

RBS and RUS, USDA

Pt. 4280

life of the guaranteed loan. The Borrower's reports will include, but not be limited to, the information specified in paragraphs (a)(1) through (8), as applicable, of this section.

(1) The actual amount of Advanced Biofuels, Biobased Products including Renewable Chemicals, and Byproducts produced.

(2) If applicable, documentation that identified health or sanitation problems have been solved.

(3) A summary of the cost of operating and maintaining the facility.

(4) A description of any maintenance or operational problems associated with the facility.

(5) Certification that the Project is and has been in compliance with all applicable State and Federal environmental laws and regulations.

(6) The number of jobs created.

(7) A description of the status of the Project's feedstock including, but not limited to, the feedstock being used, outstanding feedstock contracts, feedstock changes and interruptions, and quality of the feedstock.

(8) The results of the annual inspections conducted under paragraph (b) of this section.

(b) For the life of the guaranteed loan, conduct annual inspections.

§§ 4279.291–4279.299 [Reserved]

§ 4279.300 OMB control number.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in the subsequent interim rule have been submitted to the Office of Management and Budget (OMB) under OMB control number 0570–0065 for approval. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

PART 4280—LOANS AND GRANTS

Subpart A—Rural Economic Development Loan and Grant Programs

Sec.

4280.1 Purpose.

4280.2 Policy.

4280.3 Definitions.

4280.4–4280.12 [Reserved]

4280.13 Applicant eligibility.

4280.14 [Reserved]

4280.15 Ultimate Recipient Projects eligible for Rural Economic Development Loan funding.

4280.16 REDL and REDG Loan terms.

4280.17 Additional REDL terms.

4280.18 [Reserved]

4280.19 REDG Grants.

4280.20 [Reserved]

4280.21 Eligible REDG initial Ultimate Recipients and Projects.

4280.22 [Reserved]

4280.23 Requirements for lending from Revolving Loan Fund.

4280.24 Revolved funds.

4280.25 Revolving Loan Fund Plan.

4280.26 Administration and operation of the Revolving Loan Fund.

4280.27 Ineligible purposes.

4280.28 [Reserved]

4280.29 Supplemental financing required for the Ultimate Recipient Project.

4280.30 Restrictions on the use of REDL or REDG funds.

4280.31–4280.35 [Reserved]

4280.36 Other laws that contain compliance requirements for these Programs.

4280.37 Application forms and filing dates.

4280.38 Maximum amount of loans and Grants.

4280.39 Contents of an application.

4280.40 [Reserved]

4280.41 Environmental review of the application.

4280.42 Application evaluation and selection.

4280.43 Discretionary points.

4280.44 Limitation on the number of loans or Grants to an Intermediary.

4280.45–4280.46 [Reserved]

4280.47 Non-selection of applications.

4280.48 Post-selection period.

4280.49 [Reserved]

4280.50 Disbursement of Zero-Interest Loan funds.

4280.51–4280.52 [Reserved]

4280.53 Loan payments.

4280.54 Construction procurement requirements.

4280.55 Monitoring responsibilities.

4280.56 Submission of reports and audits.

4280.57–4280.61 [Reserved]

4280.62 Appeals.

4280.63 Exception authority.

4280.64–4280.99 [Reserved]

4280.100 OMB control number.

Subpart B—Rural Energy for America Program General

4280.101 Purpose.

4280.102 Organization of subpart.

4280.103 Definitions.

4280.104 Exception authority.

4280.105 Review or appeal rights.

4280.106 Conflict of interest.

4280.107 [Reserved]

Pt. 4280

7 CFR Ch. XLII (1–1–23 Edition)

- 4280.108 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.
4280.109 Ineligible applicants, grantees, and owners.
4280.110 General applicant, application, and funding provisions.
4280.111 Notifications.

RENEWABLE ENERGY SYSTEM AND ENERGY EFFICIENCY IMPROVEMENT GRANTS

- 4280.112 Applicant eligibility.
4280.113 Project eligibility.
4280.114 Ineligible projects.
4280.115 RES and EEI grant funding.
4280.116 Grant applications—general.
4280.117 Determination of technical merit.
4280.118 Grant applications for RES and EEI projects with total project costs \$200,000 and greater.
4280.119 Grant applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000.
4280.120 Grant applications for RES and EEI projects with total project costs of \$80,000 or less.
4280.121 Scoring RES and EEI grant applications.
4280.122 Selecting RES and EEI grant applications for award.
4280.123 Awarding and administering RES and EEI grants.
4280.124 Servicing RES and EEI grants.
4280.125 Construction planning and performing development.
4280.126–4280.136 [Reserved]

COMBINED FUNDING FOR RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS

- 4280.137 Combined grant and guaranteed loan funding requirements.
4280.138–4280.148 [Reserved]

ENERGY AUDIT AND RENEWABLE ENERGY DEVELOPMENT ASSISTANCE GRANTS

- 4280.149 Applicant eligibility.
4280.150 Project eligibility.
4280.151 Ineligible projects.
4280.152 Grant funding for EA and REDA.
4280.153 EA and REDA grant applications—content.
4280.154 Evaluation of EA and REDA grant applications.
4280.155 Scoring EA and REDA grant applications.
4280.156 Selecting EA and REDA grant applications for award.
4280.157 [Reserved]
4280.158 Awarding and administering EA and REDA grants.
4280.159 Servicing EA and REDA grants.
4280.160–4280.165 [Reserved]
4280.166 OMB control number.

APPENDIX A TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR ENERGY EFFICIENCY IMPROVEMENT (EEI) PROJECTS

APPENDIX B TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR RENEWABLE ENERGY SYSTEM (RES) PROJECTS WITH TOTAL PROJECT COSTS OF LESS THAN \$200,000, BUT MORE THAN \$80,000

APPENDIX C TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR RENEWABLE ENERGY SYSTEM (RES) PROJECTS WITH TOTAL PROJECT COSTS OF \$200,000 AND GREATER

APPENDIX D TO SUBPART B OF PART 4280—CONTENTS OF FEASIBILITY STUDY

Subpart C [Reserved]

Subpart D—Rural Microentrepreneur Assistance Program

- 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 Forms, regulations, and instructions.
4280.307–4280.309 [Reserved]
4280.310 Program requirements for MDOs.
4280.311 Loan provisions for Agency loans to microlenders.
4280.312 Loan approval and closing.
4280.313 Grant provisions.
4280.314 [Reserved]
4280.315 MDO application and submission information.
4280.316 Application scoring.
4280.317 Selection of applications for funding.
4280.318–4280.319 [Reserved]
4280.320 Grant administration.
4280.321 Grant and loan servicing.
4280.322 Loans from the microlenders to the microentrepreneurs.
4280.323 Ineligible microloan purposes and uses.
4280.324–4280.399 [Reserved]
4280.400 OMB control number.

Subpart E—Rural Business Development Grants

GENERAL

- 4280.401 Purpose.
4280.402 [Reserved]
4280.403 Definitions.
4280.404 Exception authority.
4280.405 Review or appeal rights.
4280.406 Conflict of interest.
4280.407 Statute and regulation references.
4280.408 U.S. Department of Agriculture (USDA) departmental regulations and laws that contain other compliance requirements.

RBS and RUS, USDA

4280.409 [Reserved]
4280.410 Other laws and regulations that contain compliance requirements for this program.
4280.411 Forms, guides, and attachments.
4280.412–4280.414 [Reserved]

RURAL BUSINESS DEVELOPMENT GRANTS

4280.415 Rural Business Development Grants.

ELIGIBILITY

4280.416 Applicant eligibility.
4280.417 Project eligibility.
4280.418–4280.420 [Reserved]

FUNDING PROVISIONS

4280.421 Term requirement.
4280.422 Joint funding.
4280.423 Ineligible uses of grant funds.
4280.424–4280.426 [Reserved]

APPLYING FOR A GRANT

4280.427 Application.
4280.428 Strategic economic and community development.
4280.429 [Reserved]
4280.430 Notification of decision.
4280.431–4280.433 [Reserved]

PROCESSING AND SCORING APPLICATION

4280.434 General processing and scoring provisions.
4280.435 Scoring criteria.
4280.436–4280.438 [Reserved]

GRANT AWARDS AND AGREEMENTS

4280.439 Grant awards and agreements.
4280.440–4280.442 [Reserved]

POST AWARD ACTIVITIES AND REQUIREMENTS

4280.443 Grant monitoring and servicing.
4280.444–4280.447 [Reserved]
4280.448 Transfers and assumptions.
4280.449–4280.499 [Reserved]
4280.500 OMB control number.

AUTHORITY: 7 U.S.C. 1989(a), 7 U.S.C. 2008s

SOURCE: 70 FR 41303, July 18, 2005, unless otherwise noted.

Subpart A—Rural Economic Development Loan and Grant Programs

SOURCE: 72 FR 29843, May 30, 2007, unless otherwise noted.

§ 4280.1 Purpose.

The Rural Economic Development Loan (REDL) and Grant (REDG) Programs provide financing to eligible

§ 4280.3

Rural Utilities Service (RUS) electric or telecommunications borrowers (Intermediaries) to promote rural economic development and job creation projects.

§ 4280.2 Policy.

(a) *REDL Program.* REDL Zero-Interest Loans are made to Intermediaries, to relend, at a zero-interest rate, to Ultimate Recipients. Ultimate Recipients are responsible for repayment to the Intermediary. The Intermediary must transmit Ultimate Recipient loan repayments to Rural Development.

(b) *REDG Program.* Grants are made to Intermediaries to establish Revolving Loan Funds. REDG Zero-Interest Loans are made by the Intermediary from the Revolving Loan Fund to Ultimate Recipients for the purpose of financing specific, approved Projects. Ultimate Recipients are responsible for repayment to the Intermediary. The Ultimate Recipient's loan repayments are to be retained in the Revolving Loan Fund, which is maintained by the Intermediary, to finance other rural economic development Projects. Only the initial loan made by the Intermediary from the Revolving Loan Fund has to be at zero interest.

§ 4280.3 Definitions.

The following definitions are applicable to this subpart:

Advanced Telecommunications. Using communications equipment for purposes, such as the simultaneous transmission of images and voice or the electronic transmission of data between multiple sites that do not consist primarily of providing local exchange voice or other routine communications.

Agricultural Production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, fish, or birds, either for fiber, food for human consumption, or livestock feed.

Business Incubator. A facility in which small businesses can share premises, support staff, computers, software

or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other overhead expenses, and where such businesses can receive Technical Assistance, financial advice, business planning services or other support.

Community Facilities Project. An eligible community facility under the Community Facility Direct or Guaranteed programs.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

Cushion of Credit. The amount contributed by the Intermediary pursuant to 7 U.S.C. 940c.

Direct Job. A job that is created or saved by an Ultimate Recipient employer as a result of funding received from these Programs.

Established Operation. An entity that has engaged in the nature of the Project for more than one year.

Full-Time Job. A job for which a worker is scheduled to work 35 hours per week, or more, on a regular basis.

Grant. For the REDG Program only; a transfer of monies other than a loan, from Rural Development to an Intermediary for specific use in funding a Revolving Loan Fund from which loans are made to Ultimate Recipients. Grant funds must be repaid by the Intermediary to Rural Development in the event the Fund is unused for more than one year, misused, no longer need-

ed for its intended purposes, or the Grant is terminated.

Independent Provider. An entity or individual, other than the Intermediary or the Ultimate Recipient that is not owned by a subsidiary or an affiliate of the Intermediary or Ultimate Recipient or would otherwise have an interest in the Intermediary or Ultimate Recipient that would be a conflict of interest or have the appearance of a conflict of interest.

Indirect Job. A job that is created or saved as a result of a funded Project, but is not with the Ultimate Recipient.

Infrastructure. Facilities required to support private sector economic activity such as: Highways, streets, roads, and bridges; public transit; water supply; wastewater treatment; water resources; solid waste; and hazardous waste services.

Intermediary. An entity that is identified by RUS as an eligible borrower under the Rural Electrification Act and obtains a REDG Grant or a REDL Loan.

Part-Time Job. A job for which a worker is scheduled to work less than 35 hours per week, on a regular basis.

Programs. The Rural Economic Development Loan (REDL) and the Rural Economic Development Grant (REDG) Programs.

Project. The facility, equipment, or activity of the Ultimate Recipient that is funded under one of the Programs.

REDG. The Rural Economic Development Grant Program.

REDL. The Rural Economic Development Loan Program.

Revolving Loan Fund (or Fund). A revolving loan fund that is created with Grant funds and the Intermediary's supplemental contribution under the REDG Program that makes loans and uses the loan repayments and interest earnings to make subsequent loans until the Fund is terminated.

Revolving Loan Fund Plan. A plan developed by the Intermediary and approved by Rural Development that governs the use of the Revolving Loan Fund. The plan must at least include a detailed explanation of the Intermediary's Fund administration policies and procedures and planned

RBS and RUS, USDA

§ 4280.15

Fund use after the funds in the Revolving Loan Fund have revolved. Fund administration policies and procedures must at least include information regarding the review and approval of loans from the Fund.

Rural area. This information will be taken from the most recent census data. Any area other than:

(1) A city or town that has a population of greater than 50,000 inhabitants;

(2) The urbanized area contiguous and adjacent to such a city or town; and

(3) Which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I).

Rural Business-Cooperative Service (RBS). The Rural Business-Cooperative Service, an agency within the Rural Development mission area of the USDA.

Rural Development. For purposes of this regulation, The Rural Business-Cooperative Service (RBS), an Agency of the United States Department of Agriculture, or a successor Agency, will be referred to as Rural Development.

Rural Utilities Service (RUS). The Rural Utilities Service, an Agency within the Rural Development mission area of the USDA.

Seasonal Job. A job whether Part-Time or Full-Time that begins and ends in accordance with a specified time period of less than a year and generally within a range less than four months.

Start-Up Venture(s). An entity that has engaged in the nature of the Project for less than one year. An entity that has operated in excess of one year, but which is about to enter into a new line of business, would be considered a Start-Up Venture.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical Assistance. Managerial, financial and operational analysis and consultation by Independent Providers to assist Project owners in identifying

and evaluating problems or potential problems and to provide training that enables Project owners to successfully implement, manage, operate and maintain viable Projects.

Ultimate Recipient. An entity or individual that receives a loan from an Intermediary. The Ultimate Recipient may be a for profit or not-for-profit entity such as, but not limited to, a sole proprietorship, a corporation, a cooperative, a partnership, or a Limited Liability Company. The Ultimate Recipient may also be a public body, such as, but not limited to, a political subdivision of a State or locality, or a Federally-recognized Indian tribe.

Uniform Act. The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601-4655).

USDA. The United States Department of Agriculture.

Zero-Interest Loan. A loan made by the Intermediary to the Ultimate Recipient with no interest and which will be repaid to the Intermediary by the Ultimate Recipient.

[72 FR 29843, May 30, 2007, as amended at 79 FR 76015, Dec. 19, 2014; 80 FR 9913, Feb. 24, 2015; 80 FR 15885, Mar. 26, 2015; 87 FR 38644, June 29, 2022]

§§ 4280.4–4280.12 [Reserved]

§ 4280.13 Applicant eligibility.

Applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these Programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

§ 4280.14 [Reserved]

§ 4280.15 Ultimate Recipient Projects eligible for Rural Economic Development Loan funding.

An Intermediary may receive REDL funds only when it has a pre-approved Ultimate Recipient and Project that have an immediate need for the Zero-Interest Loan. REDL funds may only be used by the Intermediary to make a Zero-Interest Loan to the Ultimate Recipient to finance financially viable economic development or job creation Projects in a Rural Area. Funds may only be used to provide the following assistance:

§ 4280.16

(a) Start-Up Venture costs, including, but not limited to financing fixed assets such as real estate, buildings (new or existing), equipment, or working capital;

(b) Business expansion;

(c) Business Incubators;

(d) Technical Assistance;

(e) Project feasibility studies;

(f) Advanced Telecommunications services and computer networks for medical, educational, and job training services;

(g) Other Projects eligible under § 4280.21; or

(h) Community Facilities Projects.

(i) A borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

[72 FR 29843, May 30, 2007, as amended at 85 FR 57085, Sept. 15, 2020]

§ 4280.16 REDL and REDG Loan terms.

REDL and REDG loans made by the Intermediary are governed by the following terms:

(a) The maximum term of a loan is 10 years, including any principal deferment period. The Intermediary may choose a shorter term if desired.

(b) Deferments on Zero-Interest Loans will automatically be granted by Rural Development upon request of the Intermediary as follows:

(1) A deferral for up to 1 year for Projects involving an Established Operation; or

(2) A deferral for up to 2 years for Projects involving a Start-Up venture or a Community Facilities Project whether or not such Project also receives funding under USDA Community Facilities funding programs.

(c) The Intermediary must provide the Ultimate Recipient with the same loan terms as the Intermediary receives from Rural Development.

(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions.

§ 4280.17 Additional REDL terms.

(a) The Intermediary is responsible for fully repaying the Zero-Interest

7 CFR Ch. XLII (1–1–23 Edition)

Loan to RBS even if the Ultimate Recipient does not repay the Intermediary.

(b) The Intermediary is responsible for remitting any partial or full payment to RBS at the time the Ultimate Recipient pays the Intermediary.

(c) Unless deferred pursuant to § 4280.16(b) of this subpart, loan payments to Rural Development under the REDL Program are due monthly.

(d) If the Intermediary does not have an outstanding loan with RUS, the Intermediary must immediately provide, as security for any REDL loan it receives, a Rural Development-approved irrevocable letter of credit that remains in effect until the loan is repaid.

§ 4280.18 [Reserved]

§ 4280.19 REDG Grants.

Intermediaries receiving Grants must partially finance a Revolving Loan Fund that the Intermediary will operate and administer, by providing supplemental funds of at least 20 percent of the Grant. Grants are subject to 2 CFR parts 200, 400, 415, 417, 418, 421 as applicable.

[79 FR 76015, Dec. 19, 2014]

§ 4280.20 [Reserved]

§ 4280.21 Eligible REDG Ultimate Recipients and Projects.

The Intermediary may only make loans from the Revolving Loan Fund to entities located in a Rural area of a State. Eligible entities are as follows:

(a) Non-profit entities, public bodies, or Federally-recognized Indian tribes Ultimate Recipients for:

(1) Community development or Community Facility Projects that:

(i) will create or save employment; and

(ii) are open to and serve all Rural residents, and are owned by the Ultimate Recipient;

(2) Business Incubators;

(3) Facilities and equipment to provide education and training to residents of Rural Areas that will facilitate economic development;

(4) Facilities and equipment to provide medical care to residents of Rural Areas. Equipment and facilities may be

RBS and RUS, USDA

§ 4280.24

funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(5) Projects that utilize Advanced Telecommunications or computer networks to facilitate medical or educational services or job training; or

(6) Project feasibility studies and Technical Assistance. A qualified Independent Provider must perform feasibility studies or Technical Assistance.

(b) For-profit Ultimate Recipients for Projects under paragraphs (a)(3), (4), (5), or (6) of this section.

§ 4280.22 [Reserved]

§ 4280.23 Requirements for lending from Revolving Loan Fund.

(a) *Supplemental contribution.* The Intermediary must establish a Revolving Loan Fund and contribute an amount equal to at least 20 percent of the Grant. The supplemental contribution must come from Intermediary's funds which may not be from other Federal Grants, unless permitted by law.

(b) *Use of supplemental contribution.* The Intermediary's contribution will only be used to make REDG loans and not other investment purposes. The Intermediary's contribution must remain a permanent part of the Revolving Loan Fund until the Fund is terminated.

(c) *REDG Zero-Interest Loan Requirements.* The Fund is made up of Rural Development and Intermediary contributions and must be loaned in accordance with one of the following 2 options:

(1) The contribution may be used to fund the same Project that Rural Development is funding. The interest rate on that portion of the financing using Rural Development funds will be at zero percent. The interest rate on that portion of the financing using the Intermediary's contribution may be greater than zero percent but must be less than, or equal to, the prevailing prime rate. Using this option, loan security and recovery of loan losses must provide for the pro rata recovery and distribution between the Intermediary and Rural Development based on the respective amounts of each contribu-

tion to the total loan amount for the Project.

(2) The Intermediary's contribution may be used to fund Projects separate from the Project financed with Rural Development funds, provided that the Project is eligible in accordance with § 4280.21.

(3) Whether the Intermediary chooses the option under paragraph (c)(1) or paragraph (c)(2) of this section, its contribution must be used to fund an eligible Project within 3 years from the date of the Grant agreement. If the Intermediary fails to use its contribution within this 3-year period, Rural Development will terminate the Grant.

(d) *Intermediary's supplemental funds.* Once revolved, monies from the Fund may be loaned at an interest rate called for in the Revolving Loan Fund Plan, not to exceed the prevailing prime rate.

(e) *Eligible purposes only.* Until the total amount in the Fund has been loaned, all loans must be made for eligible purposes as stated in § 4280.21. After the Fund has been loaned, in accordance with § 4280.21 of this subpart, the Intermediary shall make loans to finance rural economic development purposes in accordance with the Revolving Loan Fund Plan. All loan repayments, including interest earned, must be deposited into the Fund.

(f) *Termination for cause.* Rural Development will terminate the Fund and require repayment of the Grant funds if Rural Development determines that the Fund is not being operated according to the approved Revolving Loan Fund Plan, this subpart, or for other good cause determined by Rural Development, such as questionable prepayment of initial loans. As applicable, Rural Development will follow remedies for noncompliance, closeout and post-closeout adjustments and continuing responsibilities in accordance with 2 CFR 200.338–200.344 as codified by 2 CFR 400.1.

(g) All REDG Loans must be made to Rural Ultimate Recipients.

[72 FR 29843, May 30, 2007, as amended at 79 FR 76015, Dec. 19, 2014]

§ 4280.24 Revolved funds.

Rural Development and the Intermediary's supplemental funds will

§ 4280.25

be considered revolved after they have been loaned to Ultimate Recipients and subsequently repaid. Loans made from revolved funds will not require prior approval of Rural Development for creditworthiness or environmental clearance purposes. All other Federal compliance requirements, including those in this subpart, remain in effect.

§ 4280.25 Revolving Loan Fund Plan.

Each REDG Intermediary must adopt a Rural Development-approved plan that specifies that:

- (a) The initial loan made from the Fund will be at zero percent interest and have a maximum term of 10 years;
- (b) Loans made from loan repayments may carry an interest rate less than, or equal to, the prevailing prime rate. The Intermediary determines repayment terms and security arrangements on these loans.
- (c) Loans made from repayments of REDG loans must be for eligible Program purposes;
- (d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions; and
- (e) No changes will be made to a Rural Development-approved Revolving Loan Fund Plan without the prior written approval of Rural Development.

§ 4280.26 Administration and operation of the Revolving Loan Fund.

- (a) The Intermediary will operate and administer the Revolving Loan Fund. The Intermediary may contract with a third party for administrative services regarding the Fund. However, the Intermediary must permanently retain all Project review, approval, and monitoring authority and responsibility. This authority and responsibility cannot be delegated to any other person or entity.
- (b) Up to 10 percent of Rural Development Grant funds may be applied toward operating expenses over the life of the Fund. Operating expenses include the costs of administering the Fund and Technical Assistance provided to Project owners by Independent Providers.
- (c) In cases where the Intermediary uses its supplemental contribution to

7 CFR Ch. XLII (1-1-23 Edition)

the Revolving Loan Fund for a Project other than the Project that resulted in the Intermediary being awarded the Grant, the loan terms must not exceed 10 years and the interest rate must be less than, or equal to, the prevailing prime rate.

§ 4280.27 Ineligible purposes.

Zero-Interest Loans may not be used:

- (a) For activities that would adversely affect the environment, or activities that limit the choice of reasonable alternatives prior to satisfying Rural Development environmental requirements;
- (b) To pay off or refinance any existing indebtedness or costs of the Project that were incurred prior to Rural Development receipt of the Intermediary's completed application;
- (c) For any electric or telecommunications purpose or for the Intermediary's electric or telecommunications operations, for affiliated operations of the Intermediary, or for the benefit of other Intermediaries or their affiliated operations, except those purposes contained in § 4280.15(f);
- (d) To pay the salaries of any employee or owner of the Intermediary, its subsidiaries, or affiliates, except for salaries incurred in administering a Revolving Loan Fund established under the REDG Program;
- (e) For community antenna or cable television systems or facilities;
- (f) For residential purposes such as residential dwellings and land sites; facilities to provide entertainment television; to transfer property between owners without making improvements that will promote or sustain economic development in Rural Areas; or for personal, non-business related vehicles;
- (g) Where there is directly or indirectly a conflict of interest or the appearance of a conflict of interest in the Project; for Intermediaries this would include a situation in which the Intermediary, its officers, managers, Board of Directors, employees, their spouses, children, or close relatives, have a financial or ownership interest in the Project being funded, including its construction or development;
- (h) For any purpose when receipt of loan funds is conditioned upon the requirement that the Ultimate Recipient

RBS and RUS, USDA

§ 4280.36

acquire electric or telecommunications service from the Intermediary or its affiliates;

(i) For any gambling activity;

(j) For a Project that would result in the transfer of existing employment or business activity more than 25 miles from its existing location;

(k) For proposed Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510);

(l) For any illegal activity or any activity involving prostitution;

(m) For Agricultural Production, except where the Project is a farmer-owned cooperative or similar organization where the benefits of the Project are passed on to the farmer-owners, and the Agricultural Production is part of an integrated business that processes the agricultural products, and the Agricultural Production portion of the loan will not exceed 50% of the loan amount;

(n) For any pass-through Grant funding activity (a Grant by the Intermediary to the Ultimate Recipient);

(o) Provision of only local exchange voice telephone service; or

(p) for any other purpose announced in a notice by Rural Development. This will not affect Grants that have already been awarded.

§ 4280.28 [Reserved]

§ 4280.29 Supplemental financing required for the Ultimate Recipient Project.

(a) For REDL loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the Project equal to at least 20 percent of the loan to the Intermediary. For REDG grants, the Intermediary must provide supplemental funds, to capitalize the Revolving Loan Fund, equal to at least 20 percent of the Grant to the Intermediary.

(b) Funds provided by the Ultimate Recipient must be:

(1) Cash or its equivalent;

(2) Provided after Rural Development receives the completed application; and

(3) Disbursed for an eligible Project within a three year period that begins on the day the Intermediary signs the Grant agreement.

(c) Satisfactory evidence of the Ultimate Recipient's funds must be pro-

vided to Rural Development before it will advance any funds to the Intermediary.

§ 4280.30 Restrictions on the use of REDL or REDG funds.

(a) *Conflict of interest.* The Intermediary must not own or manage any Ultimate Recipient Project, unless the Project is acquired as a result of servicing a loan made from the Revolving Loan Fund. Conflicts of interest and all appearances of a conflict of interest are not permitted. The intermediary must also disclose in writing any potential conflicts of interest to the USDA awarding agency and maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest in accordance with 2 CFR 400.2(b).

(b) *Fees.* The Intermediary may charge reasonable loan servicing fees, which are limited to one percent per year of the principal amount outstanding on the loan; reasonable professional service fees that are customary for the service being provided and in accordance with any standard fee schedules that have been established for the service; and reasonable expenses the Intermediary has incurred from Independent Providers.

(c) *Interest earnings.* Any interest earned by the Intermediary on advances of Rural Development REDG or REDL funds prior to the disbursement for the Project, must be returned to Rural Development.

[72 FR 29843, May 30, 2007, as amended at 79 FR 76015, Dec. 19, 2014]

§§ 4280.31–4280.35 [Reserved]

§ 4280.36 Other laws that contain compliance requirements for these Programs.

(a) *Equal employment opportunity.* For all construction contracts and Grants in excess of \$10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) *Equal opportunity and non-discrimination.* Rural Development will ensure that equal opportunity and non-discriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15d, conducted by USDA. Rural Development will not discriminate against applicants on the bases of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(c) *Civil rights compliance.* Recipients of Grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901 subpart E, §1901.204. Initial compliance reviews will be conducted with the Intermediary when Form RD 400-4, "Assurance Agreement," is signed. For each loan or Grant an Intermediary receives, a new Form RD 400-4 must be completed. Each Ultimate Recipient must go through the same pre-award compliance review process and must also sign Form RD 400-4. For loans and Grants, a pre-award review is required before loan or Grant approval or any disbursement of funds. For Intermediaries, a post-award compliance review is required 90 days after closing the loan or Grant. This review is not required for Ultimate Recipients. Subsequent compliance reviews will be conducted 3 years from the date the post-award compliance review is completed for Intermediaries and 3 years from the date the pre-award compliance review is completed for Ultimate Recipients. Where Grant funds are used for a Revolving Loan Fund, compliance reviews are required for the Intermediaries for as long as the Fund is in operation. For Ultimate Recipients,

compliance reviews are conducted until the loan is repaid to the Fund.

(d) *Architectural barriers.* All facilities financed with Zero-Interest Loans that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to and usable by disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the "Uniform Federal Accessibility Standards", (41 CFR part 101-19.6, Appendix A).

(e) *Uniform relocation assistance.* Relocations in connection with these Programs are subject to 49 CFR part 24 as referenced by 7 CFR part 21 except that the provisions in title III of the Uniform Act do not apply to these Programs.

(f) *Drug-free workplace.* Grants made under these Programs are subject to the requirements contained in 2 CFR part 421 which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101 *et seq.*). An Intermediary requesting a REDG Grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(g) *Debarment and suspension.* The requirements of 2 CFR part 180 and Departmental Regulations 2 CFR part 417, Nonprocurement Debarment, and Suspension are applicable to these Programs.

(h) *Intergovernmental review of Federal programs.* These Programs are subject to the requirements of Executive Order 12372 (3 CFR 1982 Comp., p. 197) and 2 CFR part 415, subpart C, which implements Executive Order 12372. Proposed Projects are subject to the State and local government review process contained in 2 CFR part 415, subpart C.

(i) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, and 2 CFR part 418, are applicable to these Programs.

(j) *Earthquake hazards.* These Programs are subject to the seismic requirements of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701-7706).

(k) *Environmental requirements.* Actions taken under this subpart, including the loans made from the revolving loan fund using Agency funds, must

comply with 7 CFR part 1970. However, revolving loan funds derived from repayments by third parties are not considered Federal financial assistance for the purposes of 7 CFR part 1970.

(l) *Affirmative fair housing.* If applicable, the Intermediary will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601–3631).

(m) *Flood hazard insurance.* These Programs are subject to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by 42 U.S.C. 4001–4129.

(n) *Audits.* These Programs are subject to 2 CFR part 200, subpart F, as codified in 2 CFR part 400.1.

[72 FR 29843, May 30, 2007, as amended at 79 FR 76015, Dec. 19, 2014; 81 FR 11052, Mar. 2, 2016]

§ 4280.37 Application forms and filing dates.

(a) The Intermediary may obtain forms that supplement the written narrative sections of its application from the Rural Development State Office for the State where the Intermediary is located.

(b) An original copy only of the application is to be filed with the Rural Development State Office. No other copies are required.

§ 4280.38 Maximum amount of loans or Grants.

During any given fiscal year, Rural Development will publish an announcement of available loan and Grant funds and will indicate the maximum loan and Grant amounts for which an Intermediary or prospective Intermediary may apply. This announcement will also include contact information and application deadlines. All pending applications on file at RBS, including both loan and Grant applications, from the same Intermediary or prospective Intermediary for the same Project will be considered to be one application in determining that the maximum size of the application is in accordance with this section.

§ 4280.39 Contents of an application.

An application for a loan or a Grant must contain the following:

(a) Required forms and certifications:

(1) Standard Form 424, “Application for Federal Assistance,” signed by an authorized representative of the Intermediary.

(2) A Resolution of the Board of Directors signed by the directors and certified by the Intermediary’s board secretary. The board resolution must indicate whether the Intermediary is requesting a loan or Grant, agree to the provisions of this subpart and the loan or Grant agreement including the Intermediary’s 20 percent Fund contribution, and state that the Intermediary has the legal authority to enter into a loan or Grant agreement under these Programs;

(3) Form AD 1047, “Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions,” and Form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transactions.”

(4) Assurance statement for the Uniform Act signed by the Ultimate Recipient. This statement provides Rural Development with the required assurance statement that any relocations of persons or acquisitions of real property, as part of completing the Ultimate Recipient Project, will be handled in accordance with this statute.

(5) RD Instruction 1940-Q, Exhibit A-1, applies if the loan is greater than \$150,000 or the Grant is greater than \$100,000;

(6) SF LLL, “Disclosure of Lobbying Activities,” (if the Intermediary or the Ultimate Recipient engages in lobbying activities);

(7) Form AD 1049, “Certification Regarding Drug-Free Workplace Requirements,” for Grants only;

(8) Seismic certification if construction of a building is proposed. The Project owner certifies that any building constructed will comply with standards that reduce the damage caused by earthquakes;

(9) Environmental documentation in accordance with 7 CFR part 1970.

(10) RUS Form 7, “Financial and Statistical Report” and RUS Form 7a “Investments, Loan Guarantees, and Loans,” or similar information.

§ 4280.40

7 CFR Ch. XLII (1–1–23 Edition)

(b) A written narrative section must be provided. This section consists of the following:

(1) A Project description, including details of the work to be performed with Rural Development funds, and a business plan, including a discussion of management and prior experience of the Ultimate Recipient.

(2) A discussion of how the Project meets each selection factor in § 4280.42(b).

(3) A Revolving Loan Fund Plan is required if the Intermediary is applying for a Grant to establish a Revolving Loan Fund.

[72 FR 29843, May 30, 2007, as amended at 81 FR 11052, Mar. 2, 2016]

§ 4280.40 [Reserved]

§ 4280.41 Environmental review of the application.

The Agency will review the environmental documentation in accordance with 7 CFR part 1970. Intermediaries will be informed by the Agency if additional information is required from the intermediary to complete the environmental review process. The environmental review process must be completed before the application can be considered for approval by the Agency.

[81 FR 11052, Mar. 2, 2016]

§ 4280.42 Application evaluation and selection.

(a) Rural Development will evaluate the application and score it based on

the selection factors in this section. All applications will be ranked on a nationwide basis, based on the total points scored.

(b) The application will be evaluated and scored using the information provided in accordance with § 4280.39(b)(2) of this subpart.

(1) *Nature of the Project.* Rural Development will award up to 60 points based on whether the Project:

(i) Is a for-profit business, Business Incubator, industrial building or park, or an infrastructure connection project (such as streets or utilities)—20 points;

(ii) Provides Technical Assistance to rural businesses or rural residents, or educates or provides medical care to rural residents—20 points;

(iii) Will enhance rural economic development by providing Advanced Telecommunications services and computer networks for medical, educational, and job training services. This review will be based on the application's telecommunications design—20 points.

(2) *Number of direct full-time equivalent jobs created or saved within a 3-year period.* To calculate full-time equivalent Direct-Jobs, count two part-time jobs as one full-time job or three part-time or seasonal jobs as one full-time job. If the total numbers of part-time and seasonal jobs add up to a fraction, round up to the next whole number after combining same. Indirect-Jobs or non-Rural jobs cannot be used for this calculation.

If the number of Rural full-time equivalent direct-jobs jobs created or saved per \$100,000 of total, Project cost is:	Then Rural Development will award:
(i) Greater than five	25 points.
(ii) From one to five	15 points.

(3) *Supplemental funds for the Project.* Points will be based on a calculation of the amount of supplemental funds to be provided to the Project. All supplemental funds used in the following calculation must be disbursed to the Project between the date of Rural Development receipt of the application and 1 year after the first advance of funds by Rural Development:

If supplemental funds as a percentage of the Rural Development loan or grant to be provided to the Project are:	Then Rural Development will award:
(i) Greater than 200%	20 points.
(ii) From 100% to 200%	10 points.
(iii) From 50% to less than 100%	5 points.

RBS and RUS, USDA**\$ 4280.42**

(4) *Unemployment rate for the county(ies) where the Project is physically located.* Rural Development will compare the current unemployment rate(s) in the county(ies) to the State and na-

tional unemployment rates, and, if applicable, award points under the following categories, whichever is greater:

If the unemployment rate(s) in the county(ies) where the Project will be located:	Then Rural Development will award:
(i) Exceeds the national unemployment rate by 30% or more	15 points.
(ii) Is greater than the national unemployment rate, but exceeds it by less than 30%	5 points.
(iii) Exceeds the State unemployment rate by 30% or more	10 points.
(iv) Is greater than the State unemployment rate but exceeds it by less than 30%	5 points.

(5) *Per capita personal income for the county(ies) where the Project is physically located.* Rural Development will compare the per capita personal income in the county(ies) where the Project will

be located to the national and State per capita personal income levels, and, if applicable, award points under the following categories, whichever is greater:

If the per capita personal income level in the county(ies) is:	Then Rural Development will award:
(i) Less than or equal to 90% of the national level	15 points.
(ii) Between 90 and 100% of the national level	5 points.
(iii) Less than or equal to 90% of the State level	10 points.
(iv) Between 90 and 100% of the State level	5 points.

(6) *Rural Area location.* (i) If the Project is physically located in an incorporated city or town or equivalent having a population of 1,249 or less, or if it is physically located in an unincorporated area, Rural Development will award 20 points.

(ii) If the Project is physically located in an incorporated area having a population of 1,250 to 2500, Rural Development will award 10 points.

(7) *Decline in population for the county where the Project is physically located.* If

there has been a decline in population in the county where the Project will be located over the time period covered by the two most recent decennial Censuses to the present (or equivalent time frame if using a data source other than the decennial Census), Rural Development will award 10 points.

(8) *Cushion of Credit Payments.* Rural Development will determine the level of Cushion of Credit Payments on deposit by the Intermediary, as follows:

If the Intermediary's Cushion of Credit account level is:	Then Rural Development will award:
(i) In excess of \$300,000, or a dollar amount in excess of 3 percent of the Intermediary's total assets, whichever is less.	15 points.
(ii) Within the range of \$100,000 to \$299,999.99, or a dollar amount that is within the range of one percent to 2.99 percent of Intermediary's total assets, whichever is less.	10 points.
(iii) Within the range of \$10,000 to \$99,999.99, or a dollar amount that is within the range of 0.5 percent to .99 percent of Intermediary's total assets, whichever is less.	5 points.

(9) *Initial loan and Grant.* If the loan or Grant application will result in the first award to an Intermediary under these Programs, Rural Development will award 10 points.

(10) *County participation.* If the Project will be the first REDLG

Project financed in a county Rural Development will award 10 points.

(11) The business plan for the Applicant's Ultimate Recipient will be evaluated by Rural Development and must include:

§ 4280.43

(i) A description of the business or Project plans, its management, and, if applicable, its products and operating plans. (The business plan evaluated by Rural Development for Advanced Telecommunications will be its telecommunications and engineering design)—up to 15 points; and

(ii) An appropriate financial plan, including actual balance sheets and income statements covering the most recent 3-year period (for applicants who have been in business this long), and projected balance sheets, income statements, and cash flow statements for the ensuing 3-year period, supported by assumptions showing the basis for the projections—up to 20 points.

[72 FR 29843, May 30, 2007, as amended at 80 FR 9913, Feb. 24, 2015]

§ 4280.43 Discretionary points.

The RBS Administrator has the discretion to designate up to 25 points (no more than 5 points for each of the following elements) based on whether the Project:

(a) Is located in a Rural Empowerment Zone, Rural Economic Area Partnership Zone, Rural Enterprise Community, or Champion Community;

(b) Is located in a county that has experienced the loss, removal, or closing of a major source or sources of employment in the last 3 years which causes an increase of 2 percentage points or more in the county's most recent unemployment rate compared with the same period immediately before the dislocation;

(c) Is located in a county that has experienced chronic or long-term economic deterioration;

(d) Is located in a county that was designated a disaster area by the President of the United States that significantly affected rural economic development and job creation. The county must have been designated within 3 years prior to filing of the completed application with Rural Development; or

(e) Is consistent with the Rural Development State Office's approved strategic plan and mission area objectives and is identified as a priority area for assistance in the States' plan.

7 CFR Ch. XLII (1–1–23 Edition)

§ 4280.44 Limitation on number of loans or Grants to an Intermediary.

Depending on the amount of funds available, Rural Development may publish an announcement limiting an Intermediary to one selected Grant application and two selected loan applications in a fiscal year.

§§ 4280.45–4280.46 [Reserved]

§ 4280.47 Non-selection of applications.

Provided the application requirements have not changed, an application not selected will be reconsidered in 3 subsequent funding competitions for a total of four funding competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

§ 4280.48 Post selection period.

Rural Development will notify the Intermediary in writing if the application is selected. The documents to be executed by the Intermediary will include:

(a) For a loan:

(1) A Letter of Conditions with Project-specific terms and conditions;

(2) A loan agreement with general terms and conditions;

(3) A note covering the repayment terms of the loan; and

(4) A legal opinion concerning the authority of the Intermediary to engage in the Project.

(b) For a Grant:

(1) A Letter of Conditions with Project-specific terms and conditions;

(2) A Grant agreement with general terms and conditions; and

(3) A legal opinion concerning the authority of the Intermediary to participate in the Revolving Loan Fund and to engage in the Project.

§ 4280.49 [Reserved]

§ 4280.50 Disbursement of Zero-Interest Loan funds.

(a) For a REDL loan, Rural Development will disburse Zero-Interest Loan funds to the Intermediary in accordance with the terms of the executed loan agreement. All loan funds will be disbursed either as an advance to the Intermediary, in multiple advances, or as a reimbursement for eligible project

costs, once the Intermediary has complied with Rural Development requirements.

(b) The Intermediary must provide to the Ultimate Recipient all loan funds that the Intermediary receives from Rural Development within one year of receiving them. If the Intermediary does not re-lend Rural Development funds within one year, the loan funds, and all interest earned on the loan funds, must be returned to the Agency.

(c) For a REDG loan, Rural Development will disburse Grant funds to the Intermediary in accordance with 2 CFR 200 as adopted by USDA in 2 CFR part 400 as applicable. Specifically, Rural Development will disburse the Grant funds in advance if the following requirements are met:

(1) The Intermediary has established written procedures that will minimize the time elapsing between the transfer of funds from Rural Development and their disbursement to the Ultimate Recipient;

(2) The management system of the Intermediary meets the requirements of 2 CFR part 200 as adopted by USDA in 2 CFR part 400, as applicable;

(3) All necessary supplemental funds for the Project have been obligated or committed to the Revolving Loan Fund; and

(4) The requests for cash advances made by the Intermediary are limited to the minimum amounts needed and timed to be in accordance with the actual immediate cash needs of the Ultimate Recipient for carrying out the Project.

[72 FR 29843, May 30, 2007, as amended at 79 FR 76015, Dec. 19, 2014]

§§ 4280.51–4280.52 [Reserved]

§ 4280.53 Loan payments.

The Intermediary must make all REDL payments to Rural Development by electronic funds transfer or other means as specified in the loan documents.

§ 4280.54 Construction procurement requirements.

Construction, including bidding and awarding of contracts, must be conducted in a manner that provides maximum open and free competition.

§ 4280.55 Monitoring responsibilities.

(a) The Intermediary must monitor the Project to ensure that:

(1) Funds are used only for the approved purposes as specified in the legal documents;

(2) Disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or other forms of evidence, which are maintained on the premises of the Intermediary;

(3) Project time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved; and

(4) The Project is in compliance with all applicable regulations.

(b) Rural Development may inspect and copy records and documents that pertain to the Project. The Intermediary must retain these records for the term of the Project loan plus 2 years. In addition, Rural Development may also perform Project site visits and reviews of the use of loan or Grant proceeds.

(c) Rural Development will review and monitor Grants in accordance with 2 CFR part 200, as adopted by USDA in 2 CFR parts 400, 415, 417, 418, and 421 as applicable.

[72 FR 29843, May 30, 2007, as amended at 79 FR 76015, Dec. 19, 2014]

§ 4280.56 Submission of reports and audits.

(a) In addition to any reports and audits required by 2 CFR part 200 and subpart F as adopted by USDA in 2 CFR part 400, the Intermediary must submit the following monitoring reports to Rural Development:

(1) *Loan*. The Intermediary must submit Form RD 4280-1 “Survey of Recipients of Rural Economic Development Loan and Grant Program” to Rural Development on an annual basis until it no longer owes money to USDA under the REDLG Program.

(2) *Grant (Revolving Loan Fund)*. The Intermediary must submit the Form RD 4280-1 to Rural Development on an annual basis until all projects financed with Rural Development Grant proceeds have been repaid or are otherwise retired, whichever occurs last. Thereafter, on a triennial basis until the

§§ 4280.57–4280.61

fund is terminated, the Intermediary will submit to Rural Development the Form RD 4280-1, reporting on the activity of all loans made from the Revolving Loan Fund.

(b) If the Intermediary does not have an existing loan with RUS, the Intermediary will submit a copy of its annual audit to Rural Development within 90 days of its completion. All REDL audits must be conducted in accordance with Generally Accepted Government Auditing Standards or Generally Accepted Accounting Principles and REDG audits in accordance with 2 CFR part 200 as adopted by USDA in 2 CFR part 400.

(c) Rural Development may require Ultimate Recipients that receive loans financed with Grant funds provided under the REDG Program to submit annual audits to comply with Federal audit regulations. In accordance with 2 CFR part 200, as adopted by USDA in 2 CFR part 400, Ultimate Recipients that are nonprofit entities, or a State or local government, may be required to submit an audit subject to the threshold established in 2 CFR part 200, as adopted by in 2 CFR part 400.

[72 FR 29843, May 30, 2007, as amended at 79 FR 76015, Dec. 19, 2014]

§§ 4280.57–4280.61 [Reserved]

§ 4280.62 Appeals.

An Intermediary may appeal any appealable adverse decision made by Rural Development that affects the Intermediary in accordance with 7 CFR part 11.

§ 4280.63 Exception authority.

Except as specified in paragraphs (a) through (c) of this section, the RBS Administrator may, on a case-by-case basis, make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or when such an exception is in the best interests of the Federal Government and is otherwise not in conflict with applicable law.

(a) *Applicant eligibility.* No exception to applicant eligibility can be made.

7 CFR Ch. XLII (1–1–23 Edition)

(b) *Project eligibility.* No exception to project eligibility can be made.

(c) *Rural area definition.* No exception to the definition of rural area, as defined, can be made.

§§ 4280.64–4280.99 [Reserved]

§ 4280.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0035. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart B—Rural Energy for America Program General

SOURCE: 86 FR 22309, Apr. 27, 2021, unless otherwise noted.

§ 4280.101 Purpose.

This subpart contains the procedures and requirements for providing the following financial assistance under the Rural Energy for America Program (REAP):

(a) Grants, or a combination grant and guaranteed loan, for the purpose of purchasing and installing Renewable Energy Systems (RES) and Energy Efficiency Improvements (EEI);

(b) Grants to assist agricultural producers and rural small businesses by conducting Energy Audits (EA) and providing recommendations and information on Renewable Energy Development Assistance (REDA); and

(c) Grants or guaranteed loans, or a combination grant and guaranteed loan to an applicant or borrower pursuant to 7 CFR 1980, Subpart M Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs. A Borrower or applicant receiving funding as referenced in paragraphs (a) or (b) of this section is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR 1980, Subpart M.

§ 4280.102 Organization of subpart.

(a) Sections 4280.103 through 4280.111 discuss definitions; exception authority; review or appeal rights; conflict of interest; USDA Departmental Regulations; other applicable laws; ineligible applicants, grantees, and owners; general applicant, application, and funding provisions; and notifications, which are applicable to all of the funding programs under this subpart.

(b) Sections 4280.112 through 4280.125 discuss the requirements specific to RES and EEI grants. Sections 4280.112 and 4280.113 discuss, respectively, applicant and project eligibility. Section 4280.114 addresses ineligible projects. Section 4280.115 addresses funding provisions for these grants. Sections 4280.116 through 4280.120 address grant application content, technical merit determination, and required documentation. Sections 4280.121 through 4280.124 address the scoring, selection, awarding and administering, and servicing of these grant applications. Section 4280.125 addresses construction planning and development.

(c) Section 4280.137 presents the process by which the Agency will make combined loan guarantee and grant funding available for RES and EEI projects.

(d) Sections 4280.149 through 4280.159 present the process by which the Agency will make EA and REDA grant funding available. These sections cover applicant and project eligibility, grant funding, application content, evaluation, scoring, selection, awarding and administering, and servicing.

(e) Appendices A through C cover technical report requirements. Appendix A applies to EEI projects; Appendix B applies to RES projects with Total Project Costs of Less Than \$200,000, but more than \$80,000; and Appendix C applies to RES projects with Total Project Costs \$200,000 and Greater. Appendices A and B do not apply to RES and EEI projects with Total Project Costs of \$80,000 or less, respectively. Instead, technical report requirements for these projects are found in § 4280.120.

(f) Appendix D covers contents of feasibility study.

§ 4280.103 Definitions.

The following definitions are applicable to the capitalized terms used in this part.

Administrator. The Administrator of Rural Business-Cooperative Service within the Rural Development Mission Area of the U.S. Department of Agriculture (USDA).

Agency. The Rural Business-Cooperative Service or successor agency assigned by the Secretary of Agriculture to administer the Rural Energy for America Program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by "Agency" or "Rural Development" as applicable.

Agricultural producer. A person, including non-profits, directly engaged in the production of agricultural products through labor management and operations, including the cultivating, growing, and harvesting of plants and crops (including farming); breeding, raising, feeding, or housing of livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations. The percentage is calculated as the average of gross agricultural operations income of the concern divided by the gross total income of the concern for the five most recent years. If the concern has been in operation for less than 60 months, use average gross agricultural operations income and gross total income for as long as the concern has been in operation.

Anaerobic digester. A Renewable Energy System that uses animal waste or other renewable biomass and may include other organic substrates to produce digestate and biogas that may be sold in a gaseous or compressed liquid state or used to produce thermal or electrical energy.

Applicant. (1) Except for EA and REDA grants, the agricultural producer or rural small business that is seeking a grant, or a combination of a grant and guaranteed loan, under this subpart.

(2) For EA and REDA grants, a unit of State, Tribal, or local government; a land-grant college or university or

other institution of higher education; a rural electric cooperative; a public power entity; council; or an Instrumentality of a State, Tribal, or local government that is seeking an EA or REDA grant under this subpart.

Bioenergy project. A RES that produces fuel, biogas, thermal energy, or electric power from a renewable biomass source only.

Biofuel. A fuel derived from renewable biomass.

Biogas. Gaseous fuel (including landfill and sewage waste treatment gas) derived from the degradation and decomposition of renewable biomass.

Byproduct. An incidental or secondary product, regardless of whether it has a readily identifiable commercial use or value, generated under normal operations of the proposed project that can be reasonably measured and monitored.

Commercially available. A system that meets the requirements of either paragraph (1) or (2) of this definition.

(1) A domestic or foreign system that:

(i) Has both a proven and reliable operating history and proven performance data for at least 1 year specific to the use and operation to the proposed application;

(ii) Is based on established design and installation procedures and practices and is replicable;

(iii) Has professional service providers, trades, large construction equipment providers, and laborers who are familiar with installation procedures and practices;

(iv) Has proprietary and balance of system equipment and spare parts that are readily available;

(v) Has service that is readily available to properly maintain and operate the system; and

(vi) Has an existing established warranty that is valid in the United States for major parts and labor; or

(2) A domestic or foreign system that has been certified by a recognized industry organization whose certification standards are acceptable to the Agency.

Complete application. An application that contains all parts necessary for the Agency to determine applicant and project eligibility, the financial feasi-

bility and technical merit of the project, and contains sufficient information to determine a priority score for the application, if applicable.

Costs incurred. A cost will be considered incurred when payment for costs associated with the project have been issued. If payment was in the form of a check, the date of the check will be considered the date the cost was incurred. If payment was in the form of an electronic payment, the date that the payment was issued from the grantee/producer/borrower account will be considered the date the cost was incurred.

Council. As defined, under the Resource Conservation and Development Program, at 16 U.S.C. 3451.

Departmental regulations. The regulations of the Agency's Office of Chief Financial Officer (or successor office) as codified in 2 CFR chapter IV.

Design/Build method. A method of project development whereby all design, engineering, procurement, construction, and other related project activities are performed under a single contract. The contractor is solely responsible and accountable for successful delivery of the project to the grantee as applicable.

Eligible project costs. Those expenses approved by the Agency for the project as eligible uses of funds.

Energy assessment. An Agency-approved report assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy assessment.

(1) If the project's total project cost is greater than \$80,000, the energy assessment must be conducted by either an energy auditor or an energy assessor or an individual supervised by either an energy assessor or energy auditor. The final energy assessment must be validated and signed by the energy assessor or energy auditor who conducted the energy assessment or by the supervising energy assessor or energy auditor of the individual who conducted the assessment, as applicable.

(2) If the project's total project cost is \$80,000 or less, the energy assessment may be conducted in accordance with paragraph (1) of this definition or by an

individual or entity that has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects.

Energy assessor. A qualified consultant who has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects and who adheres to generally recognized engineering principles and practices.

Energy audit. A comprehensive report that meets an Agency-approved standard prepared by an energy auditor or an individual supervised by an energy auditor that documents current energy usage; recommended potential improvements (typically called energy conservation measures) and their costs; energy savings from these improvements; dollars saved per year; and simple payback. The methodology of the energy audit must meet professional and industry standards. The final energy audit must be validated and signed off by the energy auditor who conducted the audit or by the supervising energy auditor of the individual who conducted the audit, as applicable.

Energy auditor. A qualified consultant that meets one of the following criteria:

- (1) A certified energy auditor certified by the Association of Energy Engineers;
- (2) A certified energy manager certified by the Association of Energy Engineers;
- (3) A licensed professional engineer in the State in which the audit is conducted with at least 1-year experience and who has completed at least two similar type energy audits; or
- (4) An individual with a 4-year engineering or architectural degree with at least 3 years of experience and who has completed at least five similar type energy audits.

Energy efficiency improvement (EEI). Improvements to or replacement of an existing building or systems and/or equipment, owned by the applicant, that reduces energy consumption on an annual basis.

Existing business. A business that has been in operation for at least 1 full year. The following will be treated as existing businesses provided there is not a significant change in operations

of the existing business: Mergers by an existing business with a new or existing business, a change in the business name, or a new business and an existing business applying as co-applicants.

Feasibility study. A report including an opinion or finding conducted by an independent qualified consultant(s) evaluating the economic, market, technical, financial, and management feasibility of a proposed project or operation in terms of its expectation for success as outlined in Appendix D of this Subpart.

Federal fiscal year. The 12-month period beginning October 1 of each year and ending on September 30 of the following year; it is designated by the calendar year in which it ends.

Financial Assistance Agreement (Form RD 4280-2, Rural Business-Cooperative Service Financial Assistance Agreement). An agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

Financial feasibility. The ability of a project to achieve sufficient income, credit, and cash flow to financially sustain a project over the long term and meet all debt obligations.

Geothermal direct generation. A system that uses thermal energy directly from a geothermal source.

Geothermal electric generation. A system that uses thermal energy from a geothermal source to produce electricity.

Hybrid. A combination of two or more renewable energy technologies that are incorporated into a unified system to support a single project.

Hydroelectric source. A RES producing electricity using various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

Hydrogen project. A system that produces hydrogen derived from a renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal) geothermal or hydroelectric sources as an energy transport medium in the production of mechanical or electric power or thermal energy.

Immediate family(ies). Individuals who live in the same household or who are

closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Inspector. A qualified consultant who has at least 3 years of experience and has completed at least five inspections on similar type projects.

Institution of Higher Education. As defined in 20 U.S.C. 1002(a).

Instrumentality. An organization recognized, established, and controlled by a State, Tribal, or local government, for a public purpose or to carry out special purposes.

Interconnection agreement. A contract containing the terms and conditions governing the interconnection and parallel operation of the grantee's electric generation equipment and the utility's electric power system or a grantee's biogas production system and gas pipeline.

Matching funds. Those project funds required by 7 U.S.C. 8107 to be made available by the applicant in order to be eligible to receive the grant, or combined grant and guaranteed loan. Funds provided by the applicant in excess of matching funds are not matching funds. Unless authorized by statute, other Federal grant funds cannot be used to meet a matching funds requirement.

Ocean energy. Energy created by use of various types of moving water in the ocean and other large bodies of water (e.g., Great Lakes) including, but not limited to, tidal, wave, current, and thermal changes.

Passive investor. An equity investor that does not actively participate in management and operation decisions of the applicant or any affiliate of the applicant as evidenced by a contractual agreement.

Person. An individual or entity organized under the laws of a State or a Tribe.

Power purchase agreement. The terms and conditions governing the sale and transportation of power produced by the applicant to another party.

Public Power Entity. Is defined using the definition of "State utility" as defined in section 217(A)(4) of the Federal Power Act (16 U.S.C. 824q(a)(4)). As of this writing, the definition "means a

State or any political subdivision of a State, or any agency, authority, or Instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power."

Qualified Consultant(s). An independent third-party person possessing the knowledge, expertise, and experience to perform the specific task required.

Rated Power. The maximum amount of energy that can be created at any given time.

Refurbished. Refers to a piece of equipment or RES that has been brought into a commercial facility, thoroughly inspected, and worn parts replaced and has a warranty that is approved by the Agency or its designee.

Renewable biomass. (1) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) of Section 102; or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including the following items:

(i) Renewable plant material (including feed grains; other agricultural commodities; other plants and trees; and algae); and

(ii) Waste material including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Renewable energy. Energy derived from:

(1) A wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric Source; or

(2) Hydrogen derived from renewable biomass or water using an energy source described in paragraph (1).

Renewable energy development assistance (REDA). Assistance provided by eligible grantees to agricultural producers and rural small businesses including education, applicability, and implementation of renewable energy technologies and resources. The REDA may consist of renewable energy site assessments or renewable energy technical assistance.

Renewable energy site assessment. A report provided to an agricultural producer or rural small business providing information regarding and recommendations for the use of commercially available renewable energy technologies in its operation. The report must be prepared by a qualified consultant and must contain the information specified in Sections A through C of Appendix B.

Renewable Energy System (RES). A system that produces usable energy from a renewable energy source and may include:

(1) Distribution components necessary to move energy produced by such system to initial point of sale; and

(2) other components and ancillary infrastructure of such system, such as a storage system; however, such system may not include a mechanism for dispensing energy at retail.

Renewable energy technical assistance. Assistance provided to agricultural producers and rural small businesses on how to use renewable energy technologies and resources in their operations.

Retrofitting. A modification to an existing building or installed equipment that incorporates a function or feature(s) not included in the original design

when built or for the replacement of existing components with components that improve the original design and does not impact original warranty if the warranty is still in existence.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and excluding certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). In making this determination, the Agency will use the latest decennial census of the United States. The following exclusions apply:

(1) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that has been determined to be "rural in character" as follows:

(i) The determination that an area is "rural in character" will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (1)(ii) of this definition. The determination that an area is "rural in character" under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within ¼ mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a "rural in character" designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is "rural in character," including, but not limited to, the area's population density, demographics, and topography and how

the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's website at <https://www.rd.usda.gov>, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

(iii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is "rural in character." A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements of paragraph (1)(i)(B) of this definition and discusses why the State Director believes the area is "rural in character," including, but not limited to, the area's population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the "rural in character" provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments within 10 business days, unless the comments were submitted with the request. A public notice will be published by the State Office in accordance with paragraph (1)(ii) of this definition. There is no ap-

peal process for requests made on the initiative of the State Director.

(2) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be rural if they are "not urban in character."

(4) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be rural if they are "not urban in character."

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

Rural small business. A small business that is located in a rural area or that can demonstrate the proposed project for which assistance is being applied for under this part is located in a rural area.

Simple payback. The estimated simple payback of a project funded under this part as calculated using paragraphs (1) or (2), as applicable, of this definition.

(1) EEI projects simple payback = (total project costs) ÷ (dollar value of energy saved).

(i) Energy saved will be determined by subtracting the projected energy (determined by the method in paragraph (1)(i)(B) of this definition) to be consumed from the historical energy consumed (determined by the method

in paragraph (1)(i)(A) of this definition), and converting the result to a monetary value using a constant value or price of energy (determined by the method in paragraph (1)(i)(C) of this definition).

(A) Actual energy used in the original building and/or equipment, as applicable, prior to the EEI project, must be based on the actual average annual total energy used in British thermal units (BTU) over the most recent 12, 24, 36, 48, or 60 consecutive months of operation. Attach utility bills to document applicant entity's historical energy consumption quantity.

(B) Projected energy use if the proposed EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that actual energy use under paragraph (1)(i)(A) of this definition.

(C) Value or price of energy must be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (1)(i)(A) of this definition. When calculating the actual average price of energy, only include energy charges directly reduced by the unit of energy being replaced or saved. Attach utility bills to document applicant entity's average price of energy.

(ii) The EEI projects simple payback calculation does not allow applicants to monetize EEI benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.

(2) RES projects simple payback = (total project costs) ÷ (dollar value of energy units replaced, credited, sold, or used and fair market value of byproducts as applicable in a typical year).

(i) Value of energy replaced will be calculated based on the applicant entity's historical energy consumption with actual average price paid for the energy replaced, following the methodology outlined in paragraph (1)(i) of this definition. Attach utility bills to document applicant entity's historical energy consumption quantity and actual average price of energy.

(ii) Value of energy credited or sold will be calculated based on the amount of energy units to be credited or sold at

the proposed rate per unit, as documented in utility net metering or crediting policies and/or a power purchase agreement. Attach utility net metering or crediting policies and/or a power purchase agreement to document energy quantity and proposed rate for energy credited or sold.

(iii) If proposed energy will be used in a new facility, value of energy used will be calculated based on the amount of energy units to be used at the documented price per unit of conventional fuel alternative. Attach documentation of market price per unit of conventional fuel alternative.

(iv) Value of byproducts produced by and used in the project or related enterprises should be documented at the fair market value to be received for the byproducts in a typical year. Attach documentation of market value price to be received for byproducts and documentation to support byproduct sales or direct use.

(v) The RES projects simple payback calculation does not include any one-time benefits such as but not limited to construction and investment-related benefits, nor credits which do not provide annual income to the project, such as tax credits.

Small business means,

(1) An entity or utility, as applicable, as further defined in subparagraphs (i) through (iv) and paragraph (2) of this definition. With the exception of the entities identified in this paragraph, all other non-profit entities are not small businesses for the purposes of REAP program eligibility:

(i) A private for-profit entity, including a sole proprietorship, partnership, or corporation;

(ii) A cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code);

(iii) An electric utility (including a Tribal or governmental electric utility) that provides service to rural consumers and operates independent of direct government control; or

(iv) A Tribal corporation or other Tribal business entities that are chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or have similar structures and relationships with their Tribal governments

and are acceptable to the Agency. The Agency will determine the small business status of such Tribal entity without regard to the resources of the Tribal government; and

(2) An entity that meets Small Business Administration size standards in accordance with 13 CFR part 121 and criteria of § 121.301 as applicable to financial assistance programs, including (i) or (ii) below. The size of the concern alone and the size of the concern combined with other entity(ies) it controls or entity(ies) it is controlled by, must not exceed the size standard thresholds designated for the industry in which the concern alone or the concern and its controlling entity(ies), whichever is higher, is primarily engaged.

(i) The concern's tangible net worth is not in excess of \$15 million and average net income (excluding carry-over losses) for the preceding two completed fiscal years is not in excess of \$5.0 million; or

(ii) The size of the concern does not exceed the Small Business Administration (SBA) size standard thresholds designated for the industry in which it is primarily engaged, as measured by number of employees or annual receipts. Industry size standard designations to be utilized are listed in the Small Business Administration's (SBA) table of size standards found in 13 CFR part 121.201. Number of employees and annual receipts are calculated as follows:

(A) Number of employees is calculated as the average number of all individuals employed by a concern on a full-time, part-time, or other basis, based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(B) Annual receipts are calculated as average total income plus cost of goods sold for the five most recent years. If a concern has been in operation for less than 60 months, average annual receipts for as long as the concern has been in operation are used.

Smart Utility. The use of broadband facilities and equipment that is only

available internally by a recipient during the economic life of the assets financed by an Agency loan, grant, or loan guarantee.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Steady state operating level means that there is an adequate and consistent supply of the applicable renewable energy resource(s) for the project, both on a short-term (current) and long-term basis, and the renewable energy system and process(es) are operating at projected capacity, consistently yielding an adequate quantity and quality of renewable energy.

Total eligible project costs. The sum of all eligible project costs.

Total project costs. The sum of all costs associated with a completed project.

Underserved community(ies). Communities (including urban or rural communities and Indian tribal communities) that have limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets and that have either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency-approved census.

Used equipment. Any equipment that has been used and is provided in an "as is" condition.

Useful life means estimated durations of utility placed on a variety of assets, including buildings, machinery, equipment, vehicles, electronics, and furniture. Useful life estimations terminate at the point when assets are expected to become obsolete, require major repairs, or cease to deliver economical results.

Veteran. A veteran is a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions

RBS and RUS, USDA

§ 4280.108

other than dishonorable as defined in title 38 U.S.C. 101(2).

[86 FR 22309, Apr. 27, 2021, as amended at 87 FR 38644, June 29, 2022]

§ 4280.104 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable law.

§ 4280.105 Review or appeal rights.

Agency Applicants or grantees may have appeal or review rights for Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11. The applicant or grantee can appeal any Agency decision that directly and adversely affects them.

§ 4280.106 Conflict of interest.

(a) *General.* No conflict of interest or appearance of conflict of interest will be allowed. Conflict of interest means a situation in which a person has personal, professional, or financial interests that prevent, or appears to prevent the person from acting impartially. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and matching funds to a beneficiary or immediate family member of the applicant.

(b) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(c) *Member/delegate clause.* No member or delegate to Congress shall receive any share or part of this grant or any benefit that may arise there from; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose owner-

ship might include a member of Congress.

§ 4280.107 [Reserved]

§ 4280.108 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.

(a) *Departmental regulations.* All projects funded under this subpart are subject to the provisions of the Departmental regulations, as applicable, which are incorporated by reference herein.

(b) *Equal opportunity and non-discrimination.* The Agency will ensure that equal opportunity and non-discrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, disability, or age (provided that the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated for programs.

(2) When compliance reviews are applicable to the grant, one subsequent compliance review following project completion is required. This will occur after the last disbursement of grant funds has been made.

(d) *Environmental analysis.* Actions taken under this subpart must comply with 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds.

(2) The applicant will be notified of all specific compliance requirements, including, but not limited to, the publication of public notices, and consultation with State or Tribal Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(3) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review.

(e) *Discrimination complaints*—(1) *Who may file.* Persons or a specific class of persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250.

(2) *Time for filing.* A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or Rural Development.

§ 4280.109 Ineligible applicants, grantees, and owners.

Applicants, grantees, and owners will be ineligible to receive funds under this subpart as discussed in paragraphs (a) and (b) of this section.

(a) If an applicant, grantee, or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant, grantee, or owner is not eligible to receive a grant or combined grant and guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(b) If an applicant, grantee, or owner is debarred from receiving Federal as-

sistance, the applicant, grantee, or owner is not eligible to receive a grant or combined grant and guaranteed loan under this subpart.

§ 4280.110 General applicant, application, and funding provisions.

(a) *Satisfactory progress.* An applicant that has received one or more grants and/or guaranteed loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before the applicant will be considered for subsequent funding. This may include a review of the applicant compliance with Agency reporting requirements. Satisfactory progress for EA and REDA grants is defined as at least 50 percent of previous EA or REDA awards expended at the time the Agency makes its eligibility determination.

(b) *Application submittal.* Applications must be submitted in accordance with the provisions of this subpart unless otherwise specified in a FEDERAL REGISTER notice. Grant applications and combined grant and guaranteed loan applications for financial assistance under this subpart may be submitted at any time.

(1) *Grant applications.* Complete grant applications will be accepted on a continuous basis, with awards made based on the application's score and subject to available funding.

(2) *Combined grant and guaranteed loan applications.* Applications requesting a RES or EEI grant and a guaranteed loan under this subpart will be accepted on a continuous basis, with awards made based on the grant application's score and subject to available funding.

(c) *Application limits.* An applicant applying for a grant or a combined grant and guaranteed loan is limited to competing one RES application and one EEI application under this subpart in any one Federal fiscal year. An applicant that proposes to install the same EEI or RES (including hybrid) across multiple facilities can be considered one project and be submitted in one application.

(d) *Application modification.* Once submitted and prior to Agency award, if an applicant modifies the scope of the

RBS and RUS, USDA

§4280.110

project described in its application, the application will be treated as a new application. The submission date of record for such modified applications will be the date the Agency receives the modified information, and the application will be processed and scored by the Agency as a new application under this subpart.

(e) *Incomplete applications.* Applicants must submit complete applications in order to be considered for funding. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and provide a written explanation to the applicant for possible future resubmission. Upon receipt of a complete application by the appropriate Agency office, the Agency will complete its evaluation and will compete the application in accordance with the procedures specified in §§ 4280.122 or 4280.156 as applicable.

(f) *Application withdrawal.* During the period between the submission of an application and the execution of award documents for an application selected for funding, the applicant must notify the Agency, in writing, if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant notifies the Agency, the selection will be rescinded and/or the application withdrawn.

(g) *Technical report.* The following technologies: Hydrogen, ocean energy, geothermal electric generation, anaerobic digesters and biogas, biomass, hybrid applications, RES with storage components, and EEI or technologies as amended via FEDERAL REGISTER notification or posted on the Agency's website, must provide a technical report as specified in §§ 4280.118(d) 4280.119(b)(4), and 4280.120(b)(3) and 4280.120(b)(4), and must comply with the provisions specified in paragraphs (g)(1) through (3), as applicable, of this section:

(1) *Technical report format and detail.* The information in the technical report must follow the format specified in §4280.120(b)(3), §4280.120(b)(4), and Appendices A through C of this subpart, as applicable. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits.

In addition, information must be provided, in sufficient detail, to:

(i) Allow the Agency to determine the technical merit of the applicant's project under §4280.117;

(ii) Allow the calculation of simple payback as defined in §4280.103;

(iii) For RES Projects, enable the calculation of the percentage of historical use of energy compared to the amount of renewable energy that will be generated once the project is operating at its steady state operating level. If the project is closely associated with a residence, demonstration must be made that 50 percent or more of the projected renewable energy will benefit the agricultural operation or rural small business; and

(iv) Demonstrate that the RES or EEI will operate or perform over the project's useful life in a reliable, safe, and a cost-effective manner, which may include but is not limited to addressing project design, installation, operation, maintenance, and warranties.

(2) *Technical report modifications.* If a technical report is prepared prior to the applicant's selection of a final design, equipment vendor, or contractor, or other significant decision, it may be modified and resubmitted to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report may require additional environmental documentation in accordance with 7 CFR part 1970.

(3) *Hybrid projects.* If the application is for a hybrid project, technical reports as applicable must be prepared for each technology that comprises the hybrid project.

(h) *Time limit on use of grant funds.* Except as provided in paragraph (h)(1) of this section, grant funds not expended within 2 years from the date the Financial Assistance Agreement was signed by the Agency will be returned to the Agency.

(1) *Time extensions.* The Agency may extend the 2-year time limit for a period not to exceed 24 months if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control. Grantees must

§ 4280.111

7 CFR Ch. XLII (1–1–23 Edition)

submit a request for the no-cost extension no later than 30 days before the two-year anniversary of executing the Financial Assistance Agreement. This request must describe the extenuating circumstances that were beyond their control to complete the project for which the grant was awarded, and why an approval is in the government's best interest.

(2) *Return of funds to the Agency.* Funds remaining after grant closeout that exceed the amount the grantee is entitled to receive under the Financial Assistance Agreement will be returned to the Agency.

§ 4280.111 Notifications.

(a) *Eligibility.* If an applicant and/or their application are determined by the Agency to be eligible for participation, the Agency will notify the applicant or lender in writing of the eligibility determination.

(b) *Ineligibility.* If an applicant and/or their application are determined to be ineligible at any time, the Agency will inform the applicant or lender, as applicable, in writing of the decision, reasons therefore, and any appeal rights, if applicable. No further processing of the application will occur.

(c) *Funding determinations.* Each applicant and/or lender, as applicable, will be notified of the Agency's decision on their application. If unfunded in a competition, the application will compete in the next available competition and will continue competing until either awarded or the application has competed in the maximum number of competitions in a fiscal year. The Agency will then issue an adverse funding determination for the unsuccessful application. If the Agency's decision is not to fund an application, the Agency will include in the notification any applicable appeal or review rights.

RENEWABLE ENERGY SYSTEM AND ENERGY EFFICIENCY IMPROVEMENT GRANTS

§ 4280.112 Applicant eligibility.

To receive a RES or EEI grant under this subpart, an applicant must meet the requirements specified in paragraphs (a) through (g) of this section.

(a) *Type of applicant.* The applicant must be an agricultural producer or rural small business at the time of application.

(b) *Ownership and control.* The applicant must at the time of application and, if an award is made, for the useful life of the project as described in the Financial Assistance Agreement:

(1) Own the project; and

(2) Own or control the site for the project. If the grantee does not maintain ownership of the project and ownership or control of the site, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(c) *End Users.* If the controlling interest in the applicant entity is otherwise eligible and a legal transaction between two parties for the sale of energy in an open market is being proposed, the Agency will not consider the energy end-users as part of the analysis of the eligibility of the applicant. If the proposed end-user would be an ineligible applicant, such as an entity which is residential in nature or a non-profit entity, and the REAP applicant entity is a newly formed special-purpose entity with substantially the same ownership as the sole proposed end-user, then the REAP applicant entity is not eligible.

(d) *Revenues and expenses.* The applicant must have available at the time of application satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the useful life of the project. In addition, the applicant must control the revenues and expenses of the project, including its operation and maintenance. Notwithstanding the provisions of this paragraph, the applicant may employ a qualified consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(e) *Legal authority and responsibility.* Each applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(f) *Unique Entity Identifier (UEI).* All applicants must register for a UEI as part of the registration process. Generally, the UEI number is included on

Standard Form-424, "Application for Federal Assistance."

(g) *System for Awards Management (SAM)*. Unless exempt under 2 CFR 25.110, the applicant must:

(1) Be registered in the SAM prior to submitting an application;

(2) Maintain an active SAM registration with current information at all times while an application is pending and until final fund disbursement has been made.

§4280.113 Project eligibility.

For a project to be eligible to receive a RES or EEI grant under this subpart, the proposed project must meet each of the requirements specified in paragraphs (a) through (e) of this section. Subsequent EEI projects must meet the requirements specified in paragraph (a)(5)(ii) of this section. The applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

(a) The project must be for:

(1) The purchase of a new RES;

(2) The purchase of a refurbished RES;

(3) The retrofitting of an existing RES;

(4) For the purposes of this subpart, only those hydroelectric sources with a rated power of 30 megawatts or less are eligible, or

(5) Making an EEI that will allow less energy to be used on an annual basis than the original building and/or equipment being improved or replaced as provided in a vendor/installer certification or as demonstrated in an energy assessment or energy audit as applicable.

(i) *Types of improvements*. Eligible EEI include, but are not limited to:

(A) Efficiency improvements to existing RES; and

(B) Construction of a new energy efficient building only when the building is used for the same purpose as the existing building, and, based on an en-

ergy assessment or energy audit, as applicable, it will be more cost effective to construct a new building and will use less energy on annual basis than improving the existing building.

(ii) *Subsequent EEI projects*. A proposed EEI project that replaces an EEI project previously funded under this subpart may or may not be eligible for funding.

(A) If the proposed EEI project would replace the same specific EEI equipment that had previously received funds under this subpart prior to the end of the useful life, as specified in the Financial Assistance Agreement, then the proposed improvement project, even if it is more energy efficient than the previously funded improvement, is ineligible.

(B) If the proposed EEI project would replace the same specific EEI equipment that had previously received funds under this subpart at or after the end of the useful life, as specified in the Financial Assistance Agreement, then the proposed improvement is eligible for funding under this subpart provided the EEI is more energy efficient than the previously funded improvement. If the proposed EEI is not more energy efficient than the previously funded improvement, then it is not eligible for funding under this subpart.

(b) The project must utilize commercially available technology;

(c) The project must have technical merit, as determined using the procedures specified in §4280.117; and

(d) The project must be located in a rural area in a State if the type of applicant is a rural small business, or in a rural or non-rural area in a State if the type of applicant is an agricultural producer and the application supports the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the application can only be for RES or EEI components of the business operation that are directly related to and their use and purpose is limited to the agricultural production operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(e) For a RES project, where a residence is closely associated with and shares an energy metering device with an agricultural operation or rural small business to be served by the RES project, 50 percent or more of the energy to be generated by the RES project must be used by the agricultural operation or rural small business. This also includes projects which will virtually net meter or credit energy to be generated by the RES project to a residence off-site from the project and owned by the applicant. The application must contain sufficient documentation to evaluate this provision which may include using either of the methods identified in paragraphs (e)(1) through (2) of this section.

(1) Provide a renewable energy site assessment or other documentation including calculations that demonstrate, based on historical energy use, that 50 percent or more of the energy to be produced by the RES project will be used in the agricultural operation or rural small business. This includes documentation on historical residential energy use. The Agency may request additional data to determine residential versus business or agricultural operation usage. The actual percentage of energy determined to benefit the rural small business or agricultural operation will be used to determine eligible project costs; or

(2) The applicant may install, or elect to conditionalize funding upon the installation of, a device (such as a second meter) that restricts 100 percent of the energy generated by the RES project to be used only by the agricultural operation or rural small business.

(f) An applicant is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure, subject to the requirements of 7 CFR 1980, Subpart M, Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs.

§ 4280.114 Ineligible projects.

The Agency will not award funding under this part for any projects identified in this section, unless otherwise noted.

(a) Research and development projects and projects that involve technology that is not commercially available;

(b) Business operations that derive more than 10 percent of annual gross revenue from gambling activity. Gambling activities include any lease income from space or machines used for gambling activities. State or Tribal-authorized lottery proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project are excluded;

(c) Business operations deriving income from activities of a sexual nature or illegal activities;

(d) Residential RES or EEI projects, including farm labor housing, apartment complexes, and owner-occupied bed and breakfasts, except for-profit nursing homes and assisted living facilities that provide full-time medical care for residents, and for-profit hotels that provide short-term housing;

(e) Racetracks or facilities for conducting either professional or amateur races of animals, or by professional or amateur drivers or jockeys, or any other type of racing;

(f) RES projects that co-fire with fossil fuels, natural gas or petroleum-based products or materials such as coal and other non-renewable fuels, oils, and chemicals, and tires or plastic;

(g) Projects where 50 percent or more of the costs are ineligible or where project costs as defined in the application do not meet the definition of a renewable energy system or energy efficiency improvement, including projects submitted for labor costs only. Project costs associated with an EEI that are not clearly identified in the energy assessment or audit will be considered ineligible costs; and

(h) Projects proposing two or more different types of RES technologies that are not incorporated into a unified system and projects proposing two or more different types of RES technologies at two or more locations.

§ 4280.115 RES and EEI grant funding.

(a) *Grant amounts.* The amount of grant funds that will be made available to an eligible RES or EEI project under this subpart will not exceed 25 percent

of eligible project costs. Eligible project costs are specified in paragraph (c) of this section.

(1) *Minimum request.* Unless otherwise specified in a FEDERAL REGISTER notice, the minimum request for a RES grant application is \$2,500 and the minimum request for an EEI grant application is \$1,500.

(2) *Maximum request.* Unless otherwise specified in a FEDERAL REGISTER notice, the maximum request for a RES grant application is \$500,000 and the maximum request for an EEI grant application is \$250,000.

(3) *Maximum grant assistance.* Unless otherwise specified in a FEDERAL REGISTER notice, the maximum amount of grant assistance to one person or entity under this subpart will not exceed \$750,000 per Federal fiscal year.

(b) *Matching funds and other funds.* The applicant is responsible for securing the remainder of the total project costs not covered by grant funds.

(1) Without specific statutory authority, other Federal grant funds cannot be used to meet the matching funds requirement. A copy of the statutory authority must be provided to the Agency to verify if the other Federal grant funds can be used to meet the matching funds requirement under this subpart.

(2) Passive third-party equity contributions are acceptable for RES projects, including equity raised from the sale of Federal tax credits.

(c) *Eligible Project Costs.* Eligible project costs are only those costs incurred after a complete application has been received by the Agency and are associated with the items identified in paragraphs (c)(1) through (6) of this section. Each item identified in paragraphs (c)(1) through (6) of this section is only an eligible project cost if it is directly related to and its use and purpose is limited to the RES or EEI.

(1) Purchase and installation of new or refurbished equipment.

(2) Construction, retrofitting, replacement, and improvements.

(3) EEI identified by vendor/installer certification or in the applicable energy assessment or energy audit.

(4) Fees for construction permits and licenses and fees required by an interconnection agreement.

(5) Professional service fees related to the project for qualified consultants, contractors, installers, and other third-party services.

(6) For an eligible RES in which a residence is closely associated with the rural small business or agricultural operation the installation of a second meter to separate the residence from the portion of the project that benefits the rural small business or agricultural operation, as applicable.

(d) *Ineligible project costs.* Ineligible project costs for RES and EEI projects include, but are not limited to:

(1) Costs for agricultural tillage equipment, used equipment, and vehicles;

(2) Construction or equipment costs that would be incurred regardless of the installation of a RES or EEI.

(3) Lease payments, including lease to own or capitalized leases;

(4) Any project cost that creates a conflict of interest or an appearance of a conflict of interest as provided in §4280.106;

(5) Funds used for political or lobbying activities; and

(6) Funds used to pay off any Federal direct or guaranteed loans or other Federal debts.

(e) *Award amount considerations.* In determining the amount of a RES or EEI grant awarded, the Agency will take into consideration the following six criteria:

(1) The type of RES to be purchased;

(2) The estimated quantity of energy to be generated by the RES;

(3) The expected environmental benefits of the RES;

(4) The quantity of energy savings expected to be derived from the activity, as certified by the vendor/installer as applicable, or demonstrated by an energy audit or energy assessment;

(5) The estimated period of time for the energy savings generated by the activity to equal the cost of the activity; and

(6) The expected energy efficiency of the RES.

§4280.116 Grant applications—general.

(a) *General.* Separate applications must be submitted for RES and EEI projects. An original, hardcopy or electronic, of each application is required.

(b) *Application content.* Applications for RES projects or EEI projects must contain the information specified in § 4280.118 unless the requirements of either § 4280.119(a) or § 4280.120(a) are met. If the requirements of § 4280.119(a) are met, the application may contain the information specified in § 4280.119(b). If the requirements of § 4280.120(a) are met, the application may contain the information specified in § 4280.120(b). For RES Projects only, the Agency may require a feasibility study based on the scope of the project to the applicant's overall operations, including new facilities with significant impacts on an existing operation, or when the application information or technical report does not provide sufficient documentation and analysis of the project's engineering, technical, financial, or market feasibility, or the economic viability of the project including any feedstock or off-take agreements, that are needed to evaluate whether a project will be successful. The elements of an acceptable feasibility study may vary by project scope and should be prepared by a qualified and independent third party.

(c) *Evaluation of applications.* The Agency will evaluate each RES and EEI grant application and make a determination as to whether the application meets the criteria specified in paragraphs (c)(1) through (4).

(1) The application is complete, as defined in § 4280.103;

(2) The Applicant is eligible according to § 4280.112;

(3) The project is eligible according to § 4280.113; and

(4) The proposed project has technical merit as determined under § 4280.117.

§ 4280.117 Determination of technical merit.

The Agency will determine the technical merit of all proposed projects for which complete applications are submitted under §§ 4280.118, 4280.119, and 4280.120 under this subpart using the procedures specified in this section. Only projects that have been determined by the Agency to have technical merit are eligible for funding under this subpart.

(a) *General.* The Agency will use the information provided in the applicant's application and/or technical report to determine whether or not the project has technical merit. In making this determination, the Agency may engage the services of other Government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the technical report. The technical report can also be provided in the technical feasibility section of the feasibility study, when required, instead of completing a separate technical report.

(b) *Technical report areas.* The areas that the Agency will evaluate in the technical reports when making the technical merit determination are specified in paragraphs (b)(1) through (5) of this section.

(1) *EEI whose total project costs are \$80,000 or less.* The following areas will be evaluated in making the technical merit determination:

- (i) Project description;
- (ii) Qualifications of EEI provider(s); and
- (iii) Vender/Installer certification, energy assessment, or energy audit.

(2) *RES whose total project costs are \$80,000 or less.* The following areas will be evaluated in making the technical merit determination:

- (i) Project description;
- (ii) Resource assessment;
- (iii) Project economic assessment; and
- (iv) Qualifications of key service providers.

(3) *EEI whose total project costs are greater than \$80,000.* The following areas will be evaluated in making the technical merit determination:

- (i) Project information;
- (ii) Energy assessment or energy audit; and
- (iii) Qualifications of the contractor or installers.

(4) *RES whose total project costs are less than \$200,000, but more than \$80,000.* The following areas will be evaluated in making the technical merit determination:

- (i) Project description;
- (ii) Resource assessment;
- (iii) Project economic assessment;

(iv) Project construction and equipment; and

(v) Qualifications of key service providers.

(5) *RES whose total project costs are \$200,000 and greater.* The following areas will be evaluated in making the technical merit determination:

- (i) Qualifications of the project team;
- (ii) Agreements and permits;
- (iii) Resource assessment;
- (iv) Design and engineering;
- (v) Project development;
- (vi) Equipment procurement and installation; and
- (vii) Operations and maintenance.

(c) *Pass/Pass with conditions/fail assignments.* The Agency will assign each area of the technical report, as specified in paragraph (b) of this section, a “pass,” “pass with conditions,” or “fail.” An area will receive a “pass” if the information provided for the area has no weaknesses and meets or exceeds any requirements specified for the area. An area will receive a “pass with conditions” if the information provided for the area has minor weaknesses which could be conditionalized and reasonably resolved by the applicant. Otherwise, if the information provided for the area is conclusively deemed to be a major weakness or if the area has not been addressed by the applicant, the area will receive a “fail.”

(d) *Determination.* The Agency will compile the results for each area of the technical report to determine if the project has technical merit.

(1) A project whose technical report receives a “pass” in each of the applicable technical report areas will be considered to have “technical merit.”

(2) A project whose technical report receives a “pass with conditions” in one or more the applicable areas will be considered to have “conditional technical merit.”

(3) A project whose technical report receives a “fail” in any one technical report area will be considered to be without technical merit.

(e) *Further processing of applications.* A project that is determined to have “technical merit” or “conditional technical merit” is eligible for further consideration for funding. Projects with “conditional technical merit”

would be subject to funding conditions that would need to be met to ensure full technical merit prior to completion of the project. A project that is determined to be “without technical merit” is considered to be an incomplete application and therefore is not eligible to compete for funding.

§ 4280.118 Grant applications for RES and EEI projects with total project costs of \$200,000 and greater.

Grant applications for RES and EEI projects with total project costs of \$200,000 and greater must provide the information specified in paragraphs (a) through (c) of this section, as applicable. Each applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.121.

(a) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (a)(1) through (10), as applicable, of this section, except paragraph (a)(5) is optional.

(1) Form RD 4280-3C, “Application for Renewable Energy Systems and Energy Efficiency Improvement Projects Total Project Costs of \$200,000 or Greater”.

(2) Form SF-424, “Application for Federal Assistance.”

(3) Form SF-424C, “Budget Information—Construction Programs.”

(4) Form SF-424D, “Assurances—Construction Programs.”

(5) Identify the ethnicity, race, and gender of the applicant. Identify if the borrower is a veteran. This information is optional and is not required for a complete application but may be used by the Agency to award priority points.

(6) Environmental documentation in accordance with 7 CFR part 1970. The applicant should contact the Agency to determine what documentation is required to be provided.

(7) The applicant must identify whether or not the applicant has a known relationship or association with an Agency employee. If there is a known relationship, the applicant must identify each Agency employee with whom the applicant has a known relationship.

(8) Certification that the applicant is a legal entity in good standing (as applicable) and operating in accordance with the laws of the State(s) or Tribe(s) where the applicant has a place of business.

(9) Certification by the applicant that the equipment required for the project is available, can be procured and delivered within the proposed project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements. This would not be applicable when equipment is not part of the project.

(10) Certification by the applicant that the project will be constructed in accordance with applicable laws, regulations, agreements, permits, codes, and standards.

(b) *Applicant information.* Provide information specified in paragraphs (b)(1) through (4) of this section to allow the Agency to determine the eligibility of the applicant.

(1) *Type of applicant.* Eligible applicants must meet the definition of agricultural producer or rural small business as defined in § 4280.103. Agricultural producers seeking funding for a RES or EEI project may apply as either a rural small business or as an agricultural producer, provided they meet the applicable eligibility requirements. The applicant must provide the primary North American Industry Classification System (NAICS) code applicable to the applicant's business concern and certify on the Agency approved application form that they meet the definition of agricultural producer or rural small business. The Agency reserves the right to request supporting documentation to verify applicant eligibility.

(2) *Applicant description.* Describe the ownership of the applicant, including the information specified in paragraphs (b)(2)(i) and (ii) of this section as applicable. Include a description of the applicant's farm/ranch/business operation, including how long the applicant has been in operation.

(i) Describe how the applicant meets the ownership and control requirements as identified in § 4280.112(b).

(ii) For each entity(ies) it controls or entity(ies) it is controlled by, provide a

list of the individual owners with their contact information. Describe the relationship between the applicant and the other entity(ies), including percent ownership and control, management, passive investor ownership, and as applicable products exchanged. Organizational charts to demonstrate structure should be submitted when applicable.

(3) *Financial information.* Financial information is required on the total operation of the applicant and all entity(ies) it controls or entity(ies) that control the applicant.

(i) All financial information (*e.g.*, financial statements, balance sheets, financial projections, income statements) must be submitted in accordance with accounting practices acceptable to the Agency. Such practices can include, but are not limited to, Generally Accepted Accounting Principles (GAAP) and the industry's standard accounting practice.

(ii) For sole proprietorships and other situations where business assets are held personally, financial statements must be prepared using only the assets and liabilities directly attributable to the business. Assets, plus any improvements must be valued at the lower of cost or market value.

(iii) The Agency may request additional financial statements, financial models, cash flow information, updated financial statements, and other related financial information to determine the financial feasibility of a Project. Required financial statements:

(A) *Historical financial statements.* Provide Agency-acceptable historical balance sheets and income statements the lesser of the last 3 fiscal years or all years of operation.

(B) *Current balance sheet and income statement.* Provide a current Agency-acceptable balance sheet and year-to-date income statement dated within 90 days of submission of the complete application.

(C) *Pro forma financial statements.* Provide balance sheets, income statements, and cash flow statements or financial model starting from the current financial statements through a minimum of 2 years of the project performing at full operational capacity or

RBS and RUS, USDA

§4280.119

stable operations. Financial projections must be supported by a list of assumptions showing the basis for the projections.

(4) *Previous grants and loans.* State whether the applicant has received and accepted any grants or guaranteed loan commitments under this subpart or any guaranteed loans under 7 CFR 5001. If the applicant has, identify each such grant award or guaranteed loan commitment and describe the progress the applicant has made on each project for which the grant or loan was received, including projected schedules and actual completion dates.

(c) *Project information.* Provide information concerning the proposed project as a whole and its relationship to the applicant's operations, including the following:

(1) Identification as to whether the project is for a RES or an EEI project. Include a description and the location of the project.

(2) A description of the process that will be used to conduct all procurement transactions to demonstrate compliance with §4280.125(a)(1).

(3) Indicate if the proposed project will have a positive effect on resource conservation (*e.g.*, water, soil, forest), public health (*e.g.*, potable water, air quality), and the environment (*e.g.*, compliance with the U.S. Environmental Protection Agency's (EPA) renewable fuel standard(s), greenhouse gases, emissions, particulate matter).

(4) Identify the amount of funds and the source(s) the applicant is proposing to use for the project. Provide written commitments for funds at the time the application is submitted to receive points under this scoring criterion.

(i) If financial resources come from the applicant, documentation may include bank statements that demonstrates availability of funds.

(ii) If a third party is providing financial assistance, the applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project and must identify the dollar amount and any applicable rates and terms. If the third-party commitment is a loan, the commitment must be firm; a letter-of-intent or pre-qualification letter subject to underwriting re-

quirements or contingencies are not acceptable. An acceptable condition may be based on the receipt of the REAP grant or an appraisal.

(d) *Technical report.* Each application must contain a technical report prepared in accordance with §4280.110(g) and Appendix A or C, as applicable, of this subpart.

(e) *Construction planning and performing development.* Each application submitted must be in accordance with §4280.125 for planning, designing, bidding, contracting, and constructing RES and EEI projects as applicable.

§4280.119 Grant applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000.

Grant applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000, may provide the information specified in this section or, if the applicant elects to do so, the information specified in §4280.118. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for projects with total project costs of less than \$200,000, but more than \$80,000.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (7) of this section must be met.

(1) The applicant must be eligible in accordance with §4280.112.

(2) The project must be eligible in accordance with §4280.113.

(3) Total project costs must be less than \$200,000, but more than \$80,000.

(4) Construction planning and performing development must be performed in compliance with paragraph (c) of this section. The applicant or the applicant's prime contractor assumes

all risks and responsibilities of project development.

(5) The applicant or the applicant's prime contractor is responsible for all interim financing, including during construction.

(6) The applicant agrees not to request reimbursement from funds obligated under this program until after project completion and is operating in accordance with the information provided in the application for the project.

(7) The applicant must maintain insurance as required under § 4280.123(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (4) of this section. Each applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.121.

(1) *Forms and certifications.* The application must contain the items identified in § 4280.118(a), except that Form RD 4280-3B, "Application for Renewable Energy Systems and Energy Efficiency Improvement Projects Total Project Costs of Less than \$200,000, But More Than \$80,000" may be used instead of the form noted in § 4280.118(a)(1). In addition, the applicant must submit a certification that the applicant meets each of the criteria for submitting an application under this section as specified in paragraph (a) of this section.

(2) *Applicant information.* The application must contain the items identified in § 4280.118(b), except that the information specified in § 4280.118(b)(3) is not required. The Agency reserves the right to request supporting documentation to verify applicant eligibility.

(3) *Project information.* The application must contain the items identified in § 4280.118(c).

(4) *Technical report.* Each application must contain a technical report in accordance with § 4280.110(g) and Appendix A or B, as applicable, of this subpart.

(c) *Construction planning and performing development.* Applicants submitting applications under this section must comply with the requirements specified in paragraphs (c)(1) through

(3) of this section for construction planning and performing development.

(1) *General.* Paragraphs (a)(1), (2), and (4) of § 4280.125 apply.

(2) *Small acquisition and construction procedures.* Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment, and construction of a RES or EEI project with a total project cost of not more than \$200,000. The applicant is solely responsible for the execution of all contracts under this procedure, and Agency review and approval is not required.

(3) *Contractor forms.* Applicants must have each contractor sign, as applicable:

(i) Form RD 400-6, "Compliance Statement," for contracts exceeding \$10,000; and

(ii) Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," for contracts exceeding \$25,000.

(d) *Payment process for applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000.*

(1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor's certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the applicant to have an inspector certify that the project is constructed and installed correctly.

(2) The RES or EEI project must be constructed, installed, and operating as described in the technical report prior to disbursement of funds. For RES, the system must be operating at the steady state operating level described in the technical report for a period of not less than 30 days, unless this requirement is modified by the Agency, prior to disbursement of funds. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report and will be incorporated into the Letter of Conditions.

(3) Prior to making payment, the Agency will be provided with Form RD

RBS and RUS, USDA

§ 4280.120

1924-9, "Certificate of Contractor's Release," and Form RD 1924-10, "Release by Claimants," or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

§ 4280.120 Grant applications for RES and EEI projects with total project costs of \$80,000 or less.

Grant applications for RES and EEI projects with total project costs of \$80,000 or less must provide the information specified in this section or, if the applicant elects to do so, the information specified in either §§ 4280.118 or 4280.119. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for RES and EEI projects with total project costs of \$80,000 or less.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (7) of this section must be met.

(1) The applicant must be eligible in accordance with § 4280.112.

(2) The project must be eligible in accordance with § 4280.113.

(3) Total project costs must be \$80,000 or less.

(4) Construction planning and performing development must be performed in compliance with paragraph (c) of this section. The applicant or the applicant's prime contractor assumes all risks and responsibilities of project development.

(5) The applicant or the applicant's prime contractor is responsible for all interim financing, including during construction.

(6) The applicant agrees not to request reimbursement from funds obligated under this program until after the project has been completed and is operating in accordance with the infor-

mation provided in the application for the project.

(7) The applicant must maintain insurance as required under § 4280.123(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (4), as applicable. Each applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.121.

(1) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (b)(1)(i) through (x), as applicable, of this section except that paragraph (b)(1)(v) is optional.

(i) Form RD 4280-3A, "Application for Renewable Energy Systems and Energy Efficiency Improvement Projects Total Project Costs of \$80,000 or Less".

(ii) Form SF-424, "Application for Federal Assistance".

(iii) Form SF-424C, "Budget Information for Construction Programs".

(iv) Form SF-424D, "Assurances for Construction Programs".

(v) Identify the ethnicity, race, and gender of the applicant. Identify if the borrower is a veteran. This information is optional and is not required for a complete application but may be used by the Agency to award priority points.

(vi) Environmental documentation in accordance with 7 CFR part 1970. The applicant should contact the Agency to determine what documentation is required to be provided.

(vii) Certification by the applicant that:

(A) The applicant meets each of the applicant eligibility criteria found in § 4280.112. The Agency reserves the right to request supporting documentation to verify applicant eligibility;

(B) The proposed project meets each of the project eligibility requirements found in § 4280.113;

(C) The design, engineering, testing, and monitoring will be sufficient to demonstrate that the proposed project will meet its intended purpose;

(D) The equipment required for the project is available, can be procured and delivered within the proposed

project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements. This would not be applicable when equipment is not part of the project;

(E) The project will be constructed in accordance with applicable laws, regulations, agreements, permits, codes, and standards;

(F) The applicant meets the criteria for submitting an application for projects with total project costs of \$80,000 or less;

(G) The applicant will abide by the open and free competition requirements in compliance with § 4280.125(a)(1); and

(H) For bioenergy projects, any and all woody biomass feedstock from National Forest System land or public lands cannot be otherwise used as a higher value wood-based product.

(viii) State whether the applicant has received any grants and/or guaranteed loans under this subpart, or any guaranteed loans under 7 CFR part 5001. If the applicant has, identify each such grant and/or loan and describe the progress the applicant has made on each project for which the grant and/or loan was received, including projected schedules and actual completion dates.

(ix) The applicant must identify whether or not the applicant has a known relationship or association with an Agency employee. If there is a known relationship, the applicant must identify each Agency employee with whom the applicant has a known relationship.

(x) The applicant is a legal entity in good standing (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the applicant has a place of business.

(2) *General.* For both RES and EEI project applications:

(i) Identify whether the project is for a RES or an EEI project;

(ii) Identify the primary NAICS code applicable to the applicant's operation if known or a description of the operation in enough detail for the Agency to determine the primary NAICS code;

(iii) Indicate if the proposed project will have a positive effect on resource conservation (*e.g.*, water, soil, forest), public health (*e.g.*, potable water, air

quality), and the environment (*e.g.*, compliance with the EPA's renewable fuel standard(s), greenhouse gases, emissions, particulate matter); and

(iv) Identify the amount of matching funds and other funds and the source(s) the applicant is proposing to use for the project. In order to receive points under this scoring criterion, written commitments for funds (*e.g.*, a Letter of commitment, bank statement) must be submitted when the application is submitted.

(A) If financial resources come from the applicant, documentation may include a bank statement that demonstrates availability of funds.

(B) If a third party is providing financial assistance, the applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project, identify the dollar amount and any applicable rates and terms. If the third-party commitment is a loan, the commitment must be firm, a letter-of-intent or pre-qualification letter, subject to underwriting requirements or contingencies are not acceptable. An acceptable condition may be based on the receipt of the REAP grant or an appraisal.

(3) *Technical report for EEI.* Each EEI application submitted under this section must include a technical report in accordance with § 4280.110(g) and paragraphs (b)(3)(i) through (iv) of this section.

(i) *Project description.* Provide a description of the proposed EEI, including its intended purpose and a vendor/installer certification that the EEI project meets the requirements for being commercially available.

(ii) *Qualifications of EEI provider(s).* Provide a certification by the vendor/installer that:

(A) They are qualified to complete the project as intended, including the number of years of experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are a qualified installer/contractor.

(B) The EEI system will operate and perform over the project's useful life in

a reliable and cost-effective manner; and

(iii) *Energy assessment.* Provide a copy of the energy assessment (or energy audit) performed for the project as required under Section C of Appendix A to this subpart and the qualifications of the person which completed the energy assessment.

(iv) *Simple payback.* Provide an estimate of simple payback, including all calculations, documentation, and any assumptions.

(4) *Technical report for RES.* Each RES application submitted under this section must include a technical report in accordance with §4280.110(g) and paragraphs (b)(4)(i) through (iv) of this section.

(i) *Project description.* Provide a description of the project, including its intended purpose and a vendor/installer certification that the RES project meets the requirements for being commercially available. Appendix B contains instructions for how a project is to be constructed and installed. Identify the project's location and describe the project site.

(ii) *Resource assessment.* Provide vendor/installer certified projections on energy to be replaced and/or generated once the proposed system is operating at its steady state operating level, including the quality and availability of the renewable resource to the project. If there is a residence closely associated with the RES project, include the historical amount of energy used by the residence and the historical amount of energy used by the agricultural operation or rural small business, as applicable, to satisfactorily demonstrate 50% or more of proposed generation will benefit the agricultural operation or rural small business;

(iii) *Project economic assessment.* Describe the projected financial performance of the proposed project. The description must address total project costs, revenues accrued from the sale or crediting of energy, quantity and value of energy offset, and revenue from byproducts. Include applicable investment and other production incentives and indicate if they are a one time or reoccurring incentive. Provide an estimate of simple payback, includ-

ing all calculations, documentation, and any assumptions; and

(iv) *Qualifications of key service providers.* Provide a certification by the vendor/installer that:

(A) They are qualified to complete the project as intended, including the number of similar systems installed previously and any professional credentials, licenses, and relevant experience. If specific numbers are not available for similar systems, you may submit an estimation of the number of similar systems; and

(B) The RES system will operate and perform over the project's useful life in a reliable and cost-effective manner.

(c) *Construction planning and performing development for applications submitted under this section.* All applicants submitting applications under this section must comply with the requirements specified in paragraphs (c)(1) through (3) of this section for construction planning and performing development.

(1) *General.* Paragraphs (a)(1), (2), and (4) of §4280.125 apply.

(2) *Small acquisition and construction procedures.* Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment and construction of a RES or EEI project with a total project cost of not more than \$80,000. The applicant is solely responsible for the execution of all contracts under this procedure, and Agency review and approval is not required.

(3) *Contractor forms.* Applicants must have each contractor sign, as applicable:

(i) Form RD 400-6, "Compliance Statement" for contracts exceeding \$10,000; and

(ii) Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion lower Tier Covered Transactions" for contracts exceeding \$25,000.

(d) *Payment process for applications for RES and EEI projects with total project costs of \$80,000 or less.* (1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor's certification of final completion for the project and a statement

that the grantee accepts the work completed. At its discretion, the Agency may require the applicant to have an inspector certify that the project is constructed and installed correctly.

(2) The RES or EEI project must be constructed, installed, and currently be operating as described in the technical report prior to disbursement of funds. For RES, the system must be operating at the steady state operating level described in the technical report for a period of not less than 30 days, unless this requirement is modified by the Agency, prior to disbursement of funds. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report and will be incorporated into the Letter of Conditions.

(3) Prior to making payment, the grantee must provide the Agency with Form RD 1924-9 and Form RD 1924-10, or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

§ 4280.121 Scoring RES and EEI grant applications.

Agency personnel will score each complete and eligible RES and EEI application based on the scoring criteria specified in this section, unless otherwise specified in a FEDERAL REGISTER notice, with a maximum score of 100 points possible.

(a) *Environmental benefits.* A maximum of 5 points will be awarded for this criterion based on whether the applicant has indicated in the application that the proposed project will have a positive effect on resource conservation (*e.g.*, water, soil, forest), public health (*e.g.*, potable water, air quality), and the environment (*e.g.*, compliance with EPA's renewable fuel standard(s), greenhouse gases, emissions, particulate matter). If the project will have a positive impact on:

- (1) Any one of the three impact areas, 1 point will be awarded.
- (2) Any two of the three impact areas, 3 points will be awarded.
- (3) All three impact areas, 5 points will be awarded.

(b) *Energy generated, replaced, or saved.* A maximum of 25 points will be awarded for this criterion. Applications for RES and EEI projects are eligible

for points under both paragraphs (b)(1) and (2) of this section.

(1) *Quantity of energy generated or saved per REAP grant dollar requested.* A maximum of 10 points will be awarded for this sub-criterion. For RES and EEI projects, points will be awarded for either the amount of renewable energy generation per grant dollar requested, which includes those projects that are replacing energy usage with a renewable source; or the actual annual average energy savings over the most recent 12, 24, 36, 48, or 60 consecutive months of operation per grant dollar requested. Points will not be awarded for more than one category.

(i) *RES.* The quantity of energy generated or replaced per grant dollar requested will be determined by dividing the projected total annual energy generated or replaced by the RES or RES retrofit (minus energy for residential use), which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the annual amount of energy generated or replaced (minus energy for residential use) per grant dollar requested for the proposed RES project. In cases where there are ineligible pre-application costs, the entire quantity of energy produced by the system is utilized for this scoring criteria as long as the use of energy produced is eligible. The Agency will award up to 10 points as determined using paragraphs (b)(1)(i)(A) and (B) of this section. If the annual amount of energy generated or replaced per grant dollar requested is:

(A) 50,000 BTUs average annual energy generated or replaced per grant dollar requested or higher, 10 points will be awarded; or

(B) Less than 50,000 BTUs annual energy generated or replaced per grant dollar requested, points will be awarded according to the results of taking the energy generated or replaced per grant dollar requested/50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(ii) *EEI.* The Agency will award up to 10 points under this sub-criterion based on the average annual energy saved per grant dollar requested for the EEI project. The Agency will award up to 10 points as determined under paragraph

(b)(1)(ii)(A) and (B) of this section. If the average annual energy saved per grant dollar requested is:

(A) 50,000 BTUs average annual energy saved per grant dollar requested or higher, 10 points will be awarded; or

(B) Less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded according to the result of taking the energy saved per grant dollar requested/50,000 \times 10 points. The points awarded are rounded to the nearest hundredth of a point.

(2) *Quantity of energy replaced, generated, or saved.* A maximum of 15 points will be awarded for this sub-criterion. Points will be awarded on the basis of whether the project is for energy replacement, energy savings, or energy generation; points will not be awarded for more than one category.

(i) *Energy replacement.* The Agency will award points under this sub-criterion for a RES project based on the amount of energy replaced by the project compared to the amount of energy used by the applicable process(es) over a 12-month period. If the estimated energy produced is more than 150 percent of the energy used by the applicable process(es), the project will be scored as an energy generation project under paragraph (b)(2)(ii) of this section.

(A) *Documentation for energy replacement.* For a RES project to qualify as energy replacement, the applicant must provide documentation in its application on prior energy use incurred by the applicant. Proposed energy use, such as that attributed to an expansion, is not considered in the replacement calculation. For a RES project involving new construction and being installed to serve the new facility, the project can be classified as energy replacement only if the applicant can document prior energy use from a facility that is within plus or minus 10 percent of the size of the facility it is replacing. The estimated quantities of energy must be converted to either BTUs, watts, or similar energy equivalents to facilitate scoring.

(B) *Calculation.* Energy replacement is determined by dividing the quantity of renewable energy that the RES project is estimated would have been

generated if it were in place over the most recent 12-month period by the quantity of energy actually consumed over the same period by the applicable energy process(es) that is(are) consuming energy.

(C) *Awarding of points.* Using the results from paragraph (b)(2)(i)(B) of this section, if the percentage of energy replacement is:

(1) Greater than 50 percent, 15 points will be awarded;

(2) Greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or

(3) Equal to or less than 25 percent, 5 points will be awarded.

(ii) *Energy generation.* If the proposed RES is intended for production of energy or is a proposed retrofitting of an existing RES which increases the amount of energy generated, the Agency will award 10 points.

(iii) *Energy saved.* The Agency will award up to 15 points under this sub-criterion for an EEI project based on the percentage of estimated energy saved by the installation of the project as determined by the projections in the applicable energy assessment or energy audit. If the estimated energy expected to be saved over the same period used in the energy assessment or energy audit, as applicable, will be:

(A) 50 percent or greater, 15 points will be awarded;

(B) 35 percent up to, but not including 50 percent, 10 points will be awarded;

(C) 20 percent up to, but not including 35 percent, 5 points will be awarded; or

(D) Less than 20 percent, no points will be awarded.

(c) *Commitment of funds.* A maximum of 15 points will be awarded for this criterion based on the percentage of written commitment an applicant has from its fund sources that are documented with a complete application.

(1) *Calculation.* The percentage of written commitment is calculated as follows: Percentage of written commitment = total amount of funds for which written commitments have been submitted with the application/total amount of matching funds and other funds required.

(2) *Awarding of points.* Using the result from paragraph (c)(1) of this section, the Agency will award points as shown in paragraphs (c)(2)(i) through (iii) of this section.

(i) If the percentage of written commitments is 100 percent of the matching funds, 15 points will be awarded.

(ii) If the percentage of written commitments is less than 100 percent, but more than 50 percent, points will be awarded as follows: $((\text{Percentage of written commitments} - 50 \text{ percent}) / (50 \text{ percent})) \times 15 \text{ points}$, where points awarded are rounded to the nearest hundredth of a point.

(iii) If the percentage of written commitments is 50 percent or less, no points will be awarded.

(d) *Previous grantees and borrowers.* A maximum of 15 points will be awarded for this criterion based on whether the applicant has received and accepted a REAP grant award or guaranteed loan commitment under 7 CFR part 4280 of this title or a guaranteed loan commitment under either this part or 7 CFR part 5001 of this title.

(1) If the applicant has never received and accepted a grant award or a guaranteed loan commitment under either this part or 7 CFR part 5001 of this title, 15 points will be awarded.

(2) If the applicant has not received and accepted a grant award or guaranteed loan commitment under this subpart, or a guaranteed loan commitment under 7 CFR part 5001 of this title within the 2 previous Federal fiscal years, 5 points will be awarded.

(3) If the applicant has received a grant award or guaranteed loan commitment under this subpart, or a guaranteed loan commitment under 7 CFR part 5001 of this title within the 2 previous Federal fiscal years, no points will be awarded.

(e) *Existing business.* A maximum of 5 points will be awarded for an existing agricultural producer business or rural small business that meets the definition of existing business in § 4280.103 of this part.

(f) *Simple payback.* A maximum of 15 points will be awarded for this criterion based on the simple payback of the project as defined in § 4280.103. Points will be awarded for either RES

or EEI; points will not be awarded for more than one category.

(1) *RES.* If the simple payback of the proposed project is:

(i) Less than 10 years, 15 points will be awarded;

(ii) 10 years up to but not including 15 years, 10 points will be awarded;

(iii) 15 years up to and including 25 years, 5 points will be awarded; or

(iv) Longer than 25 years, no points will be awarded.

(2) *EEI.* If the simple payback of the proposed project is:

(i) Less than 4 years, 15 points will be awarded;

(ii) 4 years up to but not including 8 years, 10 points will be awarded;

(iii) 8 years up to and including 12 years, 5 points will be awarded; or

(iv) Longer than 12 years, no points will be awarded.

(g) *Size of request.* For grant applications requesting \$250,000 or less for RES, or \$125,000 or less for EEI, an additional 10 points may be awarded such that a maximum score of 100 points is possible. All other applications will have a maximum possible score of 90 points.

(h) *State Director and Administrator priority points.* A maximum of 10 points are available for this criterion. A State Director, for its State allocation under this subpart, or the Administrator, for making awards from the National Office reserve, may award up to 10 points to an application based on the conditions specified in paragraphs (h)(1) through (5) of this section. In no case shall an application receive more than 10 points under this criterion.

(1) The application is for an under-represented technology.

(2) Selecting the application helps achieve geographic diversity, which may include points based upon the size of the funding request.

(3) The applicant is a member of an unserved or under-served population described as follows:

(i) Owned by a veteran, including but not limited to individuals as sole proprietors, members, partners, stockholders, etc., of not less than 20 percent. In order to receive points, applicants must provide a statement in

their applications to indicate that owners of the project have Veteran status; or

(ii) Owned by a member of a socially-disadvantaged group, which are groups whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In order to receive points, the application must include a statement to indicate that the owners of the project are members of a socially disadvantaged group.

(4) Selecting the application helps further a Presidential initiative or a Secretary of Agriculture priority.

(5) The proposed project is located in a Federally declared disaster area. Declarations must be within the last 2 calendar years.

(6) The proposed project is located in an area where 20 percent or more of its population is living in poverty, as defined by the United States Census Bureau, underserved community(ies) or has experienced long-term population decline, or loss of employment.

§ 4280.122 Selecting RES and EEI grant applications for award.

Unless otherwise provided for in a FEDERAL REGISTER notice, RES and EEI grant applications will be processed in accordance with this section. Complete applications will be evaluated, processed, and subsequently ranked, and will compete for funding, subject to the availability of grant funding. Each State will receive two grant allocations, an allocation of grant funds restricted to funding requests of \$20,000 or less, and an allocation of grant funds which are unrestricted and can fund any size funding request.

(a) *RES and EEI grant applications.* Complete RES and EEI grant applications, including combination grant and guaranteed loan requests, regardless of the amount of funding requested, are eligible to compete in two competitions within a Federal fiscal year—a State competition and a National competition.

(1) To be competed in the State and National competitions, complete applications must be received by the applicable State Office by 4:30 p.m. local

time no later than March 31. If March 31 falls on a non-business day or a federally-observed holiday, the next Federal business day will be considered the last day for receipt of a complete application. Complete applications received after this date and time will be processed in the subsequent fiscal year.

(2) All eligible RES and EEI grant applications that remain unfunded after completion of the State competition will be competed in a National competition.

(b) *RES and EEI grant applications requesting \$20,000 or less.* Complete RES and EEI grant applications, including combination grant and guaranteed loan requests, requesting \$20,000 or less are eligible to compete in up to five competitions—two State competitions and a National set-aside competition for grants of \$20,000 or less, as well as the two competitions referenced in paragraph (a) of this section.

(1) For complete RES and EEI grant applications for grants requesting \$20,000 or less, there will be two State competitions each Federal fiscal year. Complete applications for \$20,000 or less that are received by the Agency by 4:30 p.m. local time on October 31 of the Federal fiscal year will be competed against each other. Complete applications for \$20,000 or less that are received by the Agency by 4:30 p.m. local time on March 31 of the Federal fiscal year and any applications for \$20,000 or less that were not ready to compete or were not funded from the prior competition, will be competed against each other. If either October 31 or March 31 falls on a weekend or a federally observed holiday, the next Federal business day will be considered the last day for receipt of a complete application. Complete applications received after 4:30 p.m. local time on March 31, regardless of the postmark on the application, will be processed in the subsequent fiscal year.

(2) All eligible RES and EEI grant applications requesting \$20,000 or less that remain unfunded after completion of the State competition for applications received by March 31 will be competed in the National competition.

(c) *Ranking of applications.* The Agency will rank complete eligible applications using the scoring criteria specific

in § 4280.121. Higher scoring applications will receive first consideration.

(d) *Funding selected applications.* As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of the applicant's grant request to the amount of funds available. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. If two or more applications score the same and if remaining funds are insufficient to fund each such application, the Agency will notify the applicants that they may either accept a proportional amount of funds or submit their total request for the next available competition. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than selecting a lower scoring application.

(e) *Handling of ranked applications not funded.* Based on the availability of funding, a ranked application might not be funded. Handling of unfunded applications depends on whether the request is more or less than \$20,000.

(1) All complete and eligible applications requesting \$20,000 or less may be competed in up to five competitions within a Federal fiscal year and if not selected for funding, the Agency will discontinue consideration of the applications.

(2) The Agency will discontinue consideration for funding all complete and eligible applications requesting more than \$20,000 that are not selected for funding after the State and National competitions for the Federal fiscal year.

(f) *Commencement of the project.* Not all grant applications that compete for funding will receive an award. Thus, the applicant assumes all risks if the applicant chooses to purchase the proposed equipment or start construction of the proposed project after the complete application has been received by the Agency, but before the applicant is

notified as to whether or not they have been selected for an award.

§ 4280.123 Awarding and administering RES and EEI grants.

The Agency will award and administer RES and EEI grants in accordance with Departmental Regulations and with paragraphs (a) through (h) of this section.

(a) *Letter of Conditions.* A Letter of Conditions will be prepared by the Agency, establishing conditions that must be agreed to by the applicant before any obligation of funds can occur. Upon reviewing the conditions and requirements in the Letter of Conditions, the applicant must complete, sign, and return the Form RD 1942-46, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," to the Agency if they accept the conditions of the grant; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the applicant before the application will be further processed.

(b) *Insurance requirements.* Agency approved insurance coverage must be maintained for 3 years after the Agency has approved the final performance report unless this requirement is waived or modified by the Agency in writing. Insurance coverage shall include, but is not limited to:

(1) Property insurance, such as fire and extended coverage, will normally be maintained on all structures and equipment.

(2) Liability.

(3) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, if applicable.

(4) Business interruption insurance for projects with total project costs of more than \$200,000.

(c) *Forms and certifications.* The forms specified in paragraphs (c)(1) through (5) of this section will be attached to the Letter of Conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (4) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(5) of this section, which

RBS and RUS, USDA

§4280.124

is to be completed by contractors, does not need to be returned to the Agency, but must be kept on file by the grantee.

(1) Form RD 1942-46, "Letter of Intent to Meet Conditions."

(2) Form RD 1940-1.

(3) Form SF-LLL, "Disclosure of Lobbying Activities," if the grant exceeds \$100,000 and/or if the grantee has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application.

(4) Form RD 400-4, "Assurance Agreement," or successor form.

(5) Form AD-1048, as signed by the contractor or other lower tier party.

(d) *Evidence of matching funds and other funds.* If an applicant submitted written evidence of matching funds and other funds with the application, the applicant is responsible for ensuring that such written evidence is still in effect (*i.e.*, not expired) when the grant is executed. If the applicant did not submit written evidence of matching funds and other funds with the application, the applicant must submit such written evidence that is in effect before the Agency will execute the Financial Assistance Agreement. In either case, written evidence of matching funds and other funds needed to complete the project must be provided to the Agency before execution of the Financial Assistance Agreement and must be in effect (*i.e.*, must not have expired) at the time Financial Assistance Agreement is executed.

(e) *System for Award Management (SAM) registration.* Before the Financial Assistance Agreement can be executed, the applicant's UEI number must be registered in the SAM and a valid (*e.g.* non-expired) Commercial and Government Entity (CAGE) code must be submitted to the Agency.

(f) *Financial Assistance Agreement.* Once the requirements specified in paragraphs (a) through (e) of this section have been met, the Financial Assistance Agreement can be executed by the grantee and the Agency. The Agreement should be signed as soon as possible, but no later than within 6 months of obligation of funds or grant funds may be de-obligated by the Agen-

cy. The grantee must abide by all requirements contained in the Financial Assistance Agreement, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements might result in termination of the grant and adoption of other available remedies.

(g) *Grant approval.* The grantee will be sent a copy of the executed Form RD 1940-1 and the Financial Assistance Agreement.

(h) *Power purchase agreement.* Where applicable, the grantee shall provide to the Agency a copy of the executed power purchase agreement within 12 months from the date that the Financial Assistance Agreement is executed, unless otherwise approved by the Agency.

§4280.124 Servicing RES and EEI grants.

The Agency will service RES and EEI grants in accordance with the requirements specified in Departmental Regulations; 7 CFR part 3; 7 CFR 1951 Subparts E and O; the Financial Assistance Agreement; and paragraphs (a) through (k) of this section.

(a) *Inspections.* Grantees must permit periodic inspection of the project records and operations by a representative of the Agency.

(b) *Programmatic changes.* Grantees may make changes to an approved project's costs, scope, contractor, or vendor subject to the provisions specified in paragraphs (b)(1) through (3) of this section. If the changes result in lowering the project's score to below what would have qualified the application for award, the Agency will not approve the changes.

(1) *Prior approval.* The grantee must obtain prior Agency approval for any change to the scope, contractor, or vendor of the approved project. Changes in project cost will require Agency approval as outlined in paragraph (b)(1)(iii) of this section.

(i) Grantees must submit requests for programmatic changes in writing to the Agency for Agency approval.

(ii) Failure to obtain prior Agency approval of any such change could result in such remedies as suspension, termination, and recovery of grant funds.

(iii) Prior Agency approval is required for all increases in project costs. Prior Agency approval is required for a decrease in project cost only if the decrease would have a negative effect on the long-term viability of the project. A decrease in project cost that does not have a negative impact on long-term viability requires Agency review and approval prior to disbursement of funds.

(2) *Changes in project cost or scope.* If there is a significant change in project cost or any change in project scope, then the grantee's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other factors, including Agency regulations used at the time of grant approval.

(3) *Change of contractor or vendor.* When seeking a change, the grantee must submit to the Agency a written request for approval. The proposed contractor or vendor must have qualifications and experience acceptable to the Agency. The written request must contain sufficient information, which may include a revised technical report as required under § 4280.118(e), 4280.119(b)(4), 4280.120(b)(3), or 4280.120(b)(4), as applicable, to demonstrate to the Agency's satisfaction that such change maintains project integrity. If the Agency determines that project integrity continues to be demonstrated, the grantee may make the change. If the Agency determines that project integrity is no longer demonstrated, the change will not be approved and the grantee has the following options: Continue with the original contractor or vendor; find another contractor or vendor that has qualifications and experience acceptable to the Agency to complete the project; or terminate the grant by providing a written request to the Agency. No additional funding will be available from the Agency if costs for the project have increased. The Agency decision will be provided in writing.

(c) *Transfer of ownership.* After the Financial Assistance Agreement for the project has been executed, the grantee may request, in writing, a transfer of the Financial Assistance Agreement to another entity. Subject

to Agency approval provided in writing, the Financial Assistance Agreement may be transferred to another entity provided:

(1) The entity is determined by the Agency to be an eligible entity under this subpart; and

(2) The type of RES or EEI technology and the scope of the project for which the Agency funds will be used remain unchanged.

(d) *Disposition of acquired property.* Grantees must abide by the disposition requirements outlined in Departmental Regulations.

(e) *Financial management system and records.* The grantee must provide for financial management systems and maintain records as specified in paragraphs (f)(1) and (2) of this section.

(1) *Financial management system.* The grantee will provide for a financial system that will include:

(i) Accurate, current, and complete disclosure of the financial results of each grant;

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income; and

(iii) Effective control over and accountability for all funds. The grantee must adequately safeguard all such assets and must ensure that funds are used solely for authorized purposes.

(2) *Records.* The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records must be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(f) *Audit requirements.* If applicable, grantees must provide an annual audit in accordance with 7 CFR part 3052. The Agency may exercise its right to do a program audit after the end of the project to ensure that all funding supported eligible project costs.

(g) *Grant disbursement.* As applicable, grantees must disburse grant funds as scheduled in accordance with the appropriate construction and inspection requirements in §§4280.119, 4280.120 or 4280.125 as applicable. Unless required by third parties providing cost sharing payments to be provided on a pro-rata basis with other funds, grant funds will be disbursed after all other funds have been expended.

(1) Unless authorized by the Agency to do so, grantees may submit requests for reimbursement no more frequently than monthly. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) Grantees must not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(3) Payments will be made by electronic funds transfer.

(4) Grantees must use SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," or other format prescribed by the Agency to request grant reimbursements. Fund requests must at a minimum include documentation of costs and evidence of payment(s), including payment date(s). Failure to provide sufficient documentation of costs and evidence of payment, including payment date, may result in denied reimbursement.

(5) For a grant awarded to a project with total project costs of \$200,000 and greater, grant funds will be disbursed in full after the project is completed, is operational, and has met or exceeded the steady state operating level as set out in the grant award requirements. Grant funds may also be disbursed through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until construction of the project is completed, the project is operational, and the project has met or exceeded the steady state operating level as set out

in the grant award requirements. In addition, the Agency reserves the right to request additional information or testing if upon a final site visit or review of documentation, the 30-day steady state operating level is not found acceptable to the Agency.

(h) *Monitoring of project.* Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes.

(1) Grantees shall constantly monitor performance to ensure that:

(i) Time schedules are being met;

(ii) Projected work is being accomplished by projected time periods;

(iii) Financial resources are being appropriately expended by contractors (if applicable); and

(iv) Any other performance objectives identified in the scope of work are being achieved.

(2) To the extent that resources are available, the Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of grantees neither:

(i) Relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only; nor

(ii) Provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or that give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(i) *Reporting requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (i)(1) through (3) of this section.

(1) *Federal financial reports.* Between grant approval and completion of project (*i.e.*, construction), SF-425, "Federal Financial Report" will be required of all grantees as applicable on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications

thereof prepared by grantee and approved by the Agency.

(2) *Project performance reports.* Between grant approval and completion of project (i.e., construction), grantees must provide semiannual project performance reports and a final project development report containing the information specified in paragraphs (i)(2)(i) and (ii) of this section. These reports are due 30 working days after June 30 and December 31 of each year.

(i) *Semiannual project performance reports.* Each semiannual project performance report must include the following:

(A) A comparison of actual accomplishments to the objectives for that period;

(B) Reasons why established objectives were not met, if applicable;

(C) Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure must be accompanied by a statement of the action taken or planned to resolve the situation; and

(D) Objectives and timetables established for the next reporting period.

(ii) *Final project development report.* The final project development report must be submitted 90 days after project completion and include:

(A) A detailed project funding and expense summary; and

(B) A summary of the project's installation/construction process, including recommendations for development of similar projects by future Applicants to the program.

(3) *Project completion requirements.* Once the project has been constructed, the grantee must provide the Agency as applicable via form RD 4280-3D "Annual Outcome Project Performance Certification", a certification that their system has for the past year performed at the steady operating level as described in the technical report of their application, and whether projected jobs created or saved have occurred, or certify that it has not performed as described. If it has not performed, a description of the circumstances which have occurred and

affected system performance must be reported, along with the actual performance of the subject REAP project, and the actual number of jobs created or saved as a direct result of the REAP project.

(i) *RES.* Three total annual outcome project performance certifications or reports are required for RES projects. The first is due at the completion of the first full calendar year following the year in which the project was completed. The remaining are required for subsequent calendar years.

(ii) *EEI.* Two total annual outcome performance certifications or reports are required for EEI projects. The first is due at completion of the first full calendar year following the year in which the project was completed. The second is required for the subsequent calendar year.

(j) *Grant close-out.* Grant close-out must be performed in accordance with the requirements specified in 2 CFR part 200.

§ 4280.125 Construction planning and performing development.

(a) *General.* The following requirements are applicable to all procurement methods specified in paragraph (f) of this section.

(1) *Maximum open and free competition.* All procurement transactions, regardless of procurement method and dollar value, must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Competitive restriction examples include, but are not limited to, the following: Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience or excessive bonding requirements. In specifying material(s), the grantee and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency will consider any recommendation made by the grantee's consultant concerning the technical design and choice of materials to be used for such a project. If the Agency determines that a design or

material, other than those that were recommended, should be considered by including them in the procurement process as an acceptable design or material in the project, the Agency will provide such applicant or grantee with a comprehensive justification for such a determination. The justification will be documented in writing.

(2) *Equal employment opportunity.* For all construction contracts and grants in excess of \$10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375 and Executive Order 13672, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant, or the lender and borrower, as applicable, is responsible for ensuring that the contractor complies with these requirements.

(3) *Surety.* The Agency will require surety on any contract for procurement exceeding \$100,000, except as provided for in paragraph (a)(3)(iv) of this section. For contracts of lesser amounts, the grantee may require surety.

(i) Surety covering both performance and payment will be required. The United States, acting through the Agency, will be named as co-obligee on all surety unless prohibited by State or Tribal law. Surety may be provided as specified in paragraphs (a)(3)(i)(A) or (B) of this section.

(A) Surety in the amount of 100 percent of the contract cost may be provided using either:

(1) A bank letter of credit; or

(2) Performance bonds and payment bonds. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the project is located.

(B) Cash deposit in escrow of at least 50 percent of the contract amount. The cash deposit cannot be from funds awarded under this subpart.

(ii) The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety are necessary, bid documents must contain provisions for such alternative types of surety. The

use of surety other than performance bonds and payment bonds requires concurrence by the Agency after submission of a justification to the Agency together with the proposed form of escrow agreement or letter of credit.

(iii) When surety is not provided, contractors must furnish evidence of payment in full for all materials, labor, and any other items procured under the contract in an Agency-approved form.

(iv) The Agency may make exceptions to surety for any of the situations identified in paragraphs (a)(3)(iv)(A) through (E) of this section.

(A) Small acquisition and construction procedures as specified in § 4280.119(c) and (d) or § 4280.120(c) and (d) as applicable are used.

(B) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are \$200,000 or less.

(C) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are more than \$200,000 and the following requirements can be met:

(1) The project involves two or fewer subcontractors; and

(2) The equipment manufacturer or provider must act as the general contractor.

(D) Other construction projects that have only one contractor performing work.

(E) The grantee agrees to request reimbursement of grant funds only after the contractors have furnished evidence of payment in full and evidence there are no outstanding liens regarding any materials, labor, and any other items procured under the contract, and the systems are deemed operational.

(4) *Grantees accomplishing work.* In some instances, grantees may wish to perform a part of the work themselves. Grantees may accomplish construction by using their own personnel and equipment, provided the grantees possess the necessary skills, abilities, and resources to perform the work and there is not a negative impact to their business operation. For a grantee to provide a portion of the work, with the

remainder to be completed by a contractor:

(i) A clear understanding of the division of work must be established and delineated in the contract;

(ii) Grantees are not eligible for payment for their own work as it is not an eligible project cost;

(iii) Warranty requirements applicable to the technology must cover the grantee's work; and

(iv) Inspection and acceptance of the grantee's work must be completed by either:

(A) An inspector that will:

(1) Inspect, as applicable, and accept construction; and

(2) Furnish inspection reports; or

(B) A licensed engineer that will:

(1) Prepare design drawings and specifications;

(2) Inspect, as applicable, and accept construction; and

(3) Furnish inspection reports.

(b) *Forms used.* Technical service and procurement documents must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, non-discrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract will become effective until concurred in writing by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(c) *Technical services.* Unless the requirements of paragraph (c)(4) of this section can be met, all RES and EEI projects with total project costs greater than \$1,000,000 require:

(1) The design, installation monitoring, testing prior to commercial operation, and project completion certification be completed by a licensed professional engineer (PE) or team of licensed PEs. Licensed PEs may be "in-house" PEs or contracted PEs.

(2) Any contract for design services must be subject to Agency concurrence.

(3) Engineers must be licensed in the State where the project is to be constructed.

(4) The Agency may grant an exception to the requirements of paragraphs (c)(1) through (3) of this section if the following requirements are met:

(i) State or Tribal law does not require the use of a licensed PE; and

(ii) The project is not complex, as determined by the Agency, and can be completed to meet the requirements of this program without the services of a licensed PE.

(d) *Design policies.* Unless the applicant plans to request a lump sum reimbursement of grant funds at the end of construction and 30 days of successful operation, regardless of total project costs, final plans and specifications must be reviewed by the Agency and approved prior to the start of construction. Facilities funded by the Agency must meet the following design requirements, as applicable:

(1) *Environmental requirements.* Actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. Project planning and design must not only be responsive to the grantee's needs but must consider the environmental consequences of the proposed project. Project design must incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review. If such actions are taken, the Agency has the right to withdraw and discontinue processing the application.

(2) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) as implemented by 41 CFR

101-196, section 504 of the Rehabilitation Act of 1973 (42 U.S.C. 1474 *et seq.*) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Energy/environment.* Project design shall consider cost effective energy-efficient and environmentally-sound products and services.

(4) *Seismic safety.* All new structures, fully or partially enclosed, used or intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and E.O. 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property shall incorporate seismic safety provisions to the extent practicable as specified in 7 CFR part 1792, subpart C.

(e) *Contract methods.* This paragraph identifies the three types of contract methods that can be used for projects funded under this subpart. The procurement methods, which are applicable to each of these contract methods, are specified in paragraph (f) of this section.

(1) *Traditional method or design-build.* The services of the consulting engineer or architect and the general construction contractor must be procured in accordance with the following paragraphs.

(i) *Solicitation of offers.* Solicitation of offers must:

(A) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary will set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a clear and accurate description

of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors must be clearly stated.

(B) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(ii) *Contract pricing.* Cost plus a percentage of cost method of contracting must not be used.

(iii) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or sub-contract related to the construction of the project:

(A) An engineer or architect as a person who has prepared plans and specifications or who will be responsible for monitoring the construction;

(B) Any entity in which the grantee's architect or engineer is an officer, employee, or holds or controls a substantial interest in the grantee;

(C) The grantee's governing body officers, employees, or agents;

(D) Any member of the grantee's immediate family or partners in paragraphs (e)(1)(iii)(A), (B), or (C) of this section; or

(E) An entity which employs, or is about to employ, any person in paragraph (e)(1)(iii)(A), (B), (C), or (D) of this section.

(iv) *Contract award.* Contracts must be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must include, but not be limited to, matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts must not be made with parties who are suspended or debarred.

(2) *Design/build method.* The design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval.

(i) *Concurrence information.* The applicant will request Agency concurrence by providing the Agency at least the

information specified in paragraphs (e)(2)(i)(A) through (H) of this section.

(A) The grantee's written request to use the design/build method with a description of the proposed method.

(B) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It shall include a nontechnical statement summarizing the work to be performed by the contractor, the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(C) A proposed firm-fixed-price contract for the entire project which provides that the contractor will be responsible for any extra cost which result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, local, and Tribal requirements effective on the contract execution date.

(D) Where noncompetitive negotiation is proposed and found, by the Agency, to be an acceptable procurement method, then the Agency will evaluate documents indicating the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(E) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the project.

(F) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(G) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.

(H) The grantee's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the grantee has the legal authority to enter into and fulfill the contract.

(ii) *Agency concurrence of design/build method.* The Agency will review the material submitted by the applicant. When all items are acceptable, the Agency approval official will concur in the use of the design/build method for the proposal.

(iii) *Forms used.* Agency approved contract documents must be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, non-discrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred, in writing, by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(iv) *Contract provisions.* Contracts will have a listing of attachments and must contain the following:

(A) The contract sum;

(B) The dates for starting and completing the work;

(C) The amount of liquidated damages, if any, to be charged;

(D) The amount, method, and frequency of payment;

(E) Surety provisions that meet the requirements of paragraph (a)(3) of this section;

(F) The requirement that changes or additions must have prior written approval of the Agency as identified in the letter of conditions;

(G) *Contract review and concurrence.* The grantee's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are in compliance with Federal, State, or Tribal law, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred, in writing, by the Agency;

(H) This part does not relieve the grantee of any responsibilities under its contract. The grantee is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of Agency funding. These include, but are not limited to, source evaluation,

protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, Tribal, or Federal authority; and

(3) *Construction management.* Construction managers as a constructor (CMc) acts in the capacity of a general contractor and is financially and professionally responsible for the construction. This type of construction management is also referred to as construction manager "At Risk." The construction contract is between the grantee and the CMc. The CMc in turn subcontracts for some or all of the work. The CMc will need to carry the Agency required 100 percent surety and insurance, as required under paragraph (a)(3) of this section. Projects using construction management must follow the requirements of (e)(2)(i) through (iv) of this section.

(f) *Procurement methods.* Procurement must be made by one of the following methods: Competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) are the preferred procurement method for construction contracts.

(1) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method, the following will apply:

(i) At a sufficient time prior to the date set for opening of bids, bids must be solicited from an adequate number of qualified sources. In addition, the invitation must be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (f)(1) of this section.

(iii) All bids must be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award must be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is

lowest. When specified in the bidding documents, factors such as discounts and transportation costs will be considered in determining which bid is lowest.

(v) The applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the applicant will select and notify the lowest responsible bidder. The contract will be awarded using an Agency-approved form.

(vi) Any or all bids may be rejected by the grantee when it is in their best interest.

(2) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers (offerors). Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications are necessary. If competitive negotiation is used for procurement, the following requirements will apply:

(i) Proposals must be solicited from two qualified sources, unless otherwise approved by the Agency, to permit reasonable competition consistent with the nature and requirements of the procurement.

(ii) The request for proposal must identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The grantee must provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the grantee, price and other factors considered. Unsuccessful offerors must be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby

the offerors' qualifications are evaluated, and the most qualified offeror is selected, subject to negotiations of fair and reasonable compensation.

(3) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source. Noncompetitive negotiation may be used when the award of a contract is not feasible under small acquisition and construction procedures, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) After solicitation of a number of sources, competition is determined inadequate; or

(ii) No acceptable bids have been received after formal advertising.

(4) *Additional procurement methods.* The grantee may use additional innovative procurement methods provided the grantee receives prior written approval from the Agency. Contracts will have a listing of attachments and the minimum provisions of the contract will include:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages to be charged;

(iv) The amount, method, and frequency of payment;

(v) Whether or not surety bonds will be provided; and

(vi) The requirement that changes or additions must have prior written approval of the Agency.

(g) *Contracts awarded prior to applications.* Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(1) *Modifications.* The contract shall be modified to conform to the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements

and executive orders related to the Agency financing.

(2) *Consultant's certification.* Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(3) *Owner's certification.* Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing.

(h) *Contract administration.* Contract administration must comply with 7 CFR 1780.76. If another authority, such as a Federal, State, or Tribal agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency will accept copies of their reports or forms as meeting oversight requirements of the Agency.

§§ 4280.126–4280.136 [Reserved]

COMBINED FUNDING FOR RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS

§ 4280.137 Combined grant and guaranteed loan funding requirements.

The requirements for a RES or EEI project for which an applicant is seeking a combined grant and guaranteed loan are specified in this section.

(a) *Eligibility.* All applicants must be eligible under the requirements specified in § 4280.112. If the applicant is seeking a loan, the applicant must also meet the borrower eligibility requirements specified in 7 CFR 5001.126. Lenders must meet eligibility requirements specified in 7 CFR 5001.130–132. Projects must meet the project eligibility requirements specified in §§ 4280.113, 7 CFR parts 5001.102 (b) and (c) and 5001.106–107, as applicable. For projects that include New Markets Tax Credits, the guaranteed loan portion of the combined funding request must meet provisions found in 5001.141.

(b) *Funding.* Funding provided under this section is subject to the limits described in paragraphs (b)(1) through (2) of this section.

(1) The amount of any combined grant and guaranteed loan shall not exceed 75 percent of eligible project costs and the grant portion shall not exceed

25 percent of eligible project costs. Loan amount provisions of 7 CFR part 5001.406(d) apply, except for (d)(2). For purposes of combined funding requests, eligible project costs are based on the total costs associated with those items specified in §4280.115(c) and 7 CFR part 5001.121(d), except for (d)(2). The applicant must provide the remaining total funds needed to complete the project.

(2) The minimum guaranteed loan request allowed is \$5,000, with the grant portion of the funding request being at least \$1,500 for EEI projects and at least \$2,500 for RES projects.

(c) *Loan origination provisions.* Provisions found in 7 CFR parts 5001.201 through 5001.208 apply to the guaranteed loan portion of a combined grant and guaranteed loan funding request.

(d) *Application provisions and documentation.* When applying for combined funding, the applicant/borrower must provide all documentation outlined in this section and the lender must submit grant and guaranteed loan application information simultaneously.

(1) Applications must include the following documentation, including the requisite forms and certifications, specified in §§ 4280.118, 4280.119, or 4280.120 as applicable, for the grant request, except that applicants submitting a properly completed 5001-1 form only need to submit the applicable RD 4280-3 form containing the applicant's CAGE code and properly signed certifications. The guaranteed loan applications are filed in accordance with 7 CFR part 5001.301 where they will be processed in accordance with 7 CFR parts 5001.303 and 5001.307, and as follows:

(2) Where both the grant application and the guaranteed loan application provisions request the same documentation, form, or certification, such documentation, form, or certification may be submitted once; the combined application does not need to contain duplicate documentation, forms, and certifications.

(e) *Loan provisions.* Provisions found in 7 CFR parts 5001.401 through 5001.408 apply to the guaranteed loan portion of a combined funding request.

(f) *Guarantee provisions.* Provisions found in 7 CFR parts 5001.450 through 5001.459 apply to the guarantee on the

guaranteed loan portion of a combined funding request.

(g) *Servicing provisions.* Provisions found in 7 CFR parts 5001.501 through 5001.524 apply to the guaranteed loan portion of a combined funding request.

(h) *Evaluation, scoring, and award.* The Agency will evaluate each combined application according to §4280.116(c) and 7 CFR part 5001.315 (a) and (b). The Agency will select applications according to applicable procedures specified in §4280.122(a) and (b) unless modified by this section. A combination loan and grant request will be selected based upon the grant score of the project. The Agency will score combined funding applications based upon the grant score as noted in §4280.121. Projects will be ranked and selected for award according to applicable competition procedures specified in §4280.122 (c), unless modified by this section or via a FEDERAL REGISTER notification.

(i) *Interest rate and terms of loan.* The interest rate and terms of the guaranteed loan for the loan portion of the combined funding request will be determined based on the procedures specified in 7 CFR parts 5001.401 and 5001.402.

(j) *Other provisions.* In addition to the requirements specified in paragraphs (a) through (i) of this section, the combined funding request is subject to the other requirements specified in this subpart, including, but not limited to, processing and servicing requirements, as applicable, as described in paragraphs (j)(1) through (4) of this section.

(1) All other provisions of §§4280.101 through 4280.111 apply to the grant portion of the combined funding request and all other provisions as applicable of 7 CFR parts 5001.1 through 5001.10 apply to the guaranteed loan portion of the combined funding request.

(2) All other provisions of §§4280.112 through 4280.124 apply to the grant portion of the combined funding request and §4280.125 applies if the project for which the grant is sought has a total project cost of \$200,000 and greater.

(3) All guarantee loan and grant combination applications that are ranked, but not funded, will be processed in accordance with provisions found in §4280.122(d), (e), and (f).

(4) Applicants whose combination applications are approved for funding must utilize both the loan and the grant. The guaranteed loan will be closed prior to grant funds being disbursed. The Agency reserves the right to reduce the total loan guarantee and grant award, as appropriate, if construction costs are less than projected or if funding sources differ from those provided in the application.

(5) Ineligible project provisions of §§ 5001.115 and 5001.119, and ineligible use of funds provision of § 5001.122 apply to the guaranteed loan portion of the combined funding request. Borrower ineligibility provisions of § 5001.127 are also applicable.

§§ 4280.138–4280.148 [Reserved]

ENERGY AUDIT AND RENEWABLE ENERGY DEVELOPMENT ASSISTANCE GRANTS

§ 4280.149 Applicant eligibility.

To be eligible for an EA grant or a REDA grant under this subpart, the applicant must meet each of the criteria, as applicable, specified in paragraphs (a) through (d) of this section. The Agency will determine an applicant's eligibility.

(a) The applicant must be one of the following:

- (1) A unit of State, Tribal, or local government;
- (2) A land-grant college or university, or other institution of higher education;
- (3) A rural electric cooperative;
- (4) A public power entity;
- (5) An instrumentality of a State, Tribal, or local government; or
- (6) A council, as defined under the Resource Conservation and Development Program, at 16 U.S. C. 3451.

(b) The applicant must have sufficient capacity to perform the EA or REDA activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(c) The applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(d) The applicant must:

- (1) Be registered in the SAM prior to submitting an application;

(2) Maintain an active SAM registration with current information at all times until final fund disbursement has been made.

(3) Provide its UEI number in each application it submits to the Agency. Generally, the UEI number is included on SF-424.

§ 4280.150 Project eligibility.

To be eligible for an EA or a REDA grant, the grant funds for a project must be used by the grantee to assist agricultural producers or rural small businesses in one of the purposes specified in paragraphs (a) and (b) of this section, and must also comply with paragraphs (c) through (f) of this section.

(a) Conducting and promoting energy audits as defined in 4280.103.

(b) Conducting and promoting REDA by providing to agricultural producers and rural small businesses recommendations and information on how to improve the energy efficiency of the operations and to use renewable energy technologies and resources in their operations.

(c) EA and REDA can be provided only to a project located in a rural area unless the grantee of such project is an agricultural producer. If the project is owned by an agricultural producer, the project for which such services are being provided may be located in either a rural or non-rural area and the EA or REDA can only be for an EEI or RES on components that support the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the Energy Audit or REDA can only be for RES or EEI components of the business operation that are directly related to and their use and purpose is limited to the agricultural production operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(d) The EA or REDA must be provided to a recipient in a State.

(e) The applicant must have a place of business in a State.

(f) The applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

§ 4280.151 Ineligible projects.

Ineligible projects for EA and REDA grants include, but are not limited to:

- (a) Research related projects.
- (b) Feasibility studies of any nature.
- (c) Projects where funding is not targeted directly to assisting agricultural producers or rural small businesses.
- (d) Projects to develop computer software or programs.
- (e) Projects where 50 percent or more of the costs are in-eligible or where project costs as defined in the application do not meet the definition of providing energy audits or renewable energy development assistance.

(f) Projects which propose to provide energy audits or renewable energy development assistance for residential purposes.

§ 4280.152 Grant funding for Energy Audit and Renewable Energy Development Assistance.

(a) *Maximum grant amount.* The maximum aggregate amount of EA and REDA grants awarded to any one recipient under this subpart cannot exceed \$100,000 in a Federal fiscal year. Grant funds awarded for EA and REDA projects may be used only to pay eligible project costs, as described in paragraph (b) of this section. Ineligible project costs are listed in paragraph (c) of this section. Provisions for EA applications are listed in paragraph (d) of this section.

(b) *Eligible project costs.* Eligible project costs for EA and REDA are those costs incurred after the date a complete application has been received by the Agency and that are directly related to conducting and promoting EA and REDA, which include but are not limited to:

- (1) Salaries;

(2) Travel expenses;

(3) Office supplies (*e.g.*, paper, pens, file folders); and

(4) Expenses charged as a direct cost or as an indirect cost of up to a maximum of 5 percent for administering the grant.

(c) *Ineligible project costs.* Ineligible project costs for EA and REDA grants include, but are not limited to:

(1) Payment for any construction-related activities;

(2) Purchase or lease of equipment;

(3) Payment of any judgment or debt owed to the United States;

(4) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106;

(5) Any costs of preparing the application package for funding under this subpart; and

(6) Funding of political or lobbying activities.

(7) Funding to train individuals to become qualified to perform EA or REDA assistance.

(8) Payment or waiver of student tuition.

(d) *EA.* A grantee that conducts energy audits must require that, as a condition of providing the EA assistance, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. Further, the amount paid by the agricultural producer or rural small business will be retained by the grantee as a contribution towards the cost of the energy audit and considered program income. The grantee may use the program income to further the objectives of their project or EA services offered during the grant period in accordance with Departmental Regulations. The 25% to be paid by an agricultural producer or rural small business does not count towards the commitment of funds scoring criteria noted in 4280.155(f).

§ 4280.153 EA and REDA grant applications—content.

(a) Unless otherwise specified in a FEDERAL REGISTER notice, applicants may only submit one EA grant application and one REDA grant application each Federal fiscal year. No combination (EA and REDA) applications will be accepted.

(b) Applicants must submit complete applications consisting of the elements specified in paragraphs (b)(1) through (7) of this section, except that paragraph (b)(3), is optional. Applications will be evaluated based only on information submitted by the applicant in the application.

(1) Form SF-424.

(2) Form SF-424A, “Budget Information—Non Construction Programs.”

(3) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a complete application.

(4) Certification that the applicant is a legal entity in good standing (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the applicant has a place of business.

(5) The applicant must identify whether or not the applicant has a known relationship or association with an Agency employee. If there is a known relationship, the applicant must identify each Agency employee with whom the applicant has a known relationship.

(6) A proposed scope of work to include the following items:

(i) A brief summary including a project title describing the proposed project;

(ii) Goals of the proposed project;

(iii) Geographic scope or service area of the proposed project and the method and rationale used to select the service area;

(iv) Identification of the specific needs for the service area and the target audience to be served. The number of agricultural producers and/or rural small businesses to be served must be identified including name and contact information, if available, as well as the method and rationale used to select the agricultural producers and/or rural small businesses;

(v) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task. Include whether organizational staff, consultants, or contractors will be used to perform each task. If a project is located in multiple States, resources must be sufficient to complete all projects;

(vi) Marketing strategies to include a discussion on how the applicant will be marketing and providing outreach activities to the proposed service area ensuring that agricultural producers and/or rural small businesses are served;

(vii) Applicant’s experience as follows:

(A) If applying for a REDA grant, the applicant’s experience in completing similar REDA activities, such as renewable energy site assessments and renewable energy technical assistance provided directly to agricultural producers and rural small businesses, including the number of similar projects the applicant has performed and the number of years the applicant has been performing a similar service.

(B) If applying for an EA grant, the number of energy audits the applicant has completed and the number of years the applicant has been performing those services;

(C) For all applicants, the amount of experience in administering EA, REDA, or similar activities as applicable to the purpose of the proposed project. Provide discussion if the applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with the agricultural producers and/or rural small businesses the applicant has served. If the applicant has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, please describe the achievement;

(viii) Itemized budget; and

(ix) Identify the amount of matching funds and other funds and the source(s) the applicant is proposing to use for the project. Provide written commitments for matching funds and other funds at the time the application is submitted.

(A) If financial resources come from the applicant, documentation may include a bank statement that demonstrates availability of funds.

(B) If a third party is providing financial assistance to the project, the applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be

RBS and RUS, USDA

§ 4280.155

specific to the project, identify the dollar amount being provided and any applicable rates and terms.

§ 4280.154 Evaluation of EA and REDA grant applications.

The Agency will evaluate EA and REDA grant applications, based only upon information submitted in the application, to determine if:

- (a) The application is complete, as defined in § 4280.103 and as per § 4280.153;
- (b) The applicant is eligible according to § 4280.149;
- (c) The project is eligible according to § 4280.150 and 4280.151, including 50% or more of proposed project costs are eligible; and
- (d) Grant funding provisions according to § 4280.152 are met.

§ 4280.155 Scoring EA and REDA grant applications.

The Agency will score each EA and REDA application using the criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible. Unless otherwise altered via a FEDERAL REGISTER notification, the project must score a minimum of 40 points to be eligible to compete for funding.

(a) *Geographic scope of project in relation to identified need.* A maximum of 20 points can be awarded.

(1) If the applicant's proposed or existing service area is state-wide or includes all or parts of multiple states, and the scope of work has identified needs throughout that service area, 20 points will be awarded.

(2) If the applicant's proposed or existing service area consists of multiple counties in a single state and the scope of work has identified needs throughout that service area, 15 points will be awarded.

(3) If the applicant's service area consists of a single county or municipality and the scope of work has identified needs throughout that service area, 10 points will be awarded.

(b) *Number of agricultural producers/rural small businesses to be served.* A maximum of 20 points will be awarded for this criterion based on the proposed number of ultimate recipients to be assisted and if the applicant has provided

the names and contact information for the ultimate recipients to be assisted.

(1) If the applicant plans to provide EA or REDA to:

(i) Up to 10 ultimate recipients, 2 points will be awarded.

(ii) Between 11 and up to and including 25 ultimate recipients, 5 points will be awarded.

(iii) More than 25 ultimate recipients, 10 points will be awarded.

(2) If the applicant provides a list with at least 50 percent of the total number of proposed ultimate recipients ready to be assisted, including their name and contact information, an additional 10 points may be awarded.

(c) *Marketing and outreach plan.* A maximum of 5 points will be awarded for this criterion. If the scope of work included in the application provides a satisfactory discussion of each of the following criteria, one point for each can be awarded.

- (1) The goals of the project;
- (2) Identified need;
- (3) Targeted ultimate recipients;
- (4) Timeline and action plan; and
- (5) Marketing and outreach strategies and supporting data for strategies.

(d) *Applicant's organizational experience in completing the EA or REDA proposed activity.* A maximum of 25 points will be awarded for this criterion based on the experience of the organization in providing EA or REDA as applicable to the purpose of the proposed project. The organization must have been in business and provided services for the number of years as identified in the paragraphs below. Experience of contractors proposed in the application to perform the services may be applied to this scoring criteria as long as the experience relates to the same type of activity, *e.g.*, energy audit experience for an EA application.

(1) More than 10 years of experience, 25 points will be awarded.

(2) At least 5 years and up to and including 10 years of experience, 20 points will be awarded.

(3) At least 2 years and up to and including 5 years of experience, 10 points will be awarded.

(4) Less than 2 years of experience, no points will be awarded.

(e) *Potential of project to produce energy savings or generation and its attending environmental benefits.* A maximum of 10 points will be awarded for this criterion under both paragraphs (e)(1) and (2) of this section

(1) If the applicant (does not include entities the applicant will contract with) has an existing program that can demonstrate the achievement of energy savings or energy generation with the agricultural producers and/or rural small businesses it has served, 5 points will be awarded.

(2) If the applicant (does not include entities the applicant will contract with) provides evidence that it has received one or more awards (*e.g.*, recognition, not funding awards) within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to a maximum of 5 points will be awarded as follows:

- (i) International/national—3 points for each.
- (ii) Regional/State—2 points for each.
- (iii) Local—1 point for each.

(f) *Commitment of funds.* A maximum of 20 points will be awarded for this criterion if written documentation from each source providing matching funds and other funds are submitted with the application. Compare eligible commitment of funds to the amount of grant requested to derive percentage to be used for scoring.

(1) If the applicant proposes to match 50 percent or more of the grant funds requested, 20 points will be awarded.

(2) If the applicant proposes to match 20 percent or more but less than 50 percent of the grant funds requested, 15 points will be awarded.

(3) If the applicant proposes to match 5 percent or more but less than 20 percent of the grant funds requested, 10 points will be awarded.

(4) If the applicant proposes to match less than 5 percent of the grant funds requested, no points will be awarded.

§ 4280.156 Selecting EA and REDA grant applications for award.

Unless otherwise provided for in a FEDERAL REGISTER notice, EA and REDA grant applications will be processed in accordance with this section. EA and REDA grant funding is main-

tained at the National Office and applications compete for funds only once in a nationwide competition.

(a) *Application competition.* Complete EA and REDA applications received by the Agency by 4:30 p.m. local time on January 31 will be competed against each other. If January 31 falls on a weekend or a Federally observed holiday, the next Federal business day will be considered the last day for receipt of a complete application. Complete applications received after 4:30 p.m. local time on January 31, regardless of the postmark on the application, will be processed in the subsequent fiscal year. Unless otherwise specified in a FEDERAL REGISTER notice, the two highest scoring applications from each State, based on the scoring criteria established under § 4280.155, will compete for initial funding. If undersubscribed on eligible applications, the third highest scoring application from each state shall be requested for National Office review and potential competition, ranking and funding, until funds are expended.

(b) *Ranking of applications.* All applications submitted to the National Office under paragraph (a) of this section will be ranked in priority score order. All applications that are ranked and meet the minimum scoring threshold will be considered for selection for funding.

(c) *Selection of applications for funding.* Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding. If two or more applications score the same and if remaining funds are insufficient to fund each such application, the Agency will distribute the remaining funds to each such application on a pro-rata basis. At its discretion, the Agency may also elect to redirect unused funds into the RES/EEI program or allow any remaining multi-year funds to be carried over to the next fiscal year rather than funding on a pro-rata basis.

(d) *Handling of ranked applications not funded.* Based on the availability of

RBS and RUS, USDA

§ 4280.159

funding, a ranked application submitted for EA or REDA funds may not be funded. Such ranked applications will not be carried forward into the next Federal fiscal year's competition.

§ 4280.157 [Reserved]

§ 4280.158 Awarding and administering EA and REDA grants.

The Agency will award and administer EA and REDA grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.123, except as specified in paragraphs (a) through (b) of this section.

(a) Instead of complying with § 4280.123(b), the grantee must provide satisfactory evidence to the Agency that all officers of grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the grantee.

(b) The power purchase agreement specified in § 4280.123 (h) is not required.

§ 4280.159 Servicing EA and REDA grants.

The Agency will service EA and REDA grants in accordance with the requirements specified in Departmental Regulations, the Financial Assistance Agreement, 7 CFR part 3, 7 CFR 1951 Subparts E and O, and the requirements in § 4280.124, except as specified in paragraphs (a) through (d) of this section.

(a) *Grant disbursement.* The Agency will determine, based on the applicable Departmental Regulations, whether disbursement of a grant will be by advance or reimbursement. Form SF-270, Request for Advance or Reimbursement, must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

(b) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period (*e.g.*, the number of EA performed, number of recipients

assisted, and the type of assistance provided for REDA);

(2) A list of recipients, each recipient's location, and each recipient's NAICS code;

(3) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(4) Objectives and timetable established for the next reporting period.

(c) *Final performance report.* A final performance report will be required with the final Federal financial report within 90 days after project completion. The final performance report must contain the information specified in paragraphs (c)(1)(i) or (ii) of this section, as applicable.

(1) For EA projects, the final performance report must provide complete information regarding:

(i) The number of audits conducted,

(ii) A list of recipients (agricultural producers and rural small businesses) with each recipient's NAICS code,

(iii) The location of each recipient,

(iv) The cost of each audit and documentation showing that the recipient of the EA provided 25 percent of the cost of the audit, and

(v) The expected energy saved for each audit conducted if the audit is implemented.

(2) For REDA projects, the final performance report must provide complete information regarding:

(i) The number of recipients assisted, and the type of assistance provided,

(ii) A list of recipients with each recipient's NAICS code,

(iii) The location of each recipient, and

(iv) The expected renewable energy that would be generated if the projects were implemented.

(d) *Outcome project performance report.* One year after submittal of the final performance report, the grantee will provide the Agency a final status report on the number of projects that are

§§ 4280.160–4280.165

proceeding with the grantee's recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

§§ 4280.160–4280.165 [Reserved]

§ 4280.166 OMB control number.

The report and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0067

APPENDIX A TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR ENERGY EFFICIENCY IMPROVEMENT (EEI) PROJECTS

For all EEI projects with total project costs of more than \$80,000, provide the information specified in Sections A and D and in Section B or Section C, as applicable. If the application is for an EEI project with total project costs of \$80,000 or less, please see § 4280.120 (b)(3) for the technical report information to be submitted with your application.

If the application is for an EEI project with total project costs of \$200,000 and greater, you must conduct an energy audit. However, if the application is for an EEI project with a total project costs of less than \$200,000, you may conduct either an energy assessment or an energy audit.

Section A—Project Information. Describe how all the improvements to or replacement of an existing building and/or equipment meet the requirements of being commercially available. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the EEI(s) is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section B—Energy audit. If conducting an energy audit, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being au-

7 CFR Ch. XLII (1–1–23 Edition)

dited. Any energy conversion should be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency, including a discussion of reliability and durability of the improvements.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Identify significant changes in future related operations and maintenance costs.

(iv) Describe explicitly how outcomes will be measured.

(3) *Technical analysis.* Give consideration to the interactions among the potential improvements and the current energy system(s).

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Calculate all direct and attendant indirect costs of each improvement;

(iii) Rank potential improvements measures by cost-effectiveness; and

(iv) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the auditor.* Provide the qualifications of the person which completed the energy audit.

Section C—Energy Assessment. If conducting an Energy Assessment, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being evaluated. Any energy conversion shall be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency.

(3) *Technical analysis.* Giving consideration to the interactions among the potential improvements and the current energy system(s), provide the information specified in section C(3)(i) through (iii) of this appendix.

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Document baseline data compared to projected consumption, together with any explanatory notes on source of the projected consumption data. When appropriate, show before-and-after data in terms of consumption per unit of production, time, or area.

(iii) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the assessor.* Provide the qualifications of the person that completed the assessment. If the energy assessment for a project with total project costs of \$80,000 or less is not conducted by Energy Auditor or Energy Assessor, then the person must have at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects.

Section D—Qualifications. Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are qualified installer/contractor.

APPENDIX B TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR RENEWABLE ENERGY SYSTEM (RES) PROJECTS WITH TOTAL PROJECT COSTS OF LESS THAN \$200,000, BUT MORE THAN \$80,000

Provide the information specified in Sections A through D for each technical report prepared under this appendix. A renewable energy site assessment may be used in lieu of Sections A through C if the renewable energy site assessment contains the information requested in Sections A through C. In such instances, the technical report would consist of Section D and the renewable energy site assessment.

NOTE: If the total project cost for the RES project is \$80,000 or less, this appendix does not apply. Instead, for such projects, please

provide the information specified in §4280.120 (b)(4).

Section A—Project Description. Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed. Describe how the system meets the definition of commercially available. Identify the project's location and describe the project site.

Section B—Resource Assessment. Describe the quality and availability of the renewable resource to the project. Identify the amount of renewable energy generated that will be generated once the proposed project is operating at its steady state operating level. If applicable, also identify the percentage of energy being replaced by the system.

If the application is for a bioenergy project, provide documentation that demonstrates that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

Section C—Project Economic Assessment. Describe the projected financial performance of the proposed project. The description must address total project costs, energy savings, and revenues, including applicable investment and other production incentives accruing from Government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, and byproducts. Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

Section D—Project Construction and Equipment Information. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the RES is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section E—Qualifications of Key Service Providers. Describe the key service providers, including the number of similar systems installed and/or manufactured previously, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

APPENDIX C TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR RENEWABLE ENERGY SYSTEM (RES) PROJECTS WITH TOTAL PROJECT COSTS OF \$200,000 AND GREATER

Provide the information specified in Sections A through G for each technical report

prepared under this appendix. Provide the resource assessment under Section C that is applicable to the project. For hybrid projects, technical reports must be prepared for each technology that comprises the hybrid project.

Section A—Qualifications of the Project Team. Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.

Section B—Agreements and Permits. Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, interconnection agreements and power purchase agreements are necessary for all renewable energy projects electrically interconnected to the utility grid.

Section C—Resource Assessment. Describe the quality and availability of the renewable resource and the amount of renewable energy generated through the deployment of the proposed system. For all bioenergy projects, except anaerobic digesters projects, complete Section C.3 of this appendix. For anaerobic digester projects, complete Section C.6 of this appendix.

1. *Wind.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

2. *Solar.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

3. *Bioenergy/Biomass Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

4. *Geothermal Electric Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters

that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

5. *Geothermal Direct Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

6. *Anaerobic Digester Project/Biogas.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes or other Renewable Biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis. If an anaerobic digester project, identify the type of operation (*e.g.*, dairy, swine, layer, etc.), along with breed, herd population size and demographics, and the type of waste collection method and frequency information available. For the biogas produced, identify the type of digester (*e.g.*, mixed, plug-flow, attached film, covered lagoon, etc.), if applicable, or the method of capture (landfill, sewage waste treatment, etc.) and treatment. Identify the system designer and determine the digester design assumptions such as the number and type of animals, the bedding type and estimated annual quantity used, the manure and wastewater volumes, and the treatment of digester effluent (*e.g.*, none, solids separation by screening, etc. with details including use or method of disposal).

7. *Hydrogen Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used

as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

8. *Hydroelectric/Ocean Energy Projects.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a qualified consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(9) *RES with storage components.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable energy resource, where applicable. Indicate the storage system specifications and the integrity of the system in conjunction with the RES it is integrated with, including application, size, lifetime, response time, capital and maintenance costs associated with the operation as well as the distribution of the stored resource(s).

Section D—Design and Engineering. Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is commercially available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component

warranties and the availability of spare parts must be presented.

Section E—Project Development. Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in Section F of this appendix.

Section F—Equipment Procurement and Installation. Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule. Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

Section G—Operations and Maintenance. Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the RES or EEI shall be monitored and recorded as appropriate to the specific technology.

APPENDIX D TO SUBPART B OF PART 4280—FEASIBILITY STUDY COMPONENTS

EXECUTIVE SUMMARY

Provide an overview to describe the nature and scope of the proposed project, including the purpose, project location, design features, capacity, and estimated capital costs. Include a summary of the feasibility determinations made for each applicable component.

ECONOMIC

What is it?	Cost benefit analysis.
What are the factors to consider?.	Minimum amount of inputs (labor, infrastructure, utilities, renewable resources, feedstocks) to operate successfully.
	Contracts in place and contracts to be negotiated, including terms and renewals.
	Environmental risks.
	Cost of project relative to the increase in revenues or benefits provided.

ECONOMIC—Continued

	Overall economic impact of project including new markets created and economic development.
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MARKET

What is it?	Analysis of the current and future market potential, competition, sales or service estimations including current and prospective buyers or users.
What are the factors to consider?.	Competition. Type of project: Service, product or commodity based. Target market, new versus established. End user analysis, captive versus competitive. By-product revenue streams. Industry risk.

TECHNICAL

What is it?	Analyzing the reliability of the technology to be used and/or the analysis of the delivery of goods or services, including transportation, business location, and the need for technology, materials, and labor.
What are the factors to consider?.	Commercial availability. Product and process success record and duplication of results. Experience of the service providers. Roads, rail, airport infrastructure. Need for local transportation. Labor market. Availability of materials. Use, age, and reliability of technology. Construction risk.

FINANCIAL

What is it?	Analysis of the operation to achieve sufficient income, credit, and cashflow to financially sustain the project over the long term and meet all debt obligations.
What are the factors to consider?.	Commercial or project underwriting. Management's assumptions. Accounting policies. Source of repayment. Dependency on other entities. Equity contribution. Market demand forecast. Peer industry comparison. Cost-accounting system. Availability of short-term credit. Adequacy of raw materials and supplies. Sensitivity analysis.

MANAGEMENT

What is it?	Analysis of the legal structure of the business or operation; ownership, board and management analysis.
What are the factors to consider?.	History of the business or organization. Professional and educational background. Experience. Skills. Qualifications necessary to implement the project.

RECOMMENDATION

Conclude with an opinion and recommendation presented by the consultant.

QUALIFICATIONS

Provide a resume or statement of qualifications of the author of the feasibility study, including prior experience.

Subpart C [Reserved]**Subpart D—Rural Microentrepreneur Assistance Program**

SOURCE: 86 FR 26353, May 14, 2021, unless otherwise noted.

§ 4280.301 Purpose and scope.

(a) This subpart contains the policies and procedures by which the Agency will administer the Rural Microentrepreneur Assistance Program (RMAP). The purpose of the Program is to support the development and ongoing success of rural microentrepreneurs and microenterprises. To accomplish this purpose, the Program will make direct loans and provide grants to selected Microenterprise Development Organizations. Selected Microenterprise Development Organization will use the funds to:

- (1) Provide microloans to rural microentrepreneurs and microenterprises;
- (2) Provide business-based training and technical assistance to rural microborrowers and potential microborrowers as an essential part of the microlending process;
- (3) Perform 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 for the purpose of providing fixed interest rate microloans to rural microentrepreneurs for business startup and for growing microenterprises in compliance with §§ 4280.311 and 4280.312. Eligible microlenders will also be eligible to receive microlender technical assistance grants to provide technical assistance and training to microenterprises that have received or are seeking a microloan under this program in compliance with § 4280.313.

(c) To allow for extended opportunities for technical assistance and training, the Agency will make technical assistance-only grants to Microenterprise Development Organizations that have sources of funding other than program funds for making or facilitating microloans.

§ 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 a Microenterprise Development Organization for the operation of services under this program. Not more than 10 percent of technical assistance grant funds may be used for such expenses.

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

Agricultural production. The cultivation, growing, or harvesting of plants and crops (including farming), breeding, raising, feeding, or housing of livestock (including ranching).

Applicant. The legal entity, also referred to as a Microenterprise Development Organization, submitting an application to participate in the program.

Application. The required forms and documentation submitted by a Microenterprise Development Organization 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 at below market rates, technical assistance in developing business or marketing plans, technical services, use of equipment, or other facilities or services to rural microentrepreneurs and microenterprises starting or growing a business. The business incubator may also provide access to capital through direct loans or referrals to loan programs.

Close relative. Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan and/or grant agreement, or other related documents evidencing the loan from the Agency or the Microenterprise Development Organization.

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

Eligible project cost. The total cost of a microborrower's project for which a microloan is being sought from a

microlender, less any costs identified as ineligible in § 4280.323.

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

Federal fiscal year (FY). 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 tribe. Means the term as defined in 25 U.S.C. 5304(e).

Loan loss reserve fund (LLRF). A deposit account that each microlender must establish and maintain in an amount equal to not less than 5 percent of the total amount owed by the microlender under this program to the Agency. This account can be used to pay any shortage in the rural microloan revolving fund caused by delinquencies or losses on microloans.

Microborrower. A microentrepreneur or microenterprise that has received loans or financial assistance from a microlender under this program in an amount of \$50,000 or less.

Microenterprise. Microenterprise means:

- (i) A sole proprietorship located in a rural area, as defined; or
- (ii) A business entity located in a rural area, as defined, with not more than 10 full-time-equivalent employees. Such businesses may include any type of legal business that meets local standards of decency, though certain business types may be ineligible as defined in § 4280.323 Business types may also include agricultural producers

provided they meet the stipulations in this definition.

Microenterprise development organization (MDO). A domestic organization that is a non-profit entity; an Indian tribe; or a public institution of higher education with loan or assistance programs for the benefit of rural micro-entrepreneurs and microenterprises. An MDO will:

- (i) Provide training and technical assistance;
- (ii) Make microloans or facilitate access to capital or other related services; and
- (iii) Have a demonstrated record of delivering services to rural microentrepreneurs, or an effective plan to develop a program to deliver services to rural microentrepreneurs.

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. All micro-entrepreneurs assisted under this regulation must be located in rural areas.

Microlender. An MDO that has been approved by the Agency for participation under this subpart to make microloans and provide an integrated program of training and technical assistance to its microborrowers and prospective microborrowers.

Microloan. A business loan of not more than \$50,000 for eligible purposes to a microborrower with a fixed interest rate and a term not to exceed 10 years.

Military personnel. Individuals, regardless of rank or grade, currently in active United States military service with less than 6 months remaining in their active duty service requirement.

Nonprofit entity. An entity chartered as a nonprofit entity under State or Tribal Law.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural Microloan Revolving Fund (RMRF). An exclusive account on which the Agency will hold a first lien and from which microloans will be made by the MDO. All payments from microborrowers and reimbursements from the LLRF will be deposited into the RMRF account. Loan payments

will be made to the Agency by the microlender from the RMRF.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and excluding certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). In making this determination, the Agency will use the latest decennial census of the United States. The following exclusions apply:

- (i) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.
- (ii) For the Commonwealth of Puerto Rico, the island is considered Rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be rural if they are "not urban in character."
- (iii) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be rural if they are "not urban in character."
- (iv) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia,

§ 4280.303

the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical assistance (TA) and training. A function performed for the benefit of a private business enterprise or a community which is a problem-solving activity such as market research, product and/or service improvement, feasibility study, worker training programs, etc., to assist in the economic development of a rural area.

Technical assistance grant. A grant from the Agency, the funds of which are used to provide TA and training.

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

FTE—Full-time employee.

FY—Fiscal year.

LLRF—Loan loss reserve fund.

MDO—Microenterprise Development Organization.

RMAP—Rural Microentrepreneur Assistance Program.

RMRF—Rural microloan revolving fund.

TA—Technical assistance.

[86 FR 26353, May 14, 2021, as amended at 87 FR 38644, June 29, 2022]

§ 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 and may not conflict with applicable law. 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 eligibility criteria; or

(b) To fund an interested party or applicant that has not successfully competed for funding in accordance with this subpart.

§ 4280.304 Review or appeal rights and administrative concerns.

(a) *Review or appeal rights.* An applicant MDO, a microlender, or grantee MDO may seek a review of an adverse

7 CFR Ch. XLII (1–1–23 Edition)

Agency decision under this subpart from the appropriate Agency official that oversees the program in question, and/or appeal the Agency decision to the National Appeals Division in accordance with 7 CFR part 11.

(b) *Administrative concerns.* Any questions or concerns regarding the administration of the program, including any action of the microlender, may be sent to: USDA Rural Development, Rural Business-Cooperative Service, Program Management Division at 1400 Independence Avenue SW, Room 5160–S, Mail Stop 3226, Washington, DC 20250–3226 or its successor agency, or the local USDA Rural Development office.

§ 4280.305 Nondiscrimination and compliance with other Federal laws.

(a) Any entity receiving funds under this subpart 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, subpart 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, audiotape, 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, 1400 Independence Avenue SW, Washington, DC 20250–9410, or call (866) 632–9992 (toll free) or (202) 401–0216 (TDD) for information and instructions regarding the filing of a Civil Rights complaint.

RBS and RUS, USDA

§4280.310

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 or provides the Agency with sufficient demographic information to complete Form RD 400-8, "Compliance Review". 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 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office, the Agency's website at: <https://www.rd.usda.gov/page/regulations-and-guidance/> and for grants on the internet at www.grants.gov.

§§ 4280.307–4280.309 [Reserved]

§4280.310 Program requirements for MDOs.

(a) *Eligibility requirements for applicant MDOs.* To be eligible for a direct loan or grant award under this subpart, an applicant must meet each of the criteria set forth in paragraphs (a)(1) through (4) of this section, as applicable.

(1) *Type of applicant.* The applicant must meet the definition of an MDO as provided in §4280.302.

(2) *Citizenship.* Non-profit entities, to be eligible to apply for status as an MDO, 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 United States.

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

(4) *Other eligibility requirements.* The applicant must also provide evidence that it:

(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 so that the applicant has the capacity to manage such a revolving loan fund;

(iii) Is actively and successfully participating as an intermediary lender in good standing under similar loan programs; and

(iv) Provides an attorney's opinion regarding the potential microlender's legal status and its ability to enter into program transactions at the time of initial entry into the program. Subsequent to acceptance into the program, an attorney's opinion will not be required unless the Agency determines significant changes to the microlender have occurred.

(b) *System for Awards Management.* All applicants must be registered in the System for Awards Management (SAM) prior to submitting an application, unless determined exempt under 2 CFR 25.110. Loan and grant recipients must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure that they complete the Financial Assistance General Certifications and Representations in SAM.

(c) *Minimum score.* Once deemed eligible, an entity will be evaluated based on the scoring criteria in §4280.316 for adequate qualification to participate in the program. Eligible MDOs must score a minimum of sixty (60) points in order to be considered to receive an award under this subpart.

(d) *Ineligible applicants.* An applicant will be considered ineligible if it:

(1) Does not meet the definition of an MDO as provided in §4280.302;

(2) Is debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs; or

(3) Has an outstanding judgment against it, obtained by the United

§ 4280.311

7 CFR Ch. XLII (1–1–23 Edition)

States in a Federal Court (other than U.S. Tax Court).

(e) *Delinquencies.* No applicant will be eligible to receive a loan if it is delinquent on a Federal debt.

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

(1) Establish an RMRF, or add capital to an RMRF originally capitalized under this program, and establish or continue a training and TA program for its microborrowers and prospective microborrowers; or

(2) Fund a TA-only grant program to provide services to rural microentrepreneurs and microenterprises.

(g) *Business incubators.* Because the purpose of a business incubator is to provide business-based TA and an environment in which micro-level, very small, and small businesses may thrive, a microlender that meets all other eligibility requirements and owns and operates a small business incubator will be considered eligible to apply. In addition, a business incubator selected to participate as a microlender may use RMAP funds to lend to an eligible microenterprise tenant, without creating a conflict of interest under § 4280.323(c).

§ 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 that it will administer by making and servicing microloans in one or more rural areas.

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

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

(d) *Cost share.* The Federal share of the eligible project cost of a microborrower's project funded under this sec-

tion shall not exceed 75 percent. The cost share requirement shall be met by the microlender using either of the options identified in paragraphs (d)(1) and (2) of this section in establishing an RMRF. A microlender may establish multiple RMRFs utilizing either option. Whichever option is selected for an RMRF, it must apply to the entire RMRF and all microloans made with funds from that RMRF.

(1) *Microborrower project level option.* The loan covenants between the Agency and the microlender and the microlender's lending policies and procedures shall limit the microlender's loan to the microborrower to no more than 75 percent of the eligible project costs and require that the microborrower obtain the remaining 25 percent of the eligible project cost from non-Federal sources. The non-Federal share of the eligible project cost of the project may be provided in cash (including through fees, grants, and gifts) or in the form of in-kind contributions.

(2) *RMRF level option.* The microlender shall capitalize the RMRF at no more than 75 percent Agency loan funds and not less than 25 percent non-Federal funds, thereby allowing the microlender to finance 100 percent of the microborrower's eligible project costs. All contributed funds shall be maintained in the RMRF.

(e) *Loan terms and conditions for microlenders.* Program loans will be made to microlenders under the following terms and conditions:

(1) Funds received from the Agency and any non-Federal share will be deposited into an account that will be the RMRF account and shall not be mingled with other MDO funds. The Agency will hold first lien position on the RMRF account, the LLRF account, and all notes receivable from microloans using Agency funds.

(2) The RMRF account will be used to make fixed-rate microloans, accept repayments from microborrowers and reimbursements from the LLRF, to repay the Agency loan and, with the advance written approval of the Agency, to supplement the LLRF with interest or fee earnings from the RMRF.

(3) The term of an Agency loan made to a microlender will be 20 years. If requested by the applicant MDO, a shorter term may be agreed upon by the microlender and the Agency. If a repayment workout is required after loan closing, the term of the loan may not exceed a 20-year period from the loan origination date.

(4) Each RMAP loan made to a microlender during its first five years of participation in the program will bear an interest rate of 2 percent for the life of the loan. After the fifth year of an MDO's continuous and satisfactory participation in the program, each new loan made to the microlender will bear interest at a rate of 1 percent. The interest rate on previous loans will remain unchanged. Satisfactory participation requires a loan default rate of 5 percent or less, a pattern of delinquencies of 10 percent or less in the MDO's RMRF account(s), and timely submission of reports to the Agency as required by §4280.311(h).

(5) Each loan made to a microlender will automatically receive a 2-year deferral during which time no repayment to the Agency will be required. The deferral period will begin on the day the Agency's loan to the microlender is closed. During the initial 2-year deferral period, each loan to a microlender will accrue interest only on funds disbursed by the Agency. Interest accrued during the 2-year deferral period will be capitalized to the loan's principal balance during the 24th month of the loan unless the microlender chooses to make a voluntary payment of the accrued interest. The required monthly payments to amortize the loan after the 2-year deferral period will be based on the full loan amount plus capitalized interest, not just the amount disbursed to the microlender, even in cases where the Agency's loan has not been fully advanced to the microlender.

(6) Except in the case of liquidation or early repayment, loans to microlenders must fully amortize over the life of the loan. The first payment will be due to the Agency on the last day of the 24th month of the life of the loan.

(7) The microlender is responsible for full repayment of its loan to the Agency regardless of the performance of its

microloan portfolio. Partial or full repayment of debt to the Agency under the program may be made at any time, including during the deferral period, without any pre-payment penalties being assessed.

(8) The Agency may call the entire loan due and payable prior to the end of the full term due to any non-performance, delinquency, or default on the loan.

(9) The loan closing between the microlender and the Agency should take place within 90 days from the execution of Form RD 1940-1, "Request for Obligation of Funds." Microlenders that are unable to close the loan within 90 days of obligation must provide justification for the delay or loan funds will be forfeited through a de-obligation of funds.

(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. Funds disbursed at loan closing exceeding 25 percent of the loan amount will only be made if and to the extent that the MDO has made a funding commitment to an eligible microborrower that will be closed within 60 days from the Agency loan date. Interest will accrue on all funds disbursed to the microlender beginning on the date of disbursement.

(11) Microlenders may request in writing and receive additional loan disbursements until the full amount of the loan to the microlender is disbursed, or until the end of the 36th month of the loan, whichever occurs first. Letters of request for disbursement should be made not more often than quarterly and must be accompanied by a description of the microlender's anticipated need. Such description will indicate the amount and number of microloans anticipated to be made with the loan disbursement.

(12) Funds not disbursed to the microlender by the end of the 36th month of the loan from the Agency will be de-obligated and no longer available for disbursement to the MDO. In such cases where loan funds are deobligated, the Agency will establish a revised payment schedule to fully amortize the loan balance by its maturity date.

(13) In the event a microlender fails to meet its payment or reporting obligations to the Agency, the Agency may pursue any combination of the following:

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

(ii) Call the loan due and payable in full; and/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 the program) deemed acceptable to the Agency.

(14) 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 take actions including the restriction of further access to withdrawals from the account by the microlender or declaring the loan in default due to improper use of loan funds.

(f) *Loan funding limitations*—(1) *Minimum and maximum loan amounts.* The minimum loan amount that a microlender may borrow under this program will be \$50,000. The maximum amount any microlender may borrow on a single loan under this program, or in any given Federal FY, will be \$500,000. In no case will the aggregate outstanding balance owed to the program by any single microlender exceed \$2,500,000.

(2) *Use of funds.* Agency loan funds must be used only to establish or recapitalize an existing Agency funded RMRF account out of which microloans will be made, into which microloan payments will be deposited, and from which repayments to the Agency will be made.

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

(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 microborrowers to repay their loans on a timely basis.

(2) *Capitalization and maintenance.* The LLRF is subject to each of the following conditions:

(i) The microlender must maintain the LLRF at a minimum of 5 percent of the total amount owed by the microlender under the program to the Agency. If the LLRF falls below the required amount, the microlender will have 30 days to replenish the LLRF. 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.

(ii) No Agency loan funds may be used to capitalize the LLRF.

(iii) The LLRF must be held in a Federally insured deposit account separate and distinct from any other fund owned by the microlender.

(iv) The LLRF must remain open, appropriately capitalized, and active until such time as any loans owed to the Agency by the microlender under the program related to such LLRF are paid in full.

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

(i) Recapitalize the RMRF in the event of the loss and write-off of a microloan;

(ii) Accept Non-Federal deposits as required for maintenance of the fund at a level equal to 5 percent or more of the amount owed to the Agency by the microlender under the program; and

(iii) Prepay or repay the Agency program loan.

(4) *LLRF funded at time of closing.* The LLRF account must be established by the microlender prior to the closing of the loan from the Agency. At the time of initial loan closing, sources of funding for the LLRF must be identified by the microlender and funds equal to 5 percent of the initial loan disbursement, if made at loan closing, must be made to the LLRF by the microlender. The amount in the LLRF can be built over time and must be maintained in an amount greater than or equal to 5 percent of the amount owed to the Agency by the microlender under the program. After the first disbursement is made to a microlender, further disbursements will only be made if the LLRF is funded at the appropriate amount. After the initial loan is made

to a microlender, subsequent loan closings may require a deposit of additional funds to the LLRF to maintain an amount equal to 5 percent of the total loan balance owed to the Agency under the program. Federal funds, except where specifically permitted by other laws, may not be used to fund the LLRF.

(5) *Additional LLRF funding.* In the event of exhibited weaknesses, such as losses that are greater than 5 percent of the microloan portfolio or a microborrower delinquency rate in excess of 10 percent, the Agency may require the microlender to deposit additional funds into the LLRF; however, the Agency may never require an LLRF balance of more than 10 percent of the total amount owed to the Agency by the microlender.

(h) *Recordkeeping, reporting, and oversight.* Microlenders must maintain all records applicable to the program and make them available to the Agency upon request. Microlenders must submit quarterly reports as specified in paragraphs (h)(1) through (4) of this section. Portfolio reporting requirements must be met via the electronic reporting system. Other reports, such as narrative information, may be submitted as hard copy in the event the microlender or grantee does not have the capability to submit or accept such reports electronically.

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

(i) 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;

(ii) Listing of each microborrower under this program, their loan balance and payment status; and

(iii) A discussion reconciling the microlender's actual results for the period against its goals, milestones, and objectives as provided in the application package.

(2) *Minimum retention.* Microlenders must provide evidence in their quar-

terly reports 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) *Combining accounts and reports.* If a microlender has more than one loan from the Agency, a separate report must be made for each loan except when RMRF accounts have been combined. A microlender may combine RMRF accounts only when the Agency approves the combining of accounts and reports in writing before such accounts are combined and reports are submitted, and:

(i) The underlying loans have the same rates, terms and conditions, including the method of determining matching funds for a microborrower's project; and

(ii) 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 RMRF and LLRF reports had been prepared.

(4) *Delinquency.* In the event that a microlender has delinquent loans in its RMAP portfolio, quarterly reports will include narrative explanation of the steps being taken to cure the delinquency.

(5) *Other reports.* Other reports may be required by the Agency 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 program servicing.

(6) *Access to microlender's records.* Upon request by the Agency, the microlender will permit representatives of the Agency to inspect and make copies of any records pertaining to operation and administration of the program. Such inspection and copying may be made during regular office hours of the microlender or at any other time agreed upon between the microlender and the Agency.

(7) *Changes in key personnel.* Before any additions or changes are made to key personnel, the microlender must notify, and the Agency must approve,

§ 4280.312

7 CFR Ch. XLII (1–1–23 Edition)

such changes. Such approval shall not be unreasonably withheld by the Agency.

§ 4280.312 Loan approval and closing.

(a) *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,” is executed by the Agency. Form RD 1940–1 authorizes funds to be obligated and may be executed by the Agency after the microlender has signed the document, provided that the microlender has the legal authority to contract for a loan and to enter into required agreements, including an Agency-approved loan agreement, and meets all program loan requirements.

(b) *Letter of conditions.* 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,” to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions. The Agency will review any requests for changes to the letter of conditions and may approve only minor changes that do not materially affect the microlender and remain within the program requirements. Changes in legal entities prior to loan closing will not be approved.

(c) *Loan closing.* (1) Prior to loan closing, microlenders must provide evidence that the RMRF and LLRF bank accounts have been set up and the LLRF has been or will be funded as described in § 4280.311(g)(4). Such 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;

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

(iv) An Agency-approved promissory note and a loan agreement for each

loan to the MDO must be executed at loan closing. The loan agreement will be prepared by the Agency using Form RD 4274–4, “Intermediary Relending Program/Rural Microentrepreneur Assistance Program Loan Agreement,” and reviewed by the MDO prior to loan closing; and

(v) An appropriate security agreement on the LLRF and RMRF accounts must be executed at loan closing.

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

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

(ii) There has been no material adverse change in the microlender, its key personnel, 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 changes and the Agency must determine that the microlender remains eligible and qualified to participate as an MDO.

(3) The microlender will provide sufficient evidence that no lawsuits or other legal issues are pending or threatened that would adversely affect the security of the microlender when Agency security instruments are filed.

§ 4280.313 Grant provisions.

Grants offered under this program will be made to eligible MDOs in such amounts and requirements for microlenders with a loan(s) from the Agency, and for MDOs that seek only a TA grant from the Agency. Competition for these funds will occur as a part of the application and qualification process of becoming a microlender or grant recipient. No entity will receive grant funding as both a microlender and a TA-only provider. RMAP microlenders are not eligible for TA-only grant funding and an MDO receiving TA-only grant funding is not eligible for microlender grant funding. Failure to meet scoring benchmarks will preclude an applicant from receiving loan and/or grant dollars. Once an MDO is participating as a microlender, TA grant funds will be made available annually based on the MDO’s lending balances and the availability of funds.

(a) *Microlender grants.* The Agency shall make microlender TA grants to

microlenders to assist them in providing marketing, management, and other TA to rural microentrepreneurs and microenterprises that have received or are seeking one or more microloans from the microlender. The capacity of a microlender to provide an integrated program of microlending and TA will be evaluated during the scoring process with their loan application and then annually in determining the amount of annual grant funds. An eligible MDO selected to be a microlender will be eligible to receive a microlending TA grant if it receives funding to provide microloans under this program. Microlender applicants for loan funding to establish or replenish a revolving loan fund originally capitalized under this program, may simultaneously apply for TA grant funds in an amount not to exceed 25 percent of the requested loan amount.

(1) Technical assistance grants to microlenders will be awarded annually on a non-competitive basis in an amount based on the MDO's outstanding loan balance as of June 30, subject to satisfactory program performance of the microlender and the availability of funds. Satisfactory performance includes the timely payment of program loan(s) and the submission of periodic reports to the Agency. Annual TA grants to a microlender, subject to the availability of funds, will be made in an amount to replenish the microlender's TA fund to an amount equal to 20 percent of the outstanding principal balance of loans made by the microlender to ultimate recipients unless otherwise published in an annual program funding notice. If available grant funds are not sufficient to fully replenish each microlender's TA funds to 20 percent of their outstanding loan balance, the available funds will be distributed proportionately based on the percentage of available funds to the total amount of annual TA grant funds requested.

(2) Any grant dollars obligated but not spent by the microlender from their initial or subsequent grants will be subtracted from the subsequent year's grant eligibility calculation to ensure that obligations cover only microloans made and active and that the MDO's total grant funds available

for TA do not exceed the established 20 percent threshold.

(3) The microlender will agree to use TA grant funds exclusively for providing TA assistance and training to eligible microentrepreneurs and microenterprises, with the exception that up to 10 percent of the grant funds may be used to cover the microlender's administrative expenses. Grant funds may not be used to make loan payments.

(b) *Technical assistance only grants.* Grants will be competitively made to MDOs for the purpose of providing TA and training to prospective microborrowers. Technical assistance-only grants will be provided to eligible MDOs that seek to provide business-based TA and training to eligible microentrepreneurs and microenterprises, but do not seek funding as a microlender for an RMRF.

(1) The amount of a TA-only grant under this program will not exceed 10 percent of the amount of authorized appropriations available in any Federal FY for TA-only grants.

(2) Technical assistance only grants will have a grant term not to exceed 12 months from the date the grant agreement is signed.

(3) Technical assistance only grantees will be required to:

(i) Refer clients to internal or external non-program funded lenders for loans of \$50,000 or less, and

(ii) Collect data regarding such clients. Technical assistance-only grantees will be considered successful if a minimum of 1-in-5 TA clients are referred for a microloan and are operating a business within 18 months of receiving TA from the MDO.

(c) *Matching requirement.* The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services. Unless specifically permitted by laws other than the statute authorizing RMAP, matching contributions must be made up of non-Federal funds.

(d) *Administrative expenses.* Not more than 10 percent of a grant received by an MDO for a Federal FY may be used to pay administrative expenses. Microlenders must annually submit a budget of proposed administrative expenses for

§ 4280.314

Agency approval. The Agency has the right to deny the requested amount, even if it is at 10 percent or less, and to fund administrative expenses at a lower level.

(1) 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. Applicants will be scored accordingly, with those using less than 10 percent of the grant funds for administrative purposes being scored higher than those using 10 percent of the grant funds for administrative purposes.

(2) While operating the program, the selected grantee will be expected to adhere to the estimates it provides in its application and annual budget. If for any reason the MDO cannot meet those expectations, it must contact the Agency in writing with justification to request a budget adjustment. Budget adjustments will be considered only if the adjustment result for administrative expenses is within the 10 percent limitation.

(3) Microlenders that exceed 10 percent for administrative expenses will be considered in performance default and may be subject to Agency actions including the forfeiting of funds.

(e) *Ineligible grant purposes.* Grant funds, matching funds, indirect costs, and in-kind goods and services may not be used for:

(1) Grant application preparation costs;

(2) Costs incurred prior to the obligation date of the grant;

(3) Capital improvements;

(4) Political or lobbying activities;

(5) Assistance to any ineligible entity;

(6) Payment of any judgment or debt owed; or

(7) Payment of any loan.

(f) *Facilitation of access to capital.* Technical assistance-only grantees will be expected to provide training and TA services to the extent that access to capital for eligible microentrepreneurs and microenterprises is facilitated by referral to either an internal or external non-program loan fund so that

7 CFR Ch. XLII (1–1–23 Edition)

these clients may take advantage of available financing programs.

(g) *Grant agreement.* For any grant to an MDO or microlender, the Agency will notify the approved applicant in writing, using an Agency-approved grant agreement, 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, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Agency regulations are complied with.

§ 4280.314 [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 FEDERAL REGISTER document. The information required in §§ 4280.315 and 4280.316 is necessary for an application to be considered complete. Only those applicants that meet the basic eligibility requirements in § 4280.310 will have their applications fully scored and considered for participation in the program under this section. When preparing applications, applicants are strongly encouraged to review the application requirements and scoring criteria in § 4280.316 and provide documentation that will support a competitive score.

(b) *Content and form of submission.* All applicants must provide the information specified in paragraph (c) of this section. Additional application information is required in paragraph (d) of this section depending on the type of application being submitted.

(c) *Application information for all applicants.* All applicants must provide the following information and forms fully completed and with all attachments:

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

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

RBS and RUS, USDA

§4280.316

(3) For entities applying for program loan funds to become an RMAP microlender only, Form RD 1910-11, "Certification of No Federal Debt."

(4) Form RD 400-8, "Compliance Review" or sufficient demographic information for Agency completion of Form RD 400-8.

(5) Demonstration that the applicant is eligible to apply to participate in the program by submission of documentation as follows:

(i) If a nonprofit entity, evidence that the applicant organization meets the citizenship requirements and a copy of the applicant's bylaws and articles of incorporation, which include evidence that the applicant is legally considered a non-profit organization;

(ii) If an Indian tribe, evidence that the applicant is a federally recognized Indian tribe, and that the Indian tribe neither operates nor is currently served by an existing MDO;

(iii) If a public institution of higher education, evidence that the applicant is a public institution of higher education; and

(iv) For nonprofit applicants only, a Certificate of Good Standing, not more than six (6) months old, from the Office of the Secretary of State in the State, or tribal equivalent, in which the applicant is located. If the applicant has offices in more than one state, then the state in which the applicant is organized and licensed will be considered the home location.

(6) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under the program with similar rates and terms.

(d) *Type of application specific information.* In addition to the information required under paragraph (c) of this section, the following information is also required, as applicable:

(1) An applicant with more than 3 years of experience as an MDO outside of the program seeking to participate as an RMAP microlender must provide sufficient documentation to validate its years of experience.

(2) An applicant with 3 years or less experience as an MDO outside of the program seeking to participate as an RMAP microlender must provide the

additional information specified in §4280.316(c).

(3) An applicant seeking status as a microlender must identify in its application which cost-share option(s) the applicant will utilize, as described in §4280.311(d), to meet the Federal cost-share requirement. If the applicant will utilize the RMRF-level option, the applicant shall identify the amount(s) and source(s) of the non-Federal share.

(4) An applicant seeking TA-only grant funds must provide the additional information specified in §4280.316(d).

(e) *Application limits.* Microenterprise Development Organizations may only submit and have pending for consideration one application at any given time, which is for either microlender funds or TA-only funds.

(f) *Completed applications.* Applications that fulfill the requirements specified in paragraphs (a) through (e) of this section will be fully reviewed, scored, and ranked by the Agency in accordance with the provisions of §4280.316.

§4280.316 Application scoring.

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

(a) *Application requirements for all applicants.* All applicants must submit the eligibility and application information described in §4280.315. The maximum points available in this part of the application are 45. In addition to the eligibility information, all applicants will 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 based on the completeness of the organizational chart and management experience.

(2) 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 the program. There should be a corresponding resume for each of the key individuals noted and named on the organizational chart. 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.

(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) Information indicating an understanding of microenterprise development concepts. Provide those parts of your policy and procedures manual that deal with the provision of loans, management of loan funds, and provision of TA. Up to 5 points will be awarded.

(5) The applicant's most recent, and two-year's previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its fund balance, its ability to manage one or more federal programs, and its capacity to manage multiple funding sources, including 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 and 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, which must be rural as defined, and include the number of counties or other jurisdictions to be served. Note that the applicant will not be scored on the size of the service area, but on its ability to fully cover the service area as described. Up to 10 points will be awarded.

(b) *Program loan application requirements for MDOs seeking to participate as RMAP microlenders with more than 3 years of experience.* In addition to the

information required under paragraph (a) of this section, applicants with more than three (3) years of experience as a microlender, including non-RMAP microloans, must also provide the information specified in paragraphs (b)(1) through (5) of this section. The total number of points available under this section (in addition to the up to 45 points available in paragraph (a) of this section) is 55.

(1) *History of provision of microloans.* The applicant must provide data regarding its history of making microloans for the three years previous to this application by answering the questions in paragraphs (b)(1)(i) through (v) 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. Up to a maximum of 20 points may be awarded under this criterion.

(i) Number and amount of microloans made during each of the three previous years.

(ii) Number and amount of microloans made in rural areas, as defined, in each of the three years prior to the year in which the application is submitted. If the history of providing microloans in rural areas shows at least one loan made in:

(A) Three or more consecutive years immediately prior to the application, 5 points will be awarded;

(B) At least two of the years but not more than the three consecutive years immediately prior to this application, 3 points will be awarded;

(C) At least 6 months, but not more than one year immediately prior to this application, 1 point will be awarded.

(iii) Calculate and enter the total number of microloans made in rural areas as a percentage of the total number of all microloans made for each of the past three years. If the percentage of the total number of microloans made in rural areas is:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(iv) Enter the dollar amount of microloans made in rural areas as a

percentage of the dollar amount of the total portfolio (rural and non-rural) of microloans made for each of the previous three years. If the percentage of the dollar amount of the microloans made in rural areas is:

(A) 75 percent or more of the total amount, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(v) Each applicant shall compare the diversity of its entire microloan portfolio to the demographic makeup of its service area (as determined by the latest applicable decennial census for the state) based on the number of microloans made during the three years preceding the subject application. Demographic groups shall include gender, racial and ethnic minority status, and disability (as defined in the Americans with Disabilities Act). 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 5 points will be awarded.

(A) If at least one loan has been made to each of the three demographic groups and if the percentage of loans made to each demographic group is 5 percent or less of their demographic makeup, 5 points will be awarded.

(B) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each between 5 to 10 percent or less of the demographic makeup, 3 points will be awarded.

(C) If at least one loan has been made to each demographic group and if the percentage of loans made to one or more of the demographic groups is greater than 10 percent of the demographic makeup, 1 point will be awarded.

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

(2) *Portfolio management.* The 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. The maximum number of points under this criterion is 10.

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

(A) 95 percent or more, 5 points will be awarded;

(B) At least 85 percent but less than 95 percent, 3 points will be awarded;

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

(ii) Enter the total number of microloans currently 30 to 90 days in arrears, or that have been written off over the three previous years. If the total number of these microloans is:

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

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

(3) *History of provision of technical assistance.* The Applicant's history of provision of TA to microentrepreneurs and microenterprises, and its ability to reach diverse communities, will be scored based on the data specified in paragraphs (b)(3)(i) through (iii) of this section. Applicants may use a chart to provide this information as they deem appropriate. The maximum number of points under this criterion is 15.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both microloans and TA services for each of the previous three years. Of this total number, provide the percentage of rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three years. If the provision of both microloans and TA services to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(ii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of

the previous three years. If the demonstrated provision of microloans and TA services to these rural microentrepreneurs and rural microenterprises is at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(iii) Provide the ratio of TA clients that also received microloans, rounding to the nearest whole number, during each of the previous three years. If the ratio of clients receiving TA services to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) A ratio of either 1:9 or 1:10, 1 point will be awarded.

(4) *Ability to provide technical assistance.* In addition to providing a statistical history of their provision of TA to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training methods used by the applicant organization to provide such TA 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 (iii) of this section. Points may be awarded for each of the categories. The maximum number of points under this criterion is 5.

(i) Applicants that have used more than one method of training and TA (*e.g.*, 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 TA on their clients will be awarded 2 points.

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

(5) *Proposed administrative expenses to be spent from TA grant funds.* The maximum number of points under this cri-

terion is 5. If the percentage of grant funds to be used for administrative purposes is:

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

(ii) Equal to 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

(c) *Application requirements for MDOs seeking to participate as RMAP microlenders with 3 years or less experience.* In addition to the information required under paragraph (a) of this section, an applicant MDO with 3 years or less experience that is applying to be a microlender must submit the information specified in paragraphs (c)(1) through (8) of this section. The total number of points available under this paragraph, in addition to the maximum of 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 loan and grant funds. Provide goals and milestones for planned microlending and TA 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 five pages in length. Up to a maximum of 10 points will be awarded.

(2) The applicant will provide the date that it began business as an MDO or other provider of business education and/or facilitator of capital. This date will reflect when the applicant became licensed to do business by the Secretary of State, or tribal equivalent, in which it is registered and engaged regularly paid staff to conduct business on a daily basis. If the applicant has been in business for:

(i) More than 2 years but less than 3 years, 5 points will be awarded;

(ii) At least 1 year, but not more than 2 years, 3 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. (If more than 3 full years, the applicant must apply under the provisions for MDOs with more than 3 years of experience as specified in paragraph (b) of this section.)

(3) The applicant must describe in detail any microenterprise development training received by it as a whole, or its employees as individuals, to date. The narrative may refer reviewers to already submitted resumes to save space. The training received will be rated on its topical variety, the quality of the description, and its relevance to the organization's strategic plan. The applicant should not submit training brochures or conference announcements. Up to a maximum of 10 points will be awarded.

(4) The applicant must indicate its current number of employees, those that concentrate on rural microentrepreneurial development, and the current average caseload for each. Indicate how the caseload ratio does or does not optimize the applicant's ability to perform the services described in the work plan. Discuss how Agency grant funds will be used to assist with TA program delivery and how funding of the program loan application will affect the portfolio. Up to 5 points will be awarded.

(5) Applicants may submit a maximum of five (5) letters of support with one point awarded for each letter. Support letters should be signed and dated and come from potential beneficiaries and other local organizations. Letters received from Congressional members and technical assistance providers will not be included in the count of support letters received. Additionally, identical form letters signed by multiple potential beneficiaries and/or local organizations will not be included in the count of support letters received. The applicant must indicate any training organizations with which it has a working relationship. Provide contact information for references regarding the applicant's capacity to perform the work in the plan provided. Up to a maximum of five (5) 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 the same. Up to 5 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 10 points will be awarded.

(8) The applicant will identify its proposed administrative expenses to be spent from TA grant funds. The maximum total number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than or equal to 5 percent of the TA grant funds, 5 points will be awarded;

(ii) More than 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

(d) *Application requirements for MDOs seeking TA-only grants.* Technical assistance-only grants may be provided to MDOs that are not RMAP micro-lenders seeking to provide training and technical assistance to rural micro-entrepreneurs and rural microenterprises. An applicant seeking a TA-only grant must submit the information specified in paragraphs (d)(1) through (4) of this section. The total number of points available under this section, in addition to the 45 points available in paragraph (a) of this section, is 55, for a total of 100 points.

(1) *History of provision of TA.* Each applicant's history of provision of TA to microentrepreneurs and microenterprises, and its ability to reach diverse communities, will be scored based on the data specified in paragraphs (d)(1)(i) through (iii) of this section. The maximum number of points under this criterion is 20.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both TA services and resultant microloans for each of the previous three years. Of this total number, provide the percentage of rural microentrepreneurs and rural microenterprises that received both TA services and resultant

microloans for each of the previous three years. If the provision of both TA services and resultant microloans to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(ii) Provide the percentage of the total number of rural microentrepreneurs by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three years. If the demonstrated provision of TA and resultant microloans to these rural microentrepreneurs when compared to the total number of microentrepreneurs assisted, is at a rate of:

(A) 75 percent or more, 10 points will be awarded;

(B) At least 50 percent but less than 75 percent, 7 points will be awarded;

(C) At least 25 percent but less than 50 percent, 5 points will be awarded.

(iii) Provide the ratio of TA clients that also received microloans during each of the last three years, rounded to the nearest whole number. If the ratio of clients receiving TA to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) Either 1:9 or 1:10, 1 point will be awarded.

(2) *Ability to provide TA.* In addition to providing a statistical history of their provision of TA to microentrepreneurs, microenterprises, and micro-borrowers, applicants must provide a narrative of not more than five pages describing the teaching and training method(s) used by the applicant organization to provide TA and discussing the outcomes of their endeavors. The narrative will be scored as specified in paragraphs (d)(2)(i) through (iv) of this section. The maximum number of points under this criterion is 20.

(i) Applicants that have used more than one method of training and TA (e.g., classroom training, peer-to-peer discussion groups, individual assist-

ance, and distance learning) will be awarded 5 points.

(ii) Applicants that provide success stories to demonstrate the effects of TA on their clients will be awarded points under either of the following paragraphs, but not both:

(A) News stories that highlight businesses made successful as a result of the applicant's TA; 5 points will be awarded.

(B) Internal stories that highlight businesses made successful as a result of TA, 3 points.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs will be awarded 3 points. Applicants will provide the total number of evaluations received and the average score from the evaluations received. An additional two points will be awarded if the total evaluation scores are above an average of 3.0 on a five-point scale, with points determined by the client ratings on a declining scale as follows:

(A) Extremely Satisfied, 5 points.

(B) Satisfied, 4 points.

(C) Average, 3 points.

(D) Dissatisfied, 2 points.

(E) Very Unsatisfied, 1 point.

(iv) Applicants that present well-written narrative information regarding their programs and services to be delivered and their outreach efforts within the service area that is clearly and concisely written and is five pages or less will be awarded up to a maximum of 5 points.

(3) *Technical assistance plan.* Submit a concise plan for the provision of TA explaining how the funds will benefit the current program and how it will allow the applicant to expand its non-program microlending activities. Up to 10 points will be awarded.

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

(i) Less than or equal to 5 percent of the TA grant funds, 5 points will be awarded;

(ii) More than 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

RBS and RUS, USDA

§4280.317

(e) *Re-application requirements for participating microlenders with more than 5 years of experience as a microlender under this program.* (1) Microlender applicants with more than 5 years of experience as an MDO under this program may choose to submit a shortened loan/grant application that includes the following:

(i) A letter of request for funding stating the amount of loan and/or grant funds being requested;

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

(iii) An indication of the number and percent of the MDO's microentrepreneurs and microenterprises remaining in business for two years or more after microloan disbursement from program funds; 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 funding(s), will review the overall program performance of the applicant over the life of its participation in the program to determine its continued qualification for subsequent funds. Requirements include:

(i) A loan default rate of 5 percent or less;

(ii) A pattern of delinquencies during the period of participation in this program of 10 percent or less;

(iii) A pattern of use of TA dollars that indicates at least one in ten TA clients receive a microloan;

(iv) A statement discussing the need for more funding, accompanied by account documentation showing the amounts in each of the RMRF and LLRF accounts established to date; and

(v) A pattern of compliance with program reporting requirements.

(3) Shortened applications under this section will be rated on a pass or fail basis. Passing applications will be assigned a score of 90 points and will be ranked accordingly in the quarterly competitions. Failing applications under this section will be scored 0 and experienced MDOs may be required to

complete the application requirements of paragraph (b) of this section.

§4280.317 Selection of applications for funding.

All eligible applications received will be scored using the scoring criteria specified in §4280.316 and funded in descending order from the highest total score to applications receiving 60 points, subject to the authorization of appropriations for the Federal F.Y. If two or more applications have the same score and available funds cannot fund the individual projects, the Administrator may prioritize such applications to help the program achieve overall geographic diversity.

(a) *Timing and submission of applications.* (1) All applications must be submitted as a complete application in one package of materials. Packages must be in the order of appearance in §4280.315. Applications that are disorganized or otherwise not ready for evaluation will be returned to the applicant and not considered for funding.

(2) Applications will be accepted on a continuing basis at any Rural Development State Office and will compete nationally for available funds on a quarterly basis using Federal fiscal quarters.

(3) Applications received will be reviewed, scored, and ranked quarterly. Unless withdrawn by the applicant, the Agency will retain unsuccessful applications that score 60 points or more for consideration in subsequent reviews, through a total of four quarterly reviews. Applications unsuccessful after competing for funds in four quarters will be returned to the applicant.

(b) *Availability of funds.* If an Application is received, scored, and ranked, but insufficient funds remain to fully fund the project, 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 project is financially feasible at the lower amount.

(c) *Applicant notification.* The Agency will notify applicants regarding their selection or non-selection, provide appeal rights of unsuccessful applicants, and provide closing procedures for the loan and/or grant awardees.

(d) *Closing.* Awardees unable to complete closing for an approved obligation within 90 days or an extended date approved by the Agency will forfeit their funding award in accordance with § 4280.311(e)(9).

§§ 4280.318–4280.319 [Reserved]

§ 4280.320 Grant administration.

(a) *Oversight.* Any MDO receiving a grant under this program is subject to Agency oversight, with site visits and inspection of records occurring at the discretion of the Agency. In addition, MDOs receiving a grant under this subpart must submit reports, as specified in paragraphs (a)(1) through (3) of this section.

(1) On a quarterly basis, within 30 days after the end of each Federal fiscal quarter, the microlender 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:

(i) Narrative reporting information as required by Office of Management and Budget (OMB) circulars and successor regulations. This narrative will include information on the MDO's TA, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information;

(ii) If requesting grant funds at the time of reporting, an executed SF-270 form and a brief description of the proposed activity-based expenditures are required.

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

(3) 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.

(b) *Payments.* The Agency will make grant payments not more often than

quarterly. The first grant payment may be made in advance and will equal no more than one fourth of the grant award. Other payment requests must be submitted on Standard Form 270 and will only be paid if the MDO's reports are up to date and approved.

§ 4280.321 Grant and loan servicing.

In addition to the ongoing oversight of the participating MDOs, all grants will be serviced in accordance with applicable regulations, including 7 CFR part 1951, subparts E and O, 7 CFR part 3, and the Office of Management and Budget (OMB) regulations including, but not limited to, 2 CFR parts 200, 215, 220, 230, and OMB Circulars A-110 and A-133. Loans to microlenders will be serviced in accordance with 7 CFR part 1951, subparts E, O, and R, and OMB Circular A-129.

§ 4280.322 Loans from the microlenders to microentrepreneurs.

The primary purpose of making a program loan to a microlender is to enable that microlender to make microloans to rural microenterprises and microentrepreneurs. It is the responsibility of each microlender to make microloans in such a fashion that the terms and conditions of the microloan will support microborrower success while enabling the microlender to repay its loan from the Agency. It is the responsibility of each microborrower to repay the microlender in accordance with the terms and conditions agreed to with the microlender. The microlender is responsible for full repayment to the Agency of its loan regardless of the performance of its microloan portfolio.

(a) *Maximum microloan amount.* The maximum amount of a microloan made under this program will be \$50,000. The total outstanding balance of microloans to any microborrower may not exceed \$50,000.

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

(1) No microloan may have a term of more than 10 years;

(2) The interest rate charged to the microborrower will be established at or before the microloan closing and at such a rate that the microloan is affordable to the microborrower and provides a reasonable margin of earnings to the microlender.

(c) *Microloan insurance requirements.* The microlender has full discretion to require reasonable hazard, key person, and other insurance coverage from the microborrower as part of the loan transaction.

(d) *Credit elsewhere test.* Microborrowers will be subject to a “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 repayment terms. Each microborrower file must contain evidence that the microborrower has sought credit elsewhere or that the rates and terms available within the community at the time were outside the range of the microborrower’s affordability. Evidence may include a comparison of rates, loan limitations, terms, or other requirements from other funding sources. Denial letters from other lenders are not required.

(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 practices and Federal nondiscrimination requirements as stated in § 4280.305.

(f) *Eligible microloan purposes.* Agency loan funds may be used to make microloans as defined in § 4280.302 for any legal business purpose not identified in § 4280.323 as an ineligible purpose. Microlenders may make microloans for qualified business activities and expenses including, but not limited to:

- (1) Working capital;
- (2) The purchase of furniture, fixtures, supplies, inventory or equipment;
- (3) Debt refinancing;
- (4) Business acquisitions; and
- (5) 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 funds. Neither interior decorating, nor the affixing of chattel to walls, floors, or ceilings are considered to be demolition or construction.

(g) *Military personnel.* Military personnel who are or seek to be a micro-entrepreneur and are on active duty with six months or less remaining in their active duty status may receive a microloan and/or TA and training if they are otherwise qualified to participate in the program.

§ 4280.323 Ineligible microloan purposes and uses.

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

(a) Construction costs including property demolition, renovation, elimination of walls, or property additions.

(b) The financing of timeshares, apartments, duplexes, or other residential housing.

(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 close relatives, as defined; or

(2) Financial assistance to any entity which would appear to benefit the microlender or its principals, directors, or employees, or their close relatives, as defined, in any way other than the normal repayment of debt.

(d) Distribution or payment to a microborrower when such will use any portion of the microloan for other than business purposes.

(e) Microloans to a charitable institution not gaining sufficient revenue from business sales or services to support the operation and repay the microloan.

(f) Microloans to a fraternal organization.

(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 a combined amount of more than \$50,000 to one or more microlenders under the program.

(h) Assistance to USDA Rural Development employees, or their close relatives, as defined.

(i) Microloans for any illegal activity.

(j) 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.

(k) Loans supporting explicitly religious activities, such as worship, religious instruction or proselytization.

(l) Golf courses, race tracks, or gambling facilities.

(m) Funding of any political or lobbying activities.

(n) Lines of credit.

§§ 4280.324–4280.399 [Reserved]

§ 4280.400 OMB control number.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0062. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart E—Rural Business Development Grants

SOURCE: 80 FR 15667, Mar. 25, 2015, unless otherwise noted.

GENERAL

§ 4280.401 Purpose.

This subpart implements the RBDG program administered by the Agency. Grants made under this subpart will be made to eligible entities for use in funding various business opportunity and business enterprise Projects that serve Rural Areas.

§ 4280.402 [Reserved]

§ 4280.403 Definitions.

Administrator. The Administrator of RBS or designees or successors.

Agency. Rural Business-Cooperative Service (RBS) or successor.

Agriculture Production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals or birds, either for fiber, food for human consumption, or livestock feed.

Arm's-length Transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary, or stockholder interest in the grantee or transferor at the time of the transaction.

Business Support Centers. Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a Rural Area, but must provide assistance to businesses located in Rural Areas.

Departmental Grant Regulations. The USDA grant regulations at 2 CFR chapter IV.

Economic Development. The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels or gains in other measurements of economic activity, such as land values.

Indian Tribe (Tribal). Indian Tribes on Federal and State reservations and other federally recognized Indian Tribal groups.

Industrial Site. The development of undeveloped real estate for uses which will assist Small and Emerging Businesses.

Long-term. The period of time covered by the three most recent decennial censuses of the United States to the present.

RBS and RUS, USDA

§ 4280.406

Nonprofit. An entity chartered as a nonprofit organization under applicable State or Tribal law.

Other Business Development. Any business related activity that will assist Small and Emerging Businesses and may include but is not limited to business incubators, business training centers, and other training activity which leads directly to Small and Emerging Business development.

Planning. A process to coordinate Economic Development activities, develop guides for action, or otherwise assist local community leaders in the Economic Development of Rural Areas.

Priority Communities. Communities targeted for Agency assistance as determined by the U.S. Department of Agriculture Under Secretary for Rural Development that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor, or have experienced Long-Term population decline or job deterioration.

Project. The result of the use of grant funds provided under this subpart through Technical Assistance or Planning relating to the Economic Development of a Rural Area; or the result of the use of program funds (*i.e.*, a facility whether constructed by the applicant or a third party made with grant funds, Technical Assistance, startup operating costs, or working capital). A revolving fund established in whole or in part with grant funds will also be considered a Project.

Public Bodies/Government Entity. Public Bodies include States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and education institutions organized under State and Federal laws, and Indian Tribes.

Rural and Rural Area. As described in 7 U.S.C. 1991(a)(13)(A) and (D) *et seq.*

Small and Emerging Business. Any private and/or Nonprofit business which will employ 50 or fewer new employees and has less than \$1 million in gross revenue; for retail operations, total sales minus cost of goods sold minus returns or for a service organizations, gross revenue minus cost of providing service or for a manufacturing operation it will be total sales minus cost

of raw materials minus the cost of production.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical Assistance. A function performed for the benefit of a private business enterprise or a community and which is a problem solving activity, such as market research, product and/or service improvement, feasibility study, etc., to assist in the Economic Development of a Rural Area.

§ 4280.404 Exception authority.

The Administrator may make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's financial interest.

§ 4280.405 Review or appeal rights.

A person 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.

§ 4280.406 Conflict of interest.

(a) *General.* No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, Conflict of Interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and matching funds or award of Project construction contracts to an individual owner, partner, or stockholder, or to a beneficiary or immediate family of the applicant or grantee when the recipient will retain any portion of ownership in the applicant's or grantee's Project. Grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest. All transactions must be Arm's-length Transactions.

§ 4280.407

7 CFR Ch. XLII (1–1–23 Edition)

(b) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(c) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress so long as the member's ownership is less than 10 percent.

§ 4280.407 Statute and regulation references.

All references to statutes and regulations are to include any and all successor statutes and regulations.

§ 4280.408 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.

(a) *Departmental regulations.* All funded under this subpart are subject to the provisions of the Departmental Regulations, as applicable, which are incorporated by reference herein.

(b) *Equal opportunity and non-discrimination.* The Agency will ensure that equal opportunity and non-discrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, “Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture.” The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This may

include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. The data must be available to conduct compliance reviews.

(1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated.

(2) Grants will require one subsequent compliance review following Project completion. This will occur prior to the last disbursement of grant funds.

(d) *Environmental requirements.* Actions taken under this subpart must comply with 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds.

(2) The applicant will be notified of all specific compliance requirements, including, but not limited to, the publication of public notices, and consultation with State Historic Preservation Offices (or Tribal Historic Preservation Offices where appropriate) and the U.S. Fish and Wildlife Service.

(3) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review.

(4) Applications for Technical Assistance or Planning Projects are generally excluded from the environmental review process by 7 CFR 1970.53 provided the assistance is not related to the development of a specific site. However, as further specified in 7 CFR 1970.53, the grantee for a Technical Assistance grant, in the process of providing Technical Assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the Technical Assistance as requested by the Agency and in accordance with 7 CFR part 1970.

(5) Applicants for grant funds must consider and document within their plans the important environmental factors within the Planning area and the potential environmental impacts of the

plan on the Planning area, as well as the alternative Planning strategies that were reviewed.

(6) Whenever an applicant files an application that includes a direct construction Project and a plan, they must have a separate environmental evaluation.

(e) *Discrimination complaints*—(1) *Who may file.* Persons or a specific class of persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250.

(2) *Time for filing.* A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or the Agency.

(f) *Uniform Relocation and Real Property Acquisition Policies Act.* All Projects must comply with the requirements set forth in 7 CFR part 21.

(g) *Floodplains and wetlands.* All Projects must comply with Executive Order 11988 “Floodplain Management” and Executive Order 11990 “Protection of Wetlands.” The applicable regulations are codified at 44 CFR parts 59 through 80.

[80 FR 15667, Mar. 25, 2015, as amended at 81 FR 11052, Mar. 2, 2016]

§4280.409 [Reserved]

§4280.410 Other laws and regulations that contain compliance requirements for this program.

(a) *Equal employment opportunity.* For all construction contracts and grants in excess of \$10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60-1). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) *Architectural barriers.* All facilities financed with Zero-Interest Loans that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to and usable by

disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, (42 U.S.C. 4151-4157).

(c) *Uniform relocation assistance.* Relocations in connection with these programs are subject to 49 CFR part 24 as referenced by 7 CFR part 21 except that the provisions in title III of the Uniform Act do not apply to these programs.

(d) *Drug-free workplace.* Grants made under these programs are subject to the requirements contained in 2 CFR chapter IV which implements the Drug-Free Workplace Act. RBDG recipients will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(e) *Debarment and suspension.* The requirements of 2 CFR chapter IV are applicable to this program.

(f) *Intergovernmental review of Federal programs.* These programs are subject to the requirements of Executive Order 12372 and 2 CFR chapter IV. Proposed Projects are subject to the State and local government review process contained in 2 CFR chapter IV.

(g) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, and 2 CFR chapter IV, are applicable to these programs.

(h) *Earthquake hazards.* These programs are subject to the seismic requirements of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701-7706).

(i) *Affirmative fair housing.* If applicable, the grantee will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601-3631 and 24 CFR part 100).

(j) *Flood hazard insurance.* The RBDG program is subject to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by 42 U.S.C. 4001-4129 and 7 CFR part 1806, subpart B.

(k) *Uniform administrative requirements, cost principles, and audit requirements for Federal awards.* The requirements of 2 CFR chapter IV, or its successor regulations are applicable to this program.

(l) *Planning and performing construction and other development.* The requirements of 7 CFR part 1924, subpart A, or

§ 4280.411

its successor regulations, are applicable to this program.

(m) *Transparency Act*. The requirements of 2 CFR part 170 are applicable to this program.

§ 4280.411 Forms, guides, and attachments.

All forms, guides, and attachments referenced in this subpart are available online at: <http://forms.sc.egov.usda.gov/eForms/> or in any Rural Development State office.

§§ 4280.412–4280.414 [Reserved]

RURAL BUSINESS DEVELOPMENT GRANTS

§ 4280.415 Rural Business Development Grants.

Sections 4280.416 through 4280.439 identify the provisions that the Agency will use for making awards for Rural Business Development Grants.

ELIGIBILITY

§ 4280.416 Applicant eligibility.

To receive an RBDG under this subpart, an applicant must meet the requirements specified in paragraphs (a) through (e) of this section. If an award is made to an applicant, that applicant (grantee) must continue to meet the requirements specified in this section. If the grantee does not, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(a) *Type of applicant*. The Applicant must be one of the following:

(1) A Public Body/Government Entity;

(2) An Indian Tribe; or

(3) A Nonprofit entity.

(b) *Financial strength and expertise*. The Applicant must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(1) Financial strength will be analyzed by the Agency based on financial data provided in the application. The analysis will consider the applicant's tangible net worth, which must be positive, and whether the applicant has dependable sources of revenue or a successful history of raising revenue sufficient to meet cash requirements.

7 CFR Ch. XLII (1–1–23 Edition)

(2) Expertise will be analyzed by the Agency based on the applicant staff's training and experience in activities similar to those proposed in the application and, if consultants will be used, on the staff's experience in choosing and supervising consultants.

(c) *Universal identifier and system for awards management*. Unless exempt under 2 CFR 25.110, the Applicant must:

(1) Be registered in the System for Awards Management (SAM) prior to submitting an application;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency; and

(3) Provide its Dun and Bradstreet Data Universal Numbering System (DUNS) number in each application it submits to the Agency. Generally, the DUNS number is included on Standard Form (SF) 424, "Application for Federal Assistance."

(d) *Delinquent debt*. The applicant must not have any delinquent debt to the Federal Government. If an applicant has any delinquent debt to the Federal Government, the applicant will be ineligible to receive any funds obligated under this subpart until the debt has been paid.

(e) *Legal authority and responsibility*. Each Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

§ 4280.417 Project eligibility.

For a Project to be eligible for funding under this subpart, the proposed Project must meet each of the requirements specified in paragraphs (a) through (e) of this section.

(a) *Types of projects*. Grant funds may be used for Projects identified in either paragraph (a)(1) of this section, business opportunity type grants, or paragraph (a)(2) of this section, business enterprise type grants. Unless otherwise announced in a Notice of Solicitation of Applications, the Agency will set aside 10 percent of its RBDG appropriation for business opportunity type grants. The Agency reserves the right to reallocate funds set aside for business opportunity type grants to business enterprise type grants if it becomes apparent to the Agency that

RBS and RUS, USDA

\$4280.417

there is insufficient demand for the funds set aside for the business opportunity type grants.

(1) *Business opportunity Projects.* Grant funds may be used for business opportunity Projects that include one or more of the following activities:

(i) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies;

(ii) Identify, train, and provide Technical Assistance to existing or prospective rural entrepreneurs and managers;

(iii) Establish Business Support Centers and otherwise assist in the creation of new Rural businesses;

(iv) Conduct local community or multi-county Economic Development Planning;

(v) Conduct leadership development training of existing or prospective adult rural entrepreneurs and managers;

(vi) Establish centers for training, technology, and trade that will provide training to Rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets; or

(vii) Pay reasonable fees and charges for professional services necessary to conduct the Technical Assistance, training, or planning functions.

(2) *Business enterprise projects.* Grant funds may be used to finance and/or develop Small and Emerging Businesses in Rural Areas including, but not limited to, the following activities:

(i) Acquisition and development of land, easements and rights-of-way;

(ii) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities;

(iii) Provision of loans for startup operating cost and working capital;

(iv) Reasonable fees and charges for professional services necessary for the planning and development of the Project;

(v) Establishment of a revolving loan fund to provide financial assistance to third parties through a loan; and

(vi) Establishment, expansion, and operation of Rural distance learning networks or development of Rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancements for adult students;

(vii) Provision of Technical Assistance for Small and Emerging Businesses, including but not limited to feasibility studies and business plans; and/or

(viii) Provision of Technical Assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

(b) *Result of projects.* (1) For business opportunity type grants, the Project must have a reasonable prospect that the Project will result in the Economic Development of a Rural Area.

(2) For business enterprise type grants, the Project must have a reasonable prospect that it will result in the development or financing of Small and Emerging Businesses.

(c) *Basis for success or failure.* Grants may be made only when the application demonstrates a need for the Project and includes a basis for determining the success or failure of the Project and individual major elements of the Project and outlines procedures that will be taken to assess the Project's impact at its conclusion.

(d) *Local and area-wide strategic plans.* Business opportunity type grants may be made only when the proposed Project is consistent with any local and area-wide strategic plans for community and Economic Development, coordinated with other Economic Development activities in the Project area, and consistent with any Rural Development State Strategic Plan.

(e) An applicant is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

[80 FR 15667, Mar. 25, 2015, as amended at 85 FR 57085, Sept. 15, 2020]

§§ 4280.418–4280.420

7 CFR Ch. XLII (1–1–23 Edition)

§§ 4280.418–4280.420 [Reserved]

FUNDING PROVISIONS

§ 4280.421 Term requirement.

A grant may be considered for the amount needed to assist with the completion of a proposed Project, provided that the Project can reasonably be expected to be completed within 1 full year after it has begun.

§ 4280.422 Joint funding.

To the extent permitted by law, Agency grant funds may be used jointly and in proportion with funds furnished by the grantee or from other sources including Agency loan funds.

§ 4280.423 Ineligible uses of grant funds.

Grant funds may not be used towards any of the uses identified in paragraphs (a) through (n) of this section.

(a) Duplicate current services or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided.

(b) Pay costs of preparing the application package for funding under this program or any other program.

(c) Pay costs for any expenses incurred prior to receipt of a full application, except for those permitted under Departmental Regulations.

(d) Fund political activities.

(e) Pay for assistance to any private business enterprise which does not create and/or support jobs in the United States.

(f) Pay any judgment or debt owed to the United States.

(g) Fund Agriculture Production either directly or through horizontally integrated livestock operations except for commercial nurseries, timber operations or limited Agricultural Production related to Technical Assistance Projects. The following are not considered Agriculture Production:

(1) Aquaculture, including conservation, development, and utilization of water for aquaculture;

(2) Commercial fishing;

(3) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products

such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage;

(4) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation; or

(5) The growing of mushrooms or hydroponics.

(h) To finance comprehensive area-wide type Planning. This does not preclude the use of grant funds for Planning for a given Project.

(i) To make loans when the rates, terms, and charges for those loans are not reasonable or would be for purposes not eligible under 7 CFR part 4274, subpart D.

(j) For programs operated by cable television systems.

(k) To fund a part of a Project that is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the Project.

(l) To pay for Technical Assistance that duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with FS and the Agency to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for Technical Assistance under the FS program. The grantee will provide documentation to FS and the Agency regarding the contact with each agency.

(m) Pass through grants. Pass through grants are for, but not limited to:

(1) The purchase, refurbishing, or remodeling of real estate for use as a business incubator without charging a fair market rental;

(2) The purchase of equipment for use by an ultimate recipient without charging a fair market rental; and

(3) The making of a Revolving Loan Fund (RLF) loan without taking appropriate security to reasonably assure repayment of the loan.

(n) For a Project that would result in the transfer of existing employment or business activity more than 25 miles from its existing location.

§§ 4280.424–4280.426 [Reserved]

APPLYING FOR A GRANT

§ 4280.427 Application.

Applications for an RBDG grant as specified in § 4280.417(a)(1) and (2) must contain the following:

(a) An original and one copy of SF 424, “Application For Federal Assistance (For Non-construction);”

(b) Copies of applicant’s organizational documents showing the applicant’s legal existence and authority to perform the activities under the grant;

(c) A proposed scope of work, including a description of the proposed Project, *e.g.*, RLF, Technical Assistance, Industrial Site, Business Opportunity and Other Business Development, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the Project, and the estimated time it will take from grant approval to beginning of Project implementation;

(d) A written narrative that includes, at a minimum, the following items:

(1) An explanation of why the Project is needed, the benefits of the proposed Project, and how the Project meets the grant eligible purposes;

(2) Area to be served, identifying each governmental unit, *i.e.* town, county, etc., to be affected by the Project;

(3) Description of how the Project will coordinate Economic Development activities with other Economic Development activities within the Project area;

(4) Business to be assisted, if appropriate, and Economic Development to be accomplished;

(5) An explanation of how the proposed Project will result in newly created, increased, or supported jobs in the area and the number of projected new and supported jobs within the next 3 years;

(6) A description of the applicant’s demonstrated capability and experience in providing the proposed Project assistance or similar Economic Development

activities, including experience of key staff members and persons who will be providing the proposed Project activities and managing the Project;

(7) The method and rationale used to select the areas and businesses that will receive the service;

(8) A brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(9) Other information the Agency may request to assist it in making a grant award determination;

(e) The latest 3 years of financial information to show the applicant’s financial capacity to carry out the proposed work. If the applicant is less than 3 years old, at a minimum, the information should include all balance sheet(s), income statement(s) and cash flow statement(s). A current audited report is required if available;

(f) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372;

(g) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the RBDG;

(h) A budget which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the Project; and

(i) RBDG construction Project grants must conform with 7 CFR part 1924, subpart A requirements.

§ 4280.428 Strategic economic and community development.

Applicants with projects that support the implementation of Strategic Community Investment Plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of Strategic Community Investment Plans on a multi-jurisdictional and multi-sectoral basis.

[85 FR 59395, Sept. 22, 2020]

§ 4280.429

7 CFR Ch. XLII (1–1–23 Edition)

§ 4280.429 [Reserved]

§ 4280.430 Notification of decision.

When the Agency has determined that an application is not eligible or that no further action will be taken, the Agency will notify the applicant in writing of the reasons why the application was not favorably considered and provide any appeal rights.

§§ 4280.431–4280.433 [Reserved]

PROCESSING AND SCORING APPLICATIONS

§ 4280.434 General processing and scoring provisions.

The Agency will review each application for assistance in accordance with the priorities established in § 4280.435. The Agency will assign each application a priority rating and will select applications for funding based on the priority ratings and the total funds available to the program.

(a) *Applications.* The Agency will score each application based on the information contained in the application and its supporting information. All applications submitted for funding must contain sufficient information to permit the Agency to complete a thorough priority rating.

(b) *Unfunded applications.* The Agency will notify eligible applicants if funds are not available. If an applicant wishes to have their application maintained in an active file for future consideration, the applicant must revise and update their application in writing for the Agency to reconsider in a future funding cycle.

§ 4280.435 Scoring criteria.

The Agency will use the criteria in this section to score applications for purposes identified under § 4280.417(a)(1) and (2).

(a) *Leveraging.* If the grant will fund a critical element of a larger program of Economic Development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows. If points are awarded for leveraging, funds must be spent proportionally, and if leveraged funds

are not utilized proportionately with the grant, the Agency reserves the right to take any legal action, including terminating the grant.

(1) If Rural Development's portion of Project funding is:

- (i) Less than 20 percent—30 points;
- (ii) 20 but less than 50 percent—20 points;
- (iii) 50 but less than 75 percent—10 points; or
- (iv) 75 percent or more—0 points.

(2) [Reserved]

(b) Points will be awarded for each of the following criteria met by the community or communities that will receive the benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (b)(1) through (4) of this section, total points awarded under this paragraph (b) must not exceed 40.

(1) *Trauma.* Experiencing trauma due to a major natural disaster that occurred not more than 3 years prior to the filing of the application for assistance—15 points;

(2) *Economic distress.* The community has suffered a loss of 20 percent or more in their total jobs caused by the closure of a military facility or other employers within the last 3 years—15 points;

(3) *Long-term poverty.* Has experienced Long-Term poverty as demonstrated by being a former Rural empowerment zone, Rural economic area partnership zone, Rural enterprise community, champion community, or a persistent poverty county as determined by USDA's Economic Research Service—10 points;

(4) *Population decline.* Has experienced Long-Term population decline—10 points as demonstrated by the latest three decennial censuses.

(c) *Population.* Proposed Project(s) will be located in a community of:

- (1) Under 5,000 population—15 points;
- (2) Between 5,000 and less than 15,000 population—10 points; or
- (3) Between 15,000 and 25,000 population—5 points.

(d) *Unemployment.* Proposed Project(s) will be located in areas where the unemployment rate:

- (1) exceeds the State rate by 25 percent or more—20 points;

RBS and RUS, USDA

§4280.439

(2) exceeds the State rate by less than 25 percent—10 points; or

(3) is equal to or less than the State rate—0 points.

(e) *Median household income.* Proposed Project(s) will be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act for a family of 4 for the State is:

(1) Less than poverty line—25 points;

(2) More than poverty line but less than 65 percent of State MHI—15 points;

(3) Between 65 and 85 percent of State MHI—10 points; or

(4) Greater than 85 percent State MHI—0 points.

(f) *Experience.* Applicant has evidence of successful experience in the type of activity. Evidence of successful experience may be a description of experience supplied and certified by the applicant based upon its current employees' resumes:

(1) 10 or more years—30 points;

(2) At least 5 but less than 10 years—20 points;

(3) At least 3 but less than 5 years—10 points; or

(4) At least 1 but less than 3 years—5 points.

(g) *Small business start-up or expansion.* Applicant has evidence that small business development will be supported by startup or expansion as a result of the activities to be carried out under the grant. Written evidence of commitment by a small, or a Small and Emerging Business must be provided to the Agency, and should include the number of jobs that will be supported and created. 5 points for each letter up to 25 points.

(h) *Jobs created or supported.* The anticipated development, expansion, or furtherance of business enterprises as a result of the proposed Project will create and/or support existing jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business to be assisted.

(1) One job for less than \$5,000—25 points;

(2) one job for \$5,000 but less than \$10,000—20 points;

(3) one job for \$10,000 but less than \$15,000—15 points;

(4) one job for \$15,000 but less than \$20,000—10 points; or

(5) one job for \$20,000 but less than \$25,000—5 points.

(i) *Size of grant request.* Grant Projects utilizing funds available under this subpart of:

(1) less than \$100,000—25 points;

(2) \$100,000 to \$200,000—15 points; or

(3) more than \$200,000 but not more than \$500,000—10 points.

(j) *Indirect cost.* Applicant is not requesting grant funds to cover their administrative or indirect costs—5 points.

(k) *Discretionary points.* Either the State Director or Administrator may assign up to 50 discretionary points to an application. Assignment of discretionary points must include a written justification. Permissible justifications are geographic distribution of funds, special Secretary of Agriculture initiatives such as Priority Communities, or a state's strategic goals. Discretionary points may only be assigned to initial grants. However, in the case where two Projects have the same score, the State Director may add one point to the Project that best fits the State's strategic plan regardless of whether the Project is an initial or subsequent grant.

§§ 4280.436–4280.438 [Reserved]

GRANT AWARDS AND AGREEMENT

§ 4280.439 Grant awards and agreements.

The Agency will award and administer RBDG grants in accordance with applicable Departmental regulations, this subpart, and the unauthorized grant provisions of 7 CFR part 1951, subpart O.

(a) *Letter of conditions.* The Agency will provide each approved applicant a letter of conditions, which sets out the conditions under which the grant will be made, including, but not limited to, an Agency grant agreement.

(b) *Applicant's intent to meet conditions.* The applicant must complete, sign and return a "Letter of Intent to Meet Conditions," to the Agency. If applicant identifies certain conditions that the applicant cannot meet, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed by

§§ 4280.440–4280.442

the letter of conditions by the applicant before the any grant will be made.

§§ 4280.440–4280.442 [Reserved]

POST AWARD ACTIVITIES AND REQUIREMENTS

§ 4280.443 Grant monitoring and servicing.

RBDG grants will be monitored and serviced in accordance with the grant agreement, this subpart, and 2 CFR chapter IV.

§§ 4280.444–4280.447 [Reserved]

§ 4280.448 Transfers and assumptions.

The Agency will approve transfer and assumption requests on grants awarded under this subpart on a case by case basis, and then only to eligible entities under § 4280.416.

§§ 4280.449–4280.499 [Reserved]

§ 4280.500 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0570–0022 and 0570–0024 in accordance with the Paperwork Reduction Act of 1995. You are not required to respond to this collection of information unless it displays a valid OMB control number.

PART 4284—GRANTS

Subpart A—General Requirements for Cooperative Services Grant Programs

Sec.

- 4284.1 Purpose.
- 4284.2 Policy.
- 4284.3 Definitions.
- 4284.4 Appeals.
- 4284.5 [Reserved]
- 4284.6 Applicant eligibility.
- 4284.7 Electronic submission.
- 4284.8 Grant approval and obligation of funds.
- 4284.9 Grant disbursement.
- 4284.10 Ineligible grant purposes.
- 4284.11 Award requirements.
- 4284.12 Reporting requirements.
- 4284.13 Confidentiality of reports.
- 4284.14 Grant servicing.
- 4284.15 Performance reviews.

7 CFR Ch. XLII (1–1–23 Edition)

- 4284.16 Other considerations.
- 4284.17 Member delegate clause.
- 4284.18 Audit requirements.
- 4284.19 Programmatic changes.
- 4284.20–4284.99 [Reserved]
- 4284.100 OMB control number.

Subparts B–E [Reserved]

Subpart F—Rural Cooperative Development Grants

- 4284.501 Purpose.
- 4284.502 Policy.
- 4284.503 Program administration.
- 4284.504 Definitions.
- 4284.505–4284.506 [Reserved]
- 4284.507 Eligibility for grant assistance.
- 4284.508 Use of grant funds.
- 4284.509 Limitations on grants.
- 4284.510 Application processing.
- 4284.511 Evaluation screening.
- 4284.512 Evaluation process.
- 4284.513 Evaluation criteria and weights.
- 4284.514 Grant closing.
- 4284.515–4284.599 [Reserved]
- 4284.600 OMB control number.

Subparts G–I [Reserved]

Subpart J—Value-Added Producer Grant Program

GENERAL

- 4284.901 Purpose.
- 4284.902 Definitions.
- 4284.903 Review or appeal rights.
- 4284.904 Exception authority.
- 4284.905 Nondiscrimination and compliance with other Federal laws.
- 4284.906 State laws, local laws, regulatory commission regulations.
- 4284.907 Environmental requirements.
- 4284.908 Compliance with other regulations.
- 4284.909 Forms, regulations, and instructions.
- 4284.910–4284.914 [Reserved]

FUNDING AND PROGRAMMATIC CHANGE NOTIFICATIONS

- 4284.915 Notifications.
- 4284.916–4284.919 [Reserved]

ELIGIBILITY

- 4284.920 Applicant eligibility.
- 4284.921 Ineligible applicants.
- 4284.922 Project eligibility.
- 4284.923 Reserved funds eligibility.
- 4284.924 Priority scoring eligibility.
- 4284.925 Eligible uses of grant and matching funds.
- 4284.926 Ineligible uses of grant and matching funds.
- 4284.927 Funding limitations.
- 4284.928–4284.929 [Reserved]