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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.

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EFFECTIVE DATE NOTE: At 88 FR 86570, Dec. 14, 2023, the authority citation for part 4280 was revised, effective Jan. 16, 2024. For the convenience of the user, the revised text is set forth as follows:

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 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 needed 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 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 Marianas 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:

(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 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 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 contribution 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 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 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 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 provided 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 nondiscrimination.* Rural Development will ensure that equal opportunity and nondiscriminatory 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.

(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.

(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 national 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:

(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.

§ 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 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.

(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 feasibility 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, precommercial 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 appeal 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 annuals 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 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 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 of 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 ownership 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 nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination 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 assistance, 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 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 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 nonprofit 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 energy 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 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 requirements 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 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 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), 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, including 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 × 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 subcriterion 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: ((Percentage of written commitments -50 percent)/(50 percent)) $\times$ 15 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 underrepresented 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 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 Agency. 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, nondiscrimination 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-bid-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 subcontract 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, nondiscrimination 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 assistant 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 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 maintained 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 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 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 audited. 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 anerobic 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. Overall economic impact of project including new markets created and economic development.

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.

MARKET—Continued

	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 microentrepreneurs 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 microentrepreneurs 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, 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 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. 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 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 section 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 quarterly 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, 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 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 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.''

(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 criterion 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 microlenders seeking to provide training and technical assistance to rural microentrepreneurs 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 microborrowers, 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 assistance, 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.

(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 FY. 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 microentrepreneur 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.

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.

EFFECTIVE DATE NOTE: At 88 FR 86570, Dec. 14, 2023, § 4280.403 was amended by adding the definition of ''Conflict of Interest'' in alphabetical order and revising the definitions of ''Indian Tribe (Tribal)'' and ''Small and Emerging Business'', effective Jan. 16, 2024. For the convenience of the user, the added and revised text is set forth as follows:

§ 4280.403 Definitions.

* * * * *

Conflict of Interest. When the grantee's employees, Board of Directors, or their immediate families have a legal or personal financial interest in the recipient(s) receiving the benefits or services of the grant. Tribal Governments, subdivisions of Tribal Governments (chapters, districts, authorities, townships, etc.), and Tribal arms and instrumentalities, entities wholly-owned and chartered by Tribal Governments including but not limited to: Tribal owned corporations (including Section 17 Corporations, Community Development Corporations and Economic Development Corporations), Tribal owned businesses, Tribal owned authorities, Tribal owned utilities, other Tribally owned enterprises and their subsidiaries will not be considered as having a conflict of interest due to their, or their Board's, ties to their associated Tribe or each other.

* * * * *

Indian Tribe (Tribal), Tribal Government and/or Federally Recognized Tribes. Any Indian or Alaska Native tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103–454).

* * * * *

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, gross revenue may be reduced by cost of goods sold and returns or for a service organization, gross revenue may be reduced by the cost of providing service or for a manufacturing operation, gross revenue may be reduced by the cost of raw materials and the cost of production. The $1 million gross revenue and 50 or fewer new employee thresholds apply only to each individual Tribal owned enterprise applicant or recipient. Due to the unique structuring of Tribal economic development, the revenue or employees of the Tribe and/or parent Tribal enterprise will not apply towards the individual Tribal enterprise applicant or recipient, regardless of shared ownership or Directors. The revenue of Tribes, subdivisions of Tribes and Tribal entity applicants, will not be considered revenue in determining program and project eligibility.

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§ 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.

(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 nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination 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 State 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 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.

(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 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 [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 [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 Serviced—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;

(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 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.

EFFECTIVE DATE NOTE: At 88 FR 86570, Dec. 14, 2023, § 4280.500 was revised, effective Jan. 16, 2024. For the convenience of the user, the revised text is set forth as follows:

§ 4280.500 OMB control number.

The reporting and recordkeeping requirements contained in this part 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 number 0570–0070 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.

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart F also issued under 7 U.S.C 1932(e).

Subpart G also issued under 7 U.S.C 1926(a)(11).

Subpart J also issued under 7 U.S.C. 1632(a).

Subpart K also issued under 7 U.S.C. 1621 note.

SOURCE: 62 FR 42387, Aug. 7, 1997, unless otherwise noted.

Subpart A—General Requirements for Cooperative Services Grant Programs

SOURCE: 69 FR 23425, Apr. 29, 2004, unless otherwise noted.

§ 4284.1 Purpose.

The purpose of this subpart is to set forth definitions and requirements which are common to all grant programs set forth in this part administered by Cooperative Services within the Rural Business-Cooperative Service (RBS). Programs administered by the Business Programs within RBS are not affected by this subpart.

§ 4284.2 Policy.

It is the policy of Cooperative Services to administer grant programs as uniformly as possible to minimize unnecessary inconsistencies in the administration of the grant programs provided for in this part. The specific provisions or definitions provided in the subparts that are specific to Cooperative Services are supplemental to these general provisions. Where a specific program provision is expressly different from what is provided in this subpart, the program specific subpart shall prevail.

§ 4284.3 Definitions.

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agricultural Producer—Persons or entities, including farmers, ranchers, loggers, agricultural harvesters and fishermen, that engage in the production or harvesting of an agricultural product. Producers may or may not own the land or other production resources, but must have majority ownership interest in the agricultural product to which Value-Added is to accrue as a result of the project. Examples of agricultural producers include: a logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Agricultural Product—Plant and animal products and their by-products to include forestry products, fish and seafood products.

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 a 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. In cases of tribally-owned businesses, to avoid a conflict of interest, any business assisted by a tribe must be held through a separate entity, such as a tribal corporation. The separate entity may be owned by the tribe and distribute profits to the tribe. However, the entity's governing board must be independent from the tribal government and be elected or appointed for a specific time period. These board members must not be subject to removal without cause by the tribal government. The entity's board members must not, now or in the future, make up the majority of members of the tribal council or be members of the tribal council or other governing board of the tribe.

Cooperative Services—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

Economic development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Farmer or Rancher Cooperative—A farmer or rancher-owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, individuals or entities (including for profit and not for profit corporations, LLCs, partnerships or LLPs), where the entities are solely owned or controlled by Agricultural Producers who own a majority ownership interest in the agricultural product that is produced. An independent producer can also be a steering committee composed of independent producers in the process of organizing an association to operate a Value-Added venture that will be owned and controlled by the independent producers supplying the agricultural product to the market. Independent Producers must produce and own the agricultural product to which value is being added. Producers who produce the agricultural product under contract for another entity but do not own the product produced are not independent producers.

Majority-Controlled Producer-Based Business Venture—A venture where more than 50% of the ownership and control is held by Independent Producers, or, partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers.

Matching Funds—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Unless otherwise provided, in-kind contributions that conform to the provisions of 2 CFR part 200 as adopted by USDA in 2 CFR part 400 can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, not less than the pro-rata portion of matching funds shall have been expended prior to submitting the request for reimbursement. Matching funds are subject to the same use restrictions as grant funds.

National Office—USDA RBS headquarters in Washington, DC.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Product segregation—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

RFP—Request for Proposals.

Rural and rural area—includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the most recent decennial Census of the United States, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I).

Rural Development—A mission area within the USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

State—includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

State Office—USDA Rural Development offices located in each state.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of a change in its physical state, differentiated production or marketing, as demonstrated in a business plan, or Product segregation. Also, the economic benefit realized from the production of farm or ranch-based renewable energy. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, wind or hydro power produced on land that is farmed and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

[69 FR 23425, Apr. 29, 2004, as amended at 79 FR 76016, Dec. 19, 2014; 80 FR 9913, Feb. 24, 2015; 87 FR 38644, June 29, 2022]

§ 4284.4 Appeals.

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11 and subpart B of part 1900. If the Agency makes a determination that a decision is not appealable, a participant may request that it be reviewed by the Director of the National Appeals Division.

§ 4284.5 [Reserved]

§ 4284.6 Applicant eligibility.

An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any assistance until the judgment is paid in full or otherwise satisfied. RBS grant funds may not be used to satisfy the judgment.

§ 4284.7 Electronic submission.

Applicants and grant awardees are encouraged, but not required, to submit applications and reports in electronic form as prescribed in requests for proposals issued by USDA and in the applicable grant agreements.

§ 4284.8 Grant approval and obligation of funds.

The following statement will be entered in the comment section of the Request for Obligation of Funds, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in the applicable 7 CFR part 4284 and the Grants and Agreements Departmental Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421, in effect on the date of grant approval, and the approved Letter of Conditions.

[79 FR 76017, Dec. 19, 2014]

§ 4284.9 Grant disbursement.

The Agency will determine, based on 2 CFR part 200 as adopted by USDA in 2 CFR part 400 whether disbursement of a grant will be by advance or reimbursement.

[79 FR 76017, Dec. 19, 2014]

§ 4284.10 Ineligible grant purposes.

Grant funds may not be used to:

(a) Duplicate current services or replace 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;

(c) Pay costs of the project incurred prior to the date of grant approval;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have a least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States;

(g) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(h) Purchase, rent or install Fixed Equipment;

(i) Pay for the repair of privately owned vehicles; or

(j) Fund research and development.

§ 4284.11 Award requirements.

In addition to specific grant requirements, all approved applicants will be required to do the following:

(a) Enter into an Agency-approved grant agreement with RBS;

(b) Disclose in writing any potential conflicts of interest and maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest in accordance with 2 CFR 400.2;

(c) Use ''Request for Advance or Reimbursement'' to request advances or reimbursements, as applicable, but not more frequently than once a month;

(d) Maintain a financial management system that is acceptable to the Agency; and

(e) Collect and maintain data on race, sex and national origin of the beneficiaries of the project.

[69 FR 23425, Apr. 29, 2004, as amended at 79 FR 76017, Dec. 19, 2014]

§ 4284.12 Reporting requirements.

Grantees must submit the following to USDA:

(a) A ''Financial Status Report'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end as identified in the grant agreement or applicable program attachment. Reports are due 30 days after the reporting period ends. Failure to submit the required reports within the specified time frame is considered cause for suspension or termination of the grant.

(b) Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (a) of this section. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

(c) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 30 days of the completion of the project.

[69 FR 23425, Apr. 29, 2004, as amended at 79 FR 76017, Dec. 19, 2014]

§ 4284.13 Confidentiality of reports.

All reports submitted to the Agency will be held in confidence to the extent permitted by law.

§ 4284.14 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O and the Departmental Grants and Agreements Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421. The only exception is that the delegation of post-award servicing does not require the prior approval of the Administrator. Grantees will permit periodic inspection of the program operations by a representative of the

Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

[79 FR 76017, Dec. 19, 2014]

§ 4284.15 Performance reviews.

(a) USDA will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(b) USDA may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, but nevertheless fund the remainder of a request for an advance or reimbursement, as applicable, where USDA has determined:

(1) That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis; or

(3) Such other cause as USDA identifies in writing to the grantee (including but not limited to the use of Federal grant funds for ineligible purposes).

§ 4284.16 Other considerations.

(a) *Environmental requirements.* Grants made under this subpart must comply with 7 CFR part 1970. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1970.53, provided the assistance is not related to the development of a specific site. 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.

(b) *Civil rights.* All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin as outlined in 7 CFR part 1901, subpart E. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. This program will also be administered in accordance with all other applicable civil rights law.

(c) *Other USDA regulations.* The grant programs under this part are subject to the provisions of the following regulations, as applicable:

(1) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(2) 2 CFR part 415, General Program Administrative Regulations;

(3) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(4) 2 CFR part 418, New Restrictions on Lobbying; and

(5) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance).

[69 FR 23425, Apr. 29, 2004, as amended at 79 FR 76017, Dec. 19, 2014; 81 FR 11053, Mar. 2, 2016]

§ 4284.17 Member delegate clause.

No Member of Congress shall be admitted to any share or part of a grant program or any benefit that may arise there from, but this provision shall not be construed to bar as a contractor under a grant a publicly held corporation whose ownership might include a Member of Congress.

§ 4284.18 Audit requirements.

Grantees must comply with the audit requirements of 2 CFR part 200 as adopted by USDA in 2 CFR part 400. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

[79 FR 76017, Dec. 19, 2014]

§ 4284.19 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project.

Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination and recovery of grant funds.

§§ 4284.20–4284.99 [Reserved]

§ 4284.100 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 0570–0045.

Subparts B–E [Reserved]

Subpart F—Rural Cooperative Development Grants

SOURCE: 69 FR 23428, Apr. 29, 2004, unless otherwise noted.

§ 4284.501 Purpose.

This subpart outlines the Agency's polices and procedures for making grants for cooperative development in rural areas.

§ 4284.502 Policy.

Rural cooperative development grants will be used to facilitate the creation or retention of jobs in rural areas through the development of new rural cooperatives, Value-Added processing and rural businesses.

§ 4284.503 Program administration.

The rural cooperative development grant program is administered by Cooperative Services within the Agency.

§ 4284.504 Definitions.

Center—The entity established or operated by the grantee for rural cooperative development. It may or may not be an independent legal entity separate from the grantee.

Cooperative development—The startup, expansion or operational improvement of a cooperative to promote development in rural areas of services and products, processes that can be used in the marketing of products, or enterprises that create Value-Added to farm products through processing or marketing activities. Development activities may include, but are not limited to, technical assistance, research services, educational services and advisory services. Operational improvement includes making the cooperative more efficient or better managed.

1994 Institution—means a college identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). Contact the Agency for a list of currently eligible colleges.

Project—A planned undertaking by a Center that utilizes the funds provided to it to promote economic development in rural areas through the creation and enhancement of cooperatives.

§§ 4284.505–4284.506 [Reserved]

§ 4284.507 Eligibility for grant assistance.

Grants may be made to Nonprofit corporations and institutions of higher education. Grants may not be made to Public bodies.

§ 4284.508 Use of grant funds.

Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the cost of establishing and operating centers for rural cooperative development. Matching funds contributed by the applicant may include a loan from another federal source. Grant funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

(a) Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

(b) Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

(c) Providing training and instruction for the purpose of cooperative development.

(d) Providing loans and grants for the purpose of cooperative development in accordance with the subpart.

(e) Providing technical assistance, research services and advisory services for the purpose of cooperative development.

§ 4284.509 Limitations on grants.

Grants made pursuant to this subpart shall be for one year or less.

§ 4284.510 Application processing.

(a) *Applications.* USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one hard copy of the required forms and a proposal.

(b) *Required forms.* The following forms must be completed, signed and submitted as part of the application package. Other forms may be required. This will be published in the applicable RFP.

(1) ''Application for Federal Assistance''

(2) ''Budget Information—Non-Construction Programs''

(3) ''Assurances—Non-Construction Programs''

(c) *Proposal.* Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) *Executive Summary.* A summary of the proposal should briefly describe the Center, including goals and tasks to be accomplished, the amount requested, how the work will be performed and whether organizational staff, consultants or contractors will be used.

(4) *Eligibility.* A detailed discussion describing how the applicant meets the eligibility requirements.

(5) *Proposal Narrative.* The narrative portion of the proposal must include, but is not limited to, the following:

(i) *Project Title.* The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) *Information Sheet.* A separate one-page information sheet listing each of the evaluation criteria referenced in the RFP, followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) *Goals of the Project.* This section must include the following:

(A) A provision that substantiates that the Center will effectively serve rural areas in the United States;

(B) A provision that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

(C) A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services.

(D) Provisions that the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(iv) *Work Plan.* Applicants must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

(v) *Performance Evaluation Criteria.* Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) *Undertakings.* The applicant must expressly undertake to do the following:

(A) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector;

(B) Make arrangements for the activities by the nonprofit institution operating the Center to be monitored and evaluated; and

(C) Provide an accounting for the money received by the grantee under this subpart.

(vii) *Delivery of Cooperative development assistance.* The applicant must describe its previous accomplishments and outcomes in Cooperative development activities and/or its potential for effective delivery of Cooperative development services to rural areas. The applicant should also describe the type(s) of assistance to be provided, the expected impacts of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of its Cooperative development strategy and focus to other areas of the U.S.

(viii) *Qualifications of Personnel.* Applicants must describe the qualifications of personnel expected to perform key center tasks, and whether these personnel are to be full/part-time Center employees or contract personnel. Those personnel having a track record of positive solutions for complex cooperative development or marketing problems, or those with a record of conducting feasibility studies that later proved to be accurate, business planning, marketing analysis, or other activities relevant to the Center's success should be highlighted.

(ix) *Support and commitments.* Applicants must describe the level of support and commitment in the community for the proposed Center and the services it would provide. Plans for coordinating with other developmental organizations in the proposed service area, or with state and local government institutions should be included. Letters supporting cooperation and coordination from potential local customers should be provided.

(x) *Future support.* Applicants should describe their vision for Center operations beyond the first year, including issues such as sources and uses of alternative funding; reliance on Federal, state, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. To the extent possible, applicants should document future funding sources that will help achieve long-term sustainability of the Center.

(xi) *Evaluation criteria.* Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form.

(6) *Verification of Matching Funds.* Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. Sufficient information should be included such that USDA can verify all representations.

(7) *Certification.* Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds will have been funded prior to submitting the request for advance.

§ 4284.511 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.512 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, the Agency will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

§ 4284.513 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. Preference will be given to items in paragraphs (a) through (f) of this section. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Administrative capabilities.* The application will be evaluated to determine whether the subject Center has a track record of administering a nationally coordinated, regional or state-wide operated project. Centers that have capable financial systems and audit controls, personnel and program administration performance measures and clear rules of governance will receive more points than those not evidencing this capacity.

(b) *Technical assistance and other services.* The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance in Rural areas.

(c) *Economic development.* The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas.

(d) *Linkages.* The Agency will evaluate the applicant's demonstrated ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets.

(e) *Commitment.* The Agency will evaluate the applicant's commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States.

(f) *Matching Funds.* All applicants must demonstrate Matching Funds equal to at least 25 percent (5 percent for 1994 Institutions) of the grant amount requested. Applications exceeding these minimum commitment levels will receive more points.

(g) *Delivery.* The Agency will evaluate whether the Center has a track record in providing technical assistance in rural areas and accomplishing effective outcomes in cooperative development. The Center's potential for delivering effective cooperative development assistance, the expected effects of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of the Center's cooperative development strategy and focus to other States will also be assessed.

(h) *Work Plan/Budget.* The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non Federal funding commitments.

(i) *Qualifications of those Performing the Tasks.* The application will be evaluated to determine if the personnel expected to perform key center tasks have a track record of positive solutions for complex Cooperative development or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to Cooperative development center success.

(j) *Local support.* Applications will be reviewed for previous and expected local support for the Center, plans for coordinating with other developmental organizations in the proposed service area and coordination with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other positive rural amenities. Centers that demonstrate strong support from potential beneficiaries and formal evidence of the Center's intent to coordinate with other developmental organizations will receive more points than those not evidencing such support and formal intent.

(k) *Future support.* Applications that demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

§4284.514 Grant closing.

(a) *Letter of Conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's ''Letter of

Intent to Meet Conditions,'' 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.

(c) *Grant agreement.* The Agency and the grantee must enter into the Agency's ''Agriculture Innovation Center Grant Agreement'' prior to the advance of funds.

§§ 4284.515–4284.599 [Reserved]

§ 4284.600 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0006 in accordance with the Paperwork Reduction Act of 1995.

Subparts G–I [Reserved]

Subpart J—Value-Added Producer Grant Program

SOURCE: 80 FR 26799, May 8, 2015, unless otherwise noted.

GENERAL

§ 4284.901 Purpose.

This subpart implements the Value-Added Agricultural Product Market Development grant program (Value-Added Producer Grants (VAPG)) administered by the Rural Business-Cooperative Service whereby grants are made to enable viable Agricultural Producers (those who are prepared to progress to the next business level of planning for, or engaging in, Value-Added Agricultural Production) to develop businesses that produce and market Value-Added Agricultural Products and to create marketing opportunities for such businesses. The provisions of this subpart constitute the entire provisions applicable to this Program; the provisions of subpart A of this part do not apply to this subpart.

§ 4284.902 Definitions.

The following definitions apply to this subpart:

Administrator. The Administrator of the Rural Business-Cooperative Service or designees or successors.

Agency. The Rural Business-Cooperative Service or successor for the programs it administers.

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests and natural and manmade bodies of water, that the Independent Producer has cultivated, raised, or harvested with legal access rights. Agricultural commodities include plant and animal products and their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-farm generated manure, and fish and seafood products. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural food product. Agricultural food products can be raw, cooked, or processed edible substances, beverages, or ingredients intended for human consumption. These products cannot be animal feed, live animals (except for seafood products customarily sold and/or consumed live), non-harvested plants, fiber, medicinal products, cosmetics, tobacco products, or narcotics.

Agricultural producer. (1) An individual or entity that produces an Agricultural Commodity through participation in the day-to-day labor, management, and field operations; or that has the legal right to harvest an Agricultural Commodity that is the subject of the VAPG project.

(2) The Agency shall determine the Agricultural producer status of Tribes and Tribal entities without regard to day-to-day labor, management, and field operation and right to harvest status.

Agricultural producer group. A nonprofit membership organization that represents Independent Producers and whose mission includes working on behalf of Independent Producers and the majority of whose membership and board of directors is comprised of Independent Producers. The Independent Producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Applicant. The legal entity submitting an application to participate in the competition for program funding. The Applicant must be legally structured to meet one of the four eligible Applicant types: Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture.

Beginning farmer or rancher. (1) For the purposes of determining eligibility to receive priority points under §4284.924, a Beginning Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership of more than 50 percent farmers or ranchers each of whom have operated a Farm or Ranch for no more than 10 years.

(2) For the purposes of determining eligibility to receive funding reserved for Beginning Farmers and Ranchers under §4284.923, a Beginning Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership comprised entirely of (*i.e.*, 100 percent) farmers or ranchers that have operated a Farm or Ranch for no more than 10 years.

Business plan. A formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including Pro Forma Financial Statements appropriate to the term and scope of the Project and sufficient to evidence the viability of the Venture. It may also contain background information about the organization or team attempting to reach those goals.

Change in physical state. An irreversible processing activity that alters the raw Agricultural Commodity into a marketable Value-Added Agricultural Product. This processing activity must be something other than a post-harvest process that primarily acts to preserve the commodity for later sale. Examples of eligible Value-Added Agricultural Products in this category include, but are not limited to, fish fillets, diced tomatoes, bio-diesel fuel, cheese, jam, and wool rugs. Examples of ineligible products include, but are not limited to, pressure-ripened produce; raw bottled milk; container grown trees; young plants, seedlings or plugs; and cut flowers.

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 apply to the use of grant funds for purchases and hires, and prohibit transactions that involve a real or apparent Conflict of Interest for owners, employees, officers, agents, or their Immediate Family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, 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, including, but not limited to, owner(s) and their Immediate Family members. See §4284.925(a) and (b) for limited exceptions to this definition and practice for VAPG.

Departmental regulations. The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 2 CFR parts 200 and 400 and any successor regulations to these parts.

Emerging market. A new or developing, geographic or demographic market that is new to the Applicant or the Applicant's product. To qualify as new, the Applicant cannot have supplied this product, geographic, or demographic market for more than two years at time of application submission.

Family farm. A Farm (or Ranch) that produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence; whose owners are primarily responsible for daily physical labor and strategic management; whose hired

help only supplements family labor; and, whose owners are related by blood or marriage or are Immediate Family.

Farm or ranch. Any place from which $1,000 or more of agricultural products were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farm- or Ranch-based renewable energy. An Agricultural Commodity that is used to generate renewable energy on a Farm or Ranch owned or leased by the Independent Producer Applicant that produces the Agricultural Commodity, such that the generated renewable energy, is utilized in such a way that the applicant can demonstrate expanded customer base and increased revenues returning to the producers of the agricultural commodity as a result of the project. On-farm generation of energy from wind, solar, geothermal or hydro sources is not eligible for this program.

Farmer or rancher cooperative. A business owned and controlled by Independent Producers that is incorporated, or otherwise identified by the state in which it operates, as a cooperatively operated business. The Independent Producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Feasibility study. An analysis of the economic, market, technical, financial, and management capabilities of a proposed Project or business in terms of the Project's expectation for success.

Fiscal year. The Federal government's fiscal year.

Harvester. An Independent Producer of an Agricultural Commodity that is an individual or entity that can document that it has a legal right to access and harvest the majority of a primary Agricultural Commodity that will be used for the Value-Added Agricultural Product. Individuals and entities that merely glean, gather, or collect residual commodities that result from an initial harvesting or production of a primary Agricultural Commodity are not considered Harvesters and are not eligible for this program.

Immediate family. Individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Independent Producer. (1) Individual Agricultural Producers or entities that are solely owned and controlled by Agricultural Producers. Independent Producers must produce and own more than 50 percent of the Agricultural Commodity to which value will be added as the subject of the Project proposal. Independent Producers must maintain ownership of the Agricultural Commodity or product from its raw state through the production and marketing of the Value-Added Agricultural Product. Producers who produce the Agricultural Commodity under contract for another entity, but do not own the Agricultural Commodity or Value-Added Agricultural Product produced, are not considered Independent Producers. Entities that contract out the production of an Agricultural Commodity are not considered Independent Producers. Independent Producer entities must confirm their owner members as eligible and must identify them by name or class.

(2) A Steering Committee must apply as an Independent Producer and form a program-eligible legal entity prior to execution of the grant agreement by the Agency. The Steering Committee and entity subsequently formed must meet all other program eligibility requirements.

(3) A Harvester must apply as an Independent Producer because harvester operations do not meet the definition requirements for a Farm or Ranch. Harvester applicants are therefore not eligible to receive Reserved Funds and/or Priority Points for a Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, operator of a Small- or Medium-sized farm or ranch that is structured as a Family Farm, or a Farmer or Rancher Cooperative, but may request Reserved Funds and/or Priority Points for qualified Mid-Tier Value Chain projects.

(4) The Agency shall determine the Independent Producer status of Tribes or Tribal entities without regard to ownership of the commodity to which value will be added so long as the tribal member participant, tribal entity and/

or Tribe own and control at least 50 percent of the raw commodity necessary for the project, per the definition of Independent Producer in § 4284.902.

Local or regional supply network. An interconnected group of individuals and/or entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include Agricultural Producers, aggregators, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide facilitation services and technical assistance for development of such networks.

Locally-produced Agricultural Food Product. Any Agricultural Food Product, as defined in this subpart, that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-controlled producer-based business venture. An entity (except Farmer or Rancher Cooperatives) in which more than 50 percent of the financial ownership and voting control is held by Independent Producers. Independent Producer members must be confirmed as eligible and must be identified by name or class, along with their percentage of ownership.

Marketing plan. A plan for the project that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a real or apparent Conflict of Interest, that are used for eligible project purposes during the grant funding period. Matching Funds must be at least equal to the grant amount, and combined grant and Matching Funds must equal 100 percent of the Total Project Costs. All Matching Funds must be provided for in the approved budget, must be necessary and reasonable for accomplishment of project or program objectives and can be verified by authentic documentation from the source as part of the application. Matching Funds must be provided in the form of confirmed Applicant cash, loan, or line of credit, or provided in the form of a confirmed Applicant or family member in-kind contribution that meets the requirements and limitations in § 4284.925(a) and (b); or confirmed third-party cash or eligible third-party in-kind contribution; or confirmed non-federal grant sources (unless otherwise provided by law). Matching funds cannot be paid by the Federal Government under another Federal award and are not included as contributions for any other Federal Award. See examples of ineligible Matching Funds and Matching Funds verification requirements in §§ 4284.926 and 4284.931.

Medium-sized farm or ranch. A Farm or Ranch that is structured as a Family Farm that has averaged $500,001 to $1,000,000 in annual gross sales of agricultural commodities in the previous three years.

Mid-tier value chain. Local and regional supply networks that link Independent Producers with businesses, cooperatives, or consumers that market Value-Added Agricultural Products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of Small- and Medium-sized Farms or Ranches that are structured as a Family Farm; and

(2) Obtains agreement from an eligible Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture that is engaged in the value chain on a marketing strategy.

(3) For Mid-tier Value Chain projects, the Agency recognizes that, in a supply chain network, a variety of raw Agricultural Commodity and Value-Added Agricultural Product ownership and transfer arrangements may be necessary. Consequently, Applicant ownership of the raw Agricultural Commodity and Value-Added Agricultural Product from raw through value-added stages is not necessarily required, as long as the Mid-tier Value Chain application can demonstrate an increase in

customer base and an increase in revenue returns to the Applicant producers supplying the majority of the raw Agricultural Commodity for the project.

Planning grant. A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added Venture, and specifically for the purpose of paying for conducting and developing a Feasibility Study, Business Plan, and/or Marketing Plan associated with the processing and/or marketing of a Value-Added Agricultural Product.

Produced in a manner that enhances the value of the Agricultural Commodity. The use of a recognizably coherent set of agricultural production practices in the growing or raising of the raw commodity, such that a differentiated market identity is created for the resulting product. Examples of eligible products in this category include, but are not limited to, sustainably grown apples, eggs produced from free-range chickens, or organically grown carrots.

Physical segregation. Separating an Agricultural Commodity or product on the same farm from other varieties of the same commodity or product on the same farm during production and harvesting, with assurance of continued separation from similar commodities during processing and marketing in a manner that results in the enhancement of the value of the separated commodity or product. An example of a segregated product is non-GMO corn separated from GMO corn.

Pro forma financial statement. A financial statement that projects the future financial position of a company. The statement is part of the Business Plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections for a minimum of three years in the form of cash flow statements, income statements, and balance sheets.

Project. All of the eligible activities to be funded by the grant under this subpart and Matching Funds.

Qualified consultant. An independent, third-party, without a Conflict of Interest, possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Small-sized farm or ranch. A Farm or Ranch that is structured as a Family Farm that has averaged $500,000 or less in annual gross sales of agricultural products in the previous three years.

Socially-disadvantaged farmer or rancher. This term has the meaning given in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)): Socially-Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a ''Socially-Disadvantaged Group.''

(1) For the purposes of determining eligibility to receive priority points under § 4284.924, if there are multiple farmer or rancher owners of the Applicant organization, more than 50 percent of the ownership must be held by members of a Socially-Disadvantaged Group.

(2) For the purposes of determining eligibility to received funding reserved for Socially-Disadvantaged Farmers and Ranchers under § 4284.923, if there are multiple farmer or rancher owners of the Applicant organization, all farmer and rancher owners (*i.e.*, 100 percent) must be members of a Socially-Disadvantaged Group.

Socially-Disadvantaged group. A group 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.

State. Any of the 50 States of the United 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.

State office. USDA Rural Development offices located in each State.

Steering committee. An unincorporated group comprised wholly of specifically

identified Independent Producers in the process of organizing one of the four program eligible entity types (Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative or Majority-Controlled Producer-Based Business Venture.

Total project cost. The sum of all grant and Matching Funds in the project budget that reflects the eligible project tasks associated with the work plan.

Value-added agricultural product. Any Agricultural Commodity produced in the U.S. (including the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa), that meets the requirements specified in paragraphs (1) and (2) of this definition.

(1) The Agricultural Commodity must meet one of the following five value-added methodologies:

(i) Has undergone a Change in Physical State;

(ii) Was Produced in a Manner that Enhances the Value of the Agricultural Commodity;

(iii) Is Physically Segregated in a manner that results in the enhancement of the value of the Agricultural Commodity;

(iv) Is a source of Farm- or Ranch-based Renewable Energy, including E–85 fuel; or

(v) Is aggregated and marketed as a Locally-Produced Agricultural Food Product.

(2) As a result of the Change in Physical State or the manner in which the Agricultural Commodity was produced, marketed, or segregated:

(i) The customer base for the Agricultural Commodity is expanded and

(ii) A greater portion of the revenue derived from the marketing, processing, or physical segregation of the Agricultural Commodity is available to the producer of the commodity.

Venture. The business and its value-added undertakings, including the project and other related activities.

Veteran farmer or rancher. A farmer or rancher who has served in the Armed Forces, as defined in section 101(10) of title 38 United States Code, and who either has not operated a Farm or Ranch or has operated a Farm or Ranch for not more than 10 years.

(1) For the purposes of determining eligibility to receive priority points under § 4284.924, a Veteran Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has either never operated a Farm or Ranch or has operated a Farm or Ranch for no more than 10 years or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership of more than 50 percent Veteran Farmers or Ranchers each of whom have either never operated a Farm or Ranch or operated a Farm or Ranch for no more than 10 years.

(2) [Reserved]

Working capital grant. A grant to provide funds to operate a value-added project, specifically to pay the eligible project expenses related to the processing and/or marketing of the Value-Added Agricultural Product that are eligible uses of grant funds.

§ 4284.903 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.

§ 4284.904 Exception authority.

Except as specified in paragraphs (a) and (b) of this section, the Administrator may 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, on a case-by-case basis, when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

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

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

§ 4284.905 Nondiscrimination and compliance with other Federal laws.

(a) *Other Federal laws.* Applicants must comply with other applicable

Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with

Disabilities Act, the Equal Credit Opportunity Act, Title VI of 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) *Nondiscrimination.* 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 and Compliance, 1400 Independence Avenue SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) *Civil rights compliance.* Recipients of grants must comply with 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 basis of 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. For grants, compliance reviews will be conducted after the grantee signs the applicable Assurance Agreement, and after the last disbursement of grant funds have been made and the facility or program has been in full operations for 90 days.

(d) *Executive Order 12898.* When a project is proposed and financial assistance is requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. Civil Rights certification must be done prior to grant approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions, whichever occurs first.

§ 4284.906 State laws, local laws, regulatory commission regulations.

If there are conflicts between this subpart and State or local laws or regulatory commission regulations, the provisions of this subpart will control.

§ 4284.907 Environmental requirements.

Grants made under this subpart must comply with 7 CFR part 1970. Applications for both Planning and Working Capital grants are generally excluded from the environmental review process by § 1970.53.

[81 FR 11053, Mar. 2, 2016]

§ 4284.908 Compliance with other regulations.

(a) *Departmental regulations.* Applicants must comply with all applicable Departmental regulations and Office of Management and Budget regulations concerning grants in 2 CFR chapter IV.

(b) *Cost principles.* Applicants must comply with the cost principles found in 2 CFR parts 200, subpart E, 2 CFR part 400, and in 48 CFR subpart 31.2.

(c) *Definitions.* If a term is defined differently in the Departmental Regulations, 2 CFR parts 200 through 400 or 48 CFR subpart 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

§ 4284.909 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to the program referenced in this subpart may be obtained through the Agency's Web site and at any Rural Development office.

§§ 4284.910–4284.914 [Reserved]

FUNDING AND PROGRAMMATIC CHANGE NOTIFICATIONS

§ 4284.915 Notifications.

In implementing this subpart, the Agency will issue public notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding and simplified applications.* The Agency will issue notifications concerning:

(1) The funding level, the minimum and maximum grant amounts, and any additional funding information as determined by the Agency; and

(2) The contents of simplified applications, as provided for in § 4284.932.

(b) *Programmatic changes.* The Agency will issue notifications of any programmatic changes specified in paragraphs (b)(1) through (4) of this section.

(1) Priority categories to be used for awarding Administrator or State Director points, which may include any of the following:

(i) Unserved or underserved areas.

(ii) Geographic diversity.

(iii) Emergency conditions.

(iv) Priority mission area plans, goals, and objectives.

(2) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(3) Any application filing instructions specified in § 4284.933.

(c) *Notification methods.* The Agency will issue the information specified in paragraphs (a) and (b) of this section in one or more FEDERAL REGISTER notices. If a funding level is not known at the time of notification, it will be posted to the program Web site once an appropriation is enacted. In addition, all information will be available at any Rural Development office.

(d) *Timing.* The Agency will issue notices under this section as follows:

(1) The Agency will make the information specified in paragraph (a) of this section available each Fiscal Year.

(2) The Agency will make the information specified in paragraph (b)(1) of this section available at least 60 days prior to the application deadline, as applicable.

(3) The Agency will make the information specified in paragraphs (b)(2) through (4) of this section available on an as needed basis.

§§ 4284.916–4284.919 [Reserved]

ELIGIBILITY

§ 4284.920 Applicant eligibility.

To be eligible for a grant under this subpart, an Applicant must demonstrate that they meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and are subject to the limitations specified in paragraphs (e) and (f) of this section.

(a) *Type of Applicant.* The Applicant, including any Federally-recognized Tribes and tribal entities (Rural Development State Offices and posted application guidelines will provide additional information on Tribal eligibility), must demonstrate that they meet all definition requirements for one of the following Applicant types:

(1) An Independent Producer;

(2) An Agricultural Producer Group;

(3) A Farmer or Rancher Cooperative; or

(4) A Majority-Controlled Producer-Based Business Venture.

(b) *Emerging market.* An applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must demonstrate that they are entering into an emerging market as a result of the proposed project.

(c) *Citizenship.* (1) Individual Applicants must certify that they:

(i) Are citizens or nationals of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa; or

(ii) Reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must certify that they are more than

50 percent owned by individuals who are either citizens as identified under paragraph (c)(1)(i) of this section or legally admitted permanent residents residing in the U.S.

(d) *Legal authority and responsibility*. Each Applicant must demonstrate that they have, or can obtain, the legal authority necessary to carry out the purpose of the grant, and they must evidence good standing from the appropriate State agency or equivalent.

(e) *Multiple grant eligibility*. An Applicant may submit only one application in response to a solicitation, and must explicitly direct that it compete in either the general funds competition or in one of the named reserved funds competitions. Multiple applications from separate entities with identical or greater than 75 percent common ownership, or from a parent, subsidiary or affiliated organization (with ''affiliation'' defined by Small Business Administration regulation 13 CFR 121.103, or successor regulation) are not permitted. Further, Applicants who have already received a Planning Grant for the proposed project cannot receive another Planning Grant for the same project. Applicants who have already received a Working Capital Grant for the proposed project cannot receive any additional grants for that project.

(f) *Active VAPG grant*. If an Applicant has an active value-added grant at the time of a subsequent application, the currently active grant must be closed out within 90 days of the application submission deadline for the subsequent competition, as published in the annual solicitation.

§ 4284.921 Ineligible Applicants.

(a) Consistent with the Departmental Regulations, an Applicant is ineligible if the Applicant is debarred or suspended or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

(b) An Applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§ 4284.922 Project eligibility.

To be eligible for a VAPG grant, the application must demonstrate that the project meets the requirements specified in paragraphs (a) through (c) of this section, as applicable.

(a) *Product eligibility*. Each product that is the subject of the proposed project must meet the definition of a Value-Added Agricultural Product

(b) *Purpose eligibility*. (1) The grant funds requested must not exceed any maximum amounts specified in the annual solicitation for Planning and Working Capital Grant requests, per § 4284.915.

(2) The Matching Funds required for the project budget must be eligible and without a real or apparent Conflict of Interest, available during the project period, and source verified in the application.

(3) The proposed project must be limited to eligible planning or working capital activities as defined at § 4284.925, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject Value-Added Agricultural Product, to be demonstrated in the required work plan and budget as described at § 4284.922(b)(5).

(4) Applications that propose ineligible expenses in excess of 10 percent of Total Project Costs will be deemed ineligible to compete for funds. Applicants who submit applications containing ineligible expenses totaling less than 10 percent of Total Project Costs must remove those expenses from the project budget or replace with eligible expenses, if selected for an award.

(5) The project work plan and budget must demonstrate eligible sources and uses of funds and must:

(i) Present a detailed narrative description of the eligible activities and tasks related to the processing and/or marketing of the Value-Added Agricultural Product along with a detailed breakdown of all estimated costs allocated to those activities and tasks;

(ii) Identify the key personnel that will be responsible for overseeing and/or conducting the activities or tasks and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and Matching Funds for all activities and tasks specified in the budget; and indicate that Matching Funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Present a project budget period that commences within the start date range specified in the annual solicitation, concludes not later than 36 months after the proposed start date, and is scaled to the complexity of the project.

(6) Except as noted in paragraphs (b)(6)(i) and (ii) of this section, working capital applications must include a Feasibility Study and Business Plan completed specifically for the proposed value-added project by a Qualified Consultant. The Agency must concur in the acceptability or adequacy of the Feasibility Study and Business Plan for eligibility purposes.

(i) An Independent Producer Applicant seeking a Working Capital Grant of $50,000 or more, who can demonstrate that they are proposing market expansion for an existing Value-Added Agricultural Product(s) that they currently own and produce from at least 50 percent of their own Agricultural Commodity and that they have produced and marketed for at least 2 years at time of application submission, may submit a Business Plan or Marketing Plan for the value-added project in lieu of a Feasibility Study. The Applicant must still adequately document increased customer base and increased revenues returning to the Applicant producers as a result of the project in their application, and meet all other eligibility requirements. Further, the waiver of the independent Feasibility Study does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by an independent Feasibility Study, so Applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(ii) All four Applicant types that submit a Simplified Application for Working Capital Grant funds of less than $50,000 are not required to provide an independent Feasibility Study or Business Plan for the Project/Venture, but must provide adequate documentation to demonstrate the expected increases in customer base and revenues resulting from the project that will benefit the producer Applicants supplying the majority of the Agricultural Commodity for the project. All other eligibility requirements remain the same. The waiver of the requirement to submit a Feasibility Study and Business Plan does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by a Feasibility Study or Business Plan, so Applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(7) All applicants applying for Working Capital Grant funds must document the quantity of the raw Agricultural Commodity that will be used for the Value-Added Agricultural Product, expressed in an appropriate unit of measure (pounds, tons, bushels, etc.) to demonstrate the scale of the applicant's project. This quantification must include an estimated total quantity of the Agricultural Commodity needed for the project, the quantity that will be provided (produced and owned) by the Agricultural Producers of the applicant organization, and the quantity that will be purchased or donated from third-party sources.

(8) All Applicants requesting Working Capital grant funds must either be currently marketing each Value-added Agricultural Product that is the subject of the grant application, or be ready to implement the working capital activities in accord with the budget and work plan timeline proposed.

§ 4284.923 Reserved funds eligibility.

The Applicant must meet the requirements specified in this section, as applicable, if the Applicant chooses to compete for reserved funds. A Harvester is not eligible to compete for reserved funds under paragraph (a) of this section, but is eligible to compete for reserved funds under paragraph (b) of this section. In accordance with application deadlines, all eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same Fiscal Year, as funding levels permit.

(a) If the Applicant is applying for Beginning Farmer or Rancher or Socially-Disadvantaged Farmer or Rancher reserved funds, the Applicant must provide the following documentation to demonstrate that the applicant meets all of the requirements for the applicable definition found in § 4284.902.

(1) For beginning farmers and ranchers (including veterans), documentation must include a description from each of the individual owner(s) of the applicant farm or ranch organization, addressing the qualifying elements in the beginning farmer or rancher definition, including the length and nature of their individual owner/operator experience at any farm in the previous 10 years, along with one IRS income tax form from the previous 10 years showing that each of the individual owner(s) did not file farm income; or a detailed letter from a certified public accountant or attorney certifying that each owner meets the reserved funds beginning farmer or rancher eligibility requirements. For applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers.

(2) For Socially-Disadvantaged farmers and ranchers, documentation must include a description of the applicant's farm or ranch ownership structure and demographic profile that indicates the owner(s)' membership in a Socially-Disadvantaged group that has been subjected to racial, ethnic or gender prejudice; including identifying the total number of owners of the applicant organization; along with a self-certification statement from the individual owner(s) evidencing their membership in a Socially-Disadvantaged group. All farmer and rancher owners must be members of a Socially-Disadvantaged group.

(b) If the Applicant is applying for Mid-Tier Value Chain reserved funds, the Applicant must be one of the four VAPG Applicant types. The application must:

(1) Provide documentation demonstrating that the project meets the definition of Mid-Tier Value Chain;

(2) Demonstrate that the project proposes development of a Local or Regional Supply Network of an interconnected group of entities (including nonprofit organizations, as appropriate) through which agricultural commodities and Value-Added Agricultural Products move from production through consumption in a local or regional area of the United States, including a description of the network, its component members, either by name or by class, and its purpose;

(3) Describe at least two alliances, linkages, or partnerships within the value chain that link Independent Producers with businesses, cooperatives, or consumers that market value-added agricultural commodities or Value-Added Agricultural Products in a manner that benefits Small- or Medium-sized Farms and Ranches that are structured as a Family Farm, including the names of the parties and the nature of their collaboration;

(4) Demonstrate how the project, due to the manner in which the Value-Added Agricultural Product is marketed, will increase the profitability and competitiveness of at least two, eligible, Small- or Medium-sized Farms or Ranches that are structured as a Family Farm, including documentation to confirm that the participating Small- or Medium-sized Farms or Ranches are structured as a Family Farm and meet these program definitions. A description of the two farms or ranches confirming they meet the Family Farm requirements, and IRS income tax forms or appropriate certifications evidencing eligible farm income is sufficient.

(5) Document that the eligible Agricultural Producer Group/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture Applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible Independent Producer Applicant has obtained at least one agreement from an eligible Agricultural Producer Group/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture engaged in the value-chain on a marketing strategy;

(i) For Planning Grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a

description of the nature of their collaboration. For Working Capital grants, demonstration of the actual existence of the executed agreements is required.

(ii) Independent Producer Applicants must provide documentation to confirm that the non-applicant Agricultural Producer Group/Farmer or Rancher Cooperative/majority-controlled partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the raw Agricultural Commodity for the project;

(6) Demonstrate that the members of the Applicant organization that are benefiting from the proposed project currently own and produce more than 50 percent of the raw Agricultural Commodity that will be used for the Value-Added Agricultural Product that is the subject of the proposal; and

(7) Demonstrate that the project will result in an increase in customer base and an increase in revenue returns to the Applicant producers supplying the majority of the raw Agricultural Commodity for the project.

§ 4284.924 Priority scoring eligibility.

Applicants that demonstrate eligibility may apply for priority points if their applications: Propose projects that contribute to increasing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm; or propose Mid-Tier Value Chain projects; or are a Farmer or Rancher Cooperative. A Harvester is eligible for priority points only if the Harvester is proposing a Mid-Tier Value Chain project.

(a) Applicants seeking priority points as Beginning Farmers or Ranchers or as Socially Disadvantaged Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable.

(b) Applicants seeking priority points as Veteran Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable, and must submit form DD–214, ''Report of Separation from the U.S. Military,'' or subsequent form.

(c) Applicants seeking priority points as Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm must:

(1) Be structured as a Family Farm;

(2) Meet all requirements in the associated definitions; and

(3) Provide the following documentation:

(i) A description from the individual owner(s) of the Applicant organization addressing each qualifying element in the definitions, including identification of the average annual gross sales of agricultural commodities from the farm or ranch in the previous three years, not to exceed $500,000 for operators of small-sized farms or ranches or $1,000,000 for operators of medium-sized farms or ranches;

(ii) The names and identification of the blood or marriage relationships of all Applicant/owners of the farm; and

(iii) A statement that the Applicant/owners are primarily responsible for the daily physical labor and management of the farm with hired help merely supplementing the family labor.

(d) Applicants seeking priority points for Mid-Tier Value Chain proposals must be one of the four eligible Applicant types and provide the documentation specified in § 4284.923(b)(1) through (7), demonstrating that the project meets the Mid-Tier Value Chain definition.

(e) Applicants seeking priority points for a Farmer or Rancher Cooperative must:

(1) Demonstrate that it is a business owned and controlled by Independent Producers that is legally incorporated as a Cooperative; or that it is a business owned and controlled by Independent Producers that is not legally incorporated as a Cooperative, but is identified by the State in which it operates as a cooperatively operated business;

(2) Identify, by name or class, and confirm that the Independent Producers on whose behalf the value-added work will be done meet the definition requirements for an Independent Producer, including that each member is an individual Agricultural Producer, or

an entity that is solely owned and controlled by Agricultural Producers, that substantially participates in the production of the majority of the Agricultural Commodity to which value will be added; and

(3) Provide evidence of ''good standing'' as a cooperatively operated business in the State of incorporation or operations, as applicable.

(f) Applicants applying as Agricultural Producer Groups, Farmer and Rancher Cooperatives, or Majority-Controlled Producer-Based Business Ventures (group Applicants) may request additional priority points for projects that ''best contribute to creating or increasing marketing opportunities'' for operators of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers. The annual solicitation and Agency application package will provide instructions and documentation requirements for group Applicants to apply for these additional priority points.

§ 4284.925 Eligible uses of grant and Matching Funds.

In general, grant and cost-share Matching Funds have the same use restrictions and must be used to fund only the costs for eligible purposes as defined in paragraphs (a) and (b) of this section.

(a) Planning Grant funds may be used to pay for a Qualified Consultant to conduct and develop a Feasibility Study, Business Plan, and/or Marketing Plan associated with the processing and/or marketing of a Value-added Agricultural Product.

(1) Planning Grant funds may not be used to compensate Applicants or family members for participation in Feasibility Studies.

(2) In-kind contribution of Matching Funds to cover Applicant or family member participation in planning activities is allowed so long as the value of such contribution does not exceed a maximum of 25 percent of the Total Project Costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc., is provided. Final valuation for Applicant or family member in-kind contributions is at the discretion of the Agency. Planning funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the Value-Added Agricultural Product.

(b) Working capital funds may be used to pay the project's operational costs directly related to the processing and/or marketing of the Value-Added Agricultural Product.

(1) Examples of eligible working capital expenses include designing or purchasing a financial accounting system for the project, paying salaries of employees without ownership or Immediate Family interest to process and/or market and deliver the Value-Added Agricultural Product to consumers, paying for raw commodity inventory (less than 50 percent of the amount required for the project) from an unaffiliated third party, necessary to produce the Value-Added Agricultural Product, and paying for a marketing campaign for the Value-Added Agricultural Product.

(2) In-kind contributions may include appropriately valued inventory of raw commodity to be used in the project. In-kind contributions of Matching Funds may also include contributions of time spent on eligible tasks by Applicants or Applicant family members so long as the value of such contribution does not exceed a maximum of 25 percent of the Total Project Costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc. is provided. Final valuation for Applicant or family member in-kind contributions is at the discretion of the Agency.

§ 4284.926 Ineligible uses of grant and Matching Funds.

Federal procurement standards prohibit transactions that involve a real or apparent Conflict of Interest for owners, employees, officers, agents, or

their Immediate Family members having a personal, professional, financial or other interest in the outcome of the project; including organizational conflicts, and conflicts that restrict open and free competition for unrestrained trade. In addition, the use of funds is limited to only the eligible activities identified in § 4284.925 and prohibits other uses of funds. Ineligible uses of grant and Matching Funds awarded under this subpart include, but are not limited to:

(a) Support costs for services or goods going to or coming from a person or entity with a real or apparent Conflict of Interest, except as specifically noted for limited in-kind Matching Funds in § 4284.925(a) and (b);

(b) Pay costs for scenarios with non-competitive trade practices;

(c) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(d) Purchase, lease purchase, or install fixed equipment, including processing equipment;

(e) Purchase or repair vehicles, including boats;

(f) Pay for the preparation of the grant application;

(g) Pay expenses not directly related to the funded project for the processing and marketing of the Value-Added Agricultural Product;

(h) Fund research and development;

(i) Fund political or lobbying activities;

(j) Fund any activities prohibited by 2 CFR parts 200 through 400, and 48 CFR subpart 31.2;

(k) Fund architectural or engineering design work;

(l) Fund expenses related to the production of any Agricultural Commodity or product, including, but not limited to production planning, purchase of seed or rootstock or other production inputs, labor for cultivation or harvesting crops, and delivery of raw commodity to a processing facility;

(m) Conduct activities on behalf of anyone other than a specifically identified Independent Producer or group of Independent Producers, as identified by name or class. The Agency considers conducting industry-level feasibility studies or business plans, that are also known as feasibility study templates or guides or business plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Independent Producers;

(n) Pay for goods or services from a person or entity that employs the owner or an Immediate Family member;

(o) Duplicate current services or replace or substitute support previously provided;

(p) Pay any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;

(q) Pay any judgment or debt owed to the United States;

(r) Purchase land;

(s) Pay for costs associated with illegal activities; or

(t) Purchase the Agricultural Commodity to which value will be added (raw commodity) from the applicant entity; applicant-owned or related entity, or members of the applicant entity.

§ 4284.927 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the Total Project Costs, subject to the limitations established for maximum total grant amount.

(b) The maximum total grant amount provided to a grantee in any one year shall not exceed the amount announced in an annual notice issued pursuant to § 4284.915, but in no event may the total amount of grant funds provided to a grant recipient exceed $500,000.

(c) A grant shall have a term that does not exceed 3 years, and a project start date within 90 days of the date of award, unless otherwise specified in a notice pursuant to § 4284.915. Grant project periods should be scaled to the complexity of the objectives for the project. The Agency may extend the term of the grant period, not to exceed the 3-year maximum.

(d) The aggregate amount of awards to Majority-Controlled Producer-Based Business Ventures may not exceed 10 percent of the total funds obligated under this subpart during any Fiscal Year.

(e) Not more than 5 percent of funds appropriated each year may be used to

fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to Independent Producers and processors.

(f) Each Fiscal Year, the following amounts of reserved funds will be made available:

(1) 10 percent of total program funding to fund projects that benefit Beginning Farmers or Ranchers or Socially-Disadvantaged Farmers or Ranchers; and

(2) 10 percent of total program funding to fund projects that propose development of Mid-tier Value Chains.

(3) Funds not obligated by June 30 of each Fiscal Year shall be available to the Secretary to make grants under this subpart to eligible applicants in the general funds competition.

§§ 4284.928–4284.929 [Reserved]

APPLYING FOR A GRANT

§ 4284.930 Preliminary review.

The Agency encourages Applicants to contact their State Office well in advance of the application submission deadline, to ask questions and to discuss Applicant and Project eligibility potential. At its option, the Agency may establish a preliminary review deadline in accordance with § 4284.915, so that it may informally assess the eligibility of the application and its completeness. The result of the preliminary review is not binding on the Agency.

§ 4284.931 Application package.

All Applicants are required to submit a complete application package that is comprised of all of the elements in this section.

(a) *Application forms.* The application must include all forms listed in the annually published notice for the program. The following application forms (or their successor forms) must be completed when applying for a grant under this subpart.

(1) ''Application for Federal Assistance.''

(2) ''Budget Information-Non-Construction Programs.''

(3) ''Assurances—Non-Construction Programs.''

(4) All Applicants (including individuals and sole proprietorships) are required to have a DUNS number and maintain registration with the System for Award Management (SAM).

(b) *Application content.* The following content items must be completed when applying for a grant under this subpart:

(1) *Eligibility discussion.* The Applicant must demonstrate in detail how the:

(i) Applicant eligibility requirements in §§ 4284.920 and 4284.921 are met;

(ii) Project eligibility requirements in § 4284.922 are met;

(iii) Eligible use of grant and Matching Funds requirements in §§ 4284.925 and 4284.926 are met; and

(iv) Funding limitation requirements in § 4284.927 are met.

(2) *Evaluation criteria.* Using the format prescribed by the application package, the Applicant must address each evaluation criterion identified below.

(i) *Performance Evaluation Criteria.* The overall goal of this program and the projects it supports is to create and serve new markets, with a resulting increase in jobs, customer base and revenues returning to the producer. Applicants must provide specific information about plans to track and evaluate progress toward these outcomes as a way for the Agency to ascertain whether or not the primary program goals and project goals proposed in the work plan are likely to be accomplished during the project period. The application package will provide additional instruction to assist Applicants when responding to this criterion. The required data, including accomplishments as outlined in § 4284.960 and Applicant-suggested performance criteria, will be incorporated into the Applicant's semi-annual and final reporting requirements if selected for award, and will be specified in the grant agreement associated with each award. At a minimum, data included in each application submission must include both target outcomes and timeframes for achieving results:

(A) The number of jobs anticipated to be created or saved as a direct result of the project.

(B) The current baseline number of customers.

(C) The estimated expansion of customer base as a direct result of the project.

(D) The current baseline of revenue.

(E) The estimated increase in revenue as a direct result of the project.

(F) Applicants for both Working Capital and Planning Grants are invited to suggest additional benchmarks for evaluation that are specific to proposed project activities or outcomes and the corresponding timeframes for accomplishing them; these should be informed by the program objectives, stated above, related to new markets, expansion of customer base, and revenues returning to producer Applicants; as well as to the practical and/or logistical activities and tasks to be accomplished during the project period.

(ii) *Proposal evaluation criteria.* Applicants for both Planning and Working Capital Grants must address each proposal evaluation criterion identified in §4284.942 in narrative form, in the application package.

(3) *Certification of Matching Funds.* Using the format prescribed by the application package, Applicants must certify that:

(i) Cost-share Matching Funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of Matching Funds will have been expended prior to submitting the request for reimbursement; and

(ii) If Matching Funds are proposed in an amount exceeding the grant amount, those Matching Funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the proposed budget.

(4) *Verification of cost-share Matching Funds.* Using the format prescribed by the application package, the Applicant must demonstrate and provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the definition requirements for Matching Funds and Conflict of Interest in §4284.902, as well as the following criteria:

(i) Except as provided at §4284.925(a) and (b), Matching Funds are subject to the same use restrictions as grant funds, and must be spent on eligible project expenses during the grant funding period.

(ii) Matching Funds must be from eligible sources without a real or apparent Conflict of Interest.

(iii) Matching Funds must be at least equal to the amount of grant funds requested, and combined grant and Matching Funds must equal 100 percent of the Total Project Costs.

(iv) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as Matching Funds.

(v) Matching Funds must be provided in the form of confirmed Applicant cash, loan, or line of credit; or provided in the form of a confirmed Applicant or family member in-kind contribution that meets the requirements and limitations specified in §4284.925(a) and (b); or provided in the form of confirmed third-party cash or eligible third-party in-kind contribution; or non-federal grant sources (unless otherwise provided by law).

(vi) Examples of ineligible Matching Funds include funds used for an ineligible purpose, contributions donated outside the proposed grant funding period, applicant and third-party in-kind contributions that are over-valued, or are without substantive documentation for an independent reviewer to confirm a valuation, conducting activities on behalf of anyone other than a specific Independent Producer or group of Independent Producers, expected program income at time of application, or instances where a real or apparent Conflict of Interest exists, except as detailed in §4284.925(a) and (b).

(5) *Business plan.* For Working Capital Grant applications, Applicants must provide a copy of the Business Plan that was completed for the proposed value-added Venture, except as provided for in §§4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the Business Plan. For all planning grant applications including those proposing product eligibility under ''Produced in a Manner that Enhances the Value of

the Agricultural Commodity,'' a Business Plan is not required as part of the grant application.

(6) *Feasibility study.* As part of the application package, Applicants for Working Capital Grants must provide a copy of the third-party Feasibility Study that was completed for the proposed value-added project, except as provided for at §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the Feasibility Study.

§ 4284.932 Simplified application.

Applicants requesting less than $50,000 will be allowed to submit a simplified application, the contents of which will be announced in an annual solicitation issued pursuant to § 4284.915. Applicants requesting Working Capital Grants of less than $50,000 are not required to provide Feasibility Studies or Business Plans, but must provide information demonstrating increases in customer base and revenue returns to the producers supplying the majority of the Agricultural Commodity as a result of the project. See § 4284.922(b)(6)(ii).

§ 4284.933 Filing instructions.

Unless otherwise specified in a notification issued under § 4284.915, the requirements specified in paragraphs (a) through (e) of this section apply to all applications.

(a) *When to submit.* Complete applications must be received by the Agency on or before the application deadline established for a Fiscal Year to be considered for funding for that Fiscal Year. Applications received by the Agency after the application deadline established for a Fiscal Year will not be considered. Revisions or additional information will not be accepted after the application deadline.

(b) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(c) *Where to submit.* All applications must be submitted to the State Office of Rural Development in the State where the project primarily takes place, or on-line through grants.gov.

(d) *Format.* Applications may be submitted as paper copy, or electronically via grants.gov. If submitted as paper copy, only one original copy should be submitted. An application submission must contain all required components in their entirety. Emailed or faxed submissions will not be acknowledged, accepted or processed by the Agency.

(e) *Other forms and instructions.* Upon request, the Agency will make available to the public the necessary forms and instructions for filing applications. These forms and instructions may be obtained from any State Office of Rural Development, or the Agency's Value-Added Producer Grant program Web site in *http://www.rurdev.usda.gov/BCP_VAPG.html.*

§§ 4284.934–4284.939 [Reserved]

Processing and Scoring Applications

§ 4284.940 Processing applications.

(a) *Initial review.* Upon receipt of an application on or before the application submission deadline for each Fiscal Year, the Agency will conduct a review to determine if the Applicant and project are eligible, and if the application is complete and sufficiently responsive to program requirements.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, if the Agency has determined that either the Applicant or project is ineligible or that the application is not complete to allow evaluation of the application or sufficiently responsive to program requirements, the Agency will notify the Applicant in writing and will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by Applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. If a revised grant application is received on or before the application deadline, it will be processed by the Agency. If a revised application is not received by the specified application deadline, the Agency will not process the application and will inform the Applicant that their application was not reviewed due to tardiness.

(d) *Subsequent ineligibility determinations*. If at any time an application is determined to be ineligible, the Agency will notify the Applicant in writing of its determination.

§ 4284.941 Application withdrawal.

During the period between the submission of an application and the execution of award documents, 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 or the application withdrawn.

§ 4284.942 Proposal evaluation criteria and scoring applications.

(a) *General*. The Agency will only score applications for which it has determined that the Applicant and project are eligible, the application is complete and sufficiently responsive to program requirements. Any Applicant whose application will not be reviewed because the Agency has determined it fails to meet the preceding criteria will be notified of appeal rights pursuant to § 4284.903. Each such viable application the Agency receives on or before the application deadline in a Fiscal Year will be scored in the Fiscal Year in which it was received. Each application will be scored based on the information provided and adequately referenced in the scoring section of the application at the time the Applicant submits the application to the Agency. Scoring information must be readily identifiable in the application or it will not be considered.

(b) *Scoring Applications*. The criteria specified in paragraphs (b)(1) through (6) of this section will be used to score all applications. For each criterion, Applicants must demonstrate how the project has merit, and provide rationale for the likelihood of project success. Responses that do not address all aspects of the criterion, or that do not comprehensively convey pertinent project information will receive lower scores. The maximum number of points that will be awarded to an application is 100. Points may be awarded lump sum or on a graduated basis. The Agency application package will provide additional instruction to assist Applicants when responding to the criteria below.

(1) *Nature of the Proposed Venture (graduated score 0–30 points)*. Describe the technological feasibility of the project, as well as the operational efficiency, profitability, and overall economic sustainability resulting from the project. In addition, demonstrate the potential for expanding the customer base for the Value-Added Agricultural Product, and the expected increase in revenue returns to the producer-owners providing the majority of the raw Agricultural Commodity to the project. Applications that demonstrate high likelihood of success in these areas will receive more points than those that demonstrate less potential in these areas.

(2) *Qualifications of Project Personnel (graduated score 0–20 points)*. Identify the individuals who will be responsible for completing the proposed tasks in the work plan, including the roles and activities that owners, staff, contractors, consultants or new hires may perform; and demonstrate that these individuals have the necessary qualifications and expertise, including those hired to do market or feasibility analyses, or to develop a business operations plan for the value-added venture. Include the qualifications of those individuals responsible to lead or manage the total project (Applicant owners or project managers), as well as those individuals responsible for actually conducting the various individual tasks in the work plan (such as consultants, contractors, staff or new hires). Demonstrate the commitment and the availability of any consultants or other professionals to be hired for the project. If staff or consultants have not been selected at the time of application, provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate the strong credentials, education, capabilities, experience and availability of project personnel that will contribute to a high likelihood of project success will receive more points than those that demonstrate less potential for success in these areas.

(3) *Commitments and Support (graduated score 0–10 points).* Producer commitments to the project will be evaluated based on the number of Independent Producers currently involved in the project; and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential or identified markets and the potential amount of output to be purchased, as evidenced by letters of intent or contracts from potential buyers referenced within the application. Other Third-Party commitments to the project will be evaluated based on the critical and tangible nature of the contribution to the project, such as technical assistance, storage, processing, marketing, or distribution arrangements that are necessary for the project to proceed; and the level and quality of these contributions. Applications that demonstrate the project has strong direct financial, technical and logistical support to successfully complete the project will receive more points than those that demonstrate less potential for success in these areas.

(4) *Work Plan and Budget (graduated score 0–20 points).* In accord with § 4284.922(b)(5), Applicants must submit a comprehensive work plan and budget. The work plan must provide specific and detailed narrative descriptions of the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the activities and allocate those costs among the listed tasks. The source and use of both grant and Matching Funds must be specified for all tasks. An eligible start and end date for the project itself and for individual project tasks must be clearly indicated and may not exceed Agency specified timeframes for the grant period. Points may not be awarded unless sufficient detail is provided to determine that both grant and Matching Funds are being used for qualified purposes and are from eligible sources without a Conflict of Interest. It is recommended that Applicants utilize the budget format templates provided in the Agency's application package.

(5) *Priority Points (up to 10 points).* Priority points may be awarded in both the General Funds competition and the Reserved Funds competitions. Qualifying applications may be awarded priority points under paragraphs (b)(5)(i) and (ii) of this section, for up to a total of 10 points.

(i) *Priority categories (lump sum score of 0 or 5 points).* Qualifying Applicants may request priority points under this paragraph if they meet the requirements for one of the following categories and provide the documentation specified in § 4284.924, as applicable. Priority categories are: Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, Veteran Farmer or Rancher, Operator of a Small- or Medium-sized Farm or Ranch that is structured as a Family Farm, Mid-Tier Value Chain proposals, and Farmer or Rancher Cooperative. It is recommended that Applicants utilize the Agency application package when documenting for priority points and refer to the documentation requirements specified in § 4284.924. Applications from qualifying priority categories will be awarded 5 points. Applicants will not be awarded more than 5 points even if they qualify for more than one of the priority categories.

(ii) *Best contributing (up to 5 points).* Applications from Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures (applicant groups) may be awarded up to 5 additional points for contributing to the creation of or increase in marketing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of a Small- or Medium-sized Farm or Ranch that are structured as a Family Farm (priority groups). Applicant groups must submit documentation on the percentage of existing membership that is comprised of one or a combination of the above priority groups and on the anticipated expansion of membership to one or more additional priority groups. Applications must contain sufficient information as described in the annual solicitation and application package to enable the Agency to make the appropriate determinations for awarding points. If the application

does not contain sufficient information, the Agency will not award points accordingly.

(6) *Priority Categories (graduated score 0–10 points).* Unless otherwise specified in a notification issued under § 4284.915(b)(1), the Administrator or State Director has discretion to award up to 10 points to an application to improve the geographic diversity of awardees in a Fiscal Year. In the event of a National competition, the Administrator will award points and for a State-allocated competition, the State Director will award points.

§§ 4284.943–4284.949 [Reserved]

GRANT AWARDS AND AGREEMENT

§ 4284.950 Award process.

(a) *Selection of applications for funding and for potential funding.* The Agency will select and rank applications for funding based on the score an application has received in response to the proposal evaluation criteria, compared to the scores of other value-added applications received in the same Fiscal Year. Higher scoring applications will receive first consideration for funding. The Agency may set a minimally acceptable score for funding, which will be noted in the published program notice. The Agency will notify Applicants, in writing, whether or not they have been selected for funding. For those Applicants not selected for funding, the Agency will provide a brief explanation for why they were not selected.

(b) *Ranked applications not funded.* A ranked application that is not funded in the Fiscal Year in which it was submitted will not be carried forward into the next Fiscal Year. The Agency will notify the Applicant in writing.

(c) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's award announcement date, the Agency will rescind the award and will provide the Applicant with a written notice to that effect. This is prior to the signing of a Grant Agreement. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§ 4284.951 Obligate and award funds.

(a) *Letter of conditions.* When an application is selected subject to conditions established by the Agency, the Agency will notify the Applicant using a Letter of Conditions, which defines the conditions under which the grant will be made. Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving a Letter of Conditions unless otherwise specified by the Agency at the time of the award. If the Applicant agrees with the conditions, the Applicant must complete, an applicable Letter of Intent to Meet Conditions. If the Applicant believes that certain conditions cannot be met, the Applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the Applicant before the application will be further processed. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made.

(b) *Grant agreement and conditions.* Each grantee will be required to sign a grant agreement that outlines the approved use of funds and actions under the award, as well as the restrictions and applicable laws and regulations that pertain to the award.

(c) *Other documentation.* The grantee will execute additional documentation in order to obligate the award of funds; including, but not limited to:

(1) ''Request for Obligation of Funds;''

(2) ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transaction;''

(3) ''Certification Regarding Drug-Free Workplace Requirements;''

(4) ''Assurance Agreement (under Title VI, Civil Rights Act of 1964);''

(5) ''ACH Vendor/Miscellaneous Payment Enrollment Form;'' or

(6) ''Disclosure of Lobbying Activities.''

(d) *Grant disbursements.* Grant disbursements will be made in accordance with the Letter of Conditions, and/or the grant agreement, as applicable.

§§ 4284.952–4284.959 [Reserved]

POST AWARD ACTIVITIES AND REQUIREMENTS

§ 4284.960 Monitoring and reporting program performance.

The requirements specified in this section shall apply to grants made under this subpart.

(a) Grantees must complete the project per the terms and conditions specified in the approved work plan and budget, and in the grant agreement and letter of conditions. Grantees will expend funds only for eligible purposes and will be monitored by Agency staff for compliance. Grantees must maintain a financial management system, and property and procurement standards in accordance with Departmental Regulations.

(b) Grantees must submit narrative and financial performance reports, as prescribed by the Agency in the grant agreement, that include required data elements related to achieving programmatic objectives and a comparison of accomplishments with the objectives stated in the application. At a minimum, these include comparisons of anticipated activies and outcomes and timeframes for achieving:

(1) Expansion of customer base as a result of the project;

(2) Increased revenue returned to the producer as a result of the project;

(3) Jobs created or saved as a result of the project;

(4) Evidence of receipt of matching funds, if included or provided for in project.

(i) Semi-annual performance reports shall be submitted within 45 days following March 31 and September 30 each Fiscal Year. A final performance report shall be submitted to the Agency within 90 days of project completion. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(ii) Additional reports shall be submitted as specified in the grant agreement or Letter of Conditions, or as otherwise provided in a notification issued under § 4284.915.

(iii) Copies of supporting documentation and/or project deliverables for completed tasks must be provided to the Agency in a timely manner in accord with the development or completion of materials and in conjunction with the budget and project timeline. Examples include, but are not limited to, a Feasibility Study, Marketing Plan, Business Plan, success story, distribution network study, or best practice.

(iv) The Agency may request any additional project and/or performance data for the project for which grant funds have been received, including but not limited to:

(A) Information that will enable evaluation of the economic impact of program awards, such as:

(*1*) Business starts and clients served;

(*2*) Data associated with producer market expansion, new market penetration, and changes in customer base or revenues.

(B) Information that would promote greater understanding of the key determinants of the success of individual projects or inform program administration and evaluation, such as:

(*1*) The producer's experience related to financial management, budgeting, and running a business enterprise.

(*2*) The nature of, and advantages or disadvantages of, supply chain arrangements or equitable distribution of rewards and responsibilities for Mid-tier Value Chain projects; and

(*3*) Recommendations from Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, or Veteran Farmers or Ranchers.

(C) Information that would inform or enable the aggregation of data for program administration or evaluation purposes.

(v) The Agency may terminate or suspend the grant for lack of adequate or timely progress, reporting, or documentation, or for failure to comply with Agency requirements.

§ 4284.961 Grant servicing.

All grants awarded under this subpart shall be serviced in accordance with 7 CFR part 1951, subparts E and O, and the Departmental Regulations with the exception that delegation of the post-award servicing of the program does not require the prior approval of the Administrator.

§ 4284.962 Transfer of obligations.

At the discretion of the Agency and on a case-by-case basis, an obligation of funds established for an Applicant may be transferred to a different (substituted) Applicant provided:

(a) The substituted Applicant:

(1) Is eligible;

(2) Has a close and genuine relationship with the original Applicant; and

(3) Has the authority to receive the assistance approved for the original Applicant; and

(b) The project continues to meet all product, purpose, and reserved funds eligibility requirements so that the need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§§ 4284.963–4284.999 [Reserved]

Subpart K—Agriculture Innovation Demonstration Centers

SOURCE: 69 FR 23433, Apr. 29, 2004, unless otherwise noted.

§ 4284.1001 Purpose.

This subpart implements a demonstration program administered by the Rural Business-Cooperative Service whereby grants are made to innovation centers responsible for providing technical and business development assistance to agricultural producers seeking to engage in the marketing or the production of Value-Added products.

§ 4284.1002 Policy.

It is the policy of the Secretary of Agriculture to fund Centers which evidence broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community. It is also the policy of the Secretary, using the research and technical services of the U.S. Department of Agriculture, to assist the grantees in establishing Centers. This program is not intended to fund scientific research.

§ 4284.1003 Program administration.

The Agriculture Innovation Demonstration Center program is administered by Cooperative Services within the Agency.

§ 4284.1004 Definitions.

Board of Directors—The group of individuals that govern the Center.

Center—The Agriculture Innovation Center to be established and operated by the grantees. It may or may not be an independent legal entity, but it must be independently governed in accordance with the requirements of this subpart.

Producer Services—Services to be provided by the Centers to agricultural producers. Producer Services consist of the following types of services:

(1) Technical assistance, consisting of engineering services, applied research, Scale Production Assessments, and similar services, to enable the agricultural producers to establish businesses to produce Value-Added agricultural commodities or products;

(2) Assistance in marketing, market development and business planning, including advisory services with respect to leveraging capital assets; and

(3) Organizational, outreach and development assistance to increase the viability, growth and sustainability of businesses that produce Value-Added agricultural commodities or products.

Qualified Board of Directors—A Board of Directors that includes representatives from each of the following groups:

(1) The two general agricultural organizations with the greatest number of members in the State in which the Center is located;

(2) The State department of agriculture, or equivalent, of the State in which the Center is located; and

(3) Entities representing the four highest grossing commodities produced in the State in which the Center is located, as determined on the basis of annual gross cash sales.

Scale Production Assessments—Studies that analyze facilities, including processing facilities, for potential Value-added activities in order to determine the size that optimizes construction and other cost efficiencies.

§§ 4284.1005–4284.1006 [Reserved]

§ 4284.1007 Eligibility for grant assistance.

Non-profit and for-profit corporations, institutions of higher learning and other entities, including a consortium where a lead entity has been designated and agrees to act as funding agent, that meet the following requirements are eligible for grant assistance:

(a) The entity—

(1) Has provided services similar to those listed for Producer Services; or

(2) Demonstrates the capability of providing Producer Services;

(b) The application includes a plan that meets the requirements of § 4284.1010(c)(5)(iv) that also outlines—

(1) The support for the entity in the agricultural community;

(2) The technical and other expertise of the entity; and

(3) The goals of the entity for increasing and improving the ability of local agricultural producers to develop markets and processes for Value-Added agricultural commodities or products;

(c) The entity demonstrates that adequate resources (in cash or in kind) are available, or have been committed to be made available to the entity, to increase and improve the ability of local agricultural producers to develop markets and processes for Value-Added agricultural commodities or products; and

(d) The proposed Center has a Qualified Board of Directors.

§ 4284.1008 Use of grant funds.

Grant funds may be used to assist eligible recipients in establishing Centers that provide Producer Services and may only be used to support operations of the Center that directly relate to providing Producer Services. Grant funds may be used for the following purposes, subject to the limitations set forth in § 4284.10:

(a) Consulting services for legal, accounting and technical services to be used by the grantee in establishing and operating a Center;

(b) Hiring of employees, at the discretion of the Qualified Board of Directors;

(c) The making of matching grants to agricultural producers, individually not to exceed $5,000, where the aggregate amount of all such matching grants made by the grantee does not exceed $50,000;

(d) Applied research;

(e) Legal services; and

(f) Such other related purposes as the Agency may announce in the RFP.

§ 4284.1009 Limitations on awards.

The maximum grant award for an agriculture innovation center shall be in an amount that does not exceed the lesser of $1,000,000 or twice the dollar amount of the resources (in cash or in kind) that the eligible entity demonstrates are available, or have been committed to be made available, to the eligible entity.

§ 4284.1010 Application processing.

(a) *Applications.* USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one copy of the required forms and a proposal.

(b) *Required forms.* The following forms must be completed, signed and submitted as part of the application package. Other OMB approved forms may be required. This will be published in the applicable RFP.

(1) ''Application for Federal Assistance.''

(2) ''Budget Information—Non-Construction Programs.''

(3) ''Assurances—Non-Construction Programs.''

(c) *Proposal.* Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) *Executive Summary.* A summary of the proposal should briefly describe the project including goals, tasks to be completed and other relevant information that provides a general overview of the project and the amount requested.

(4) *Eligibility.* A detailed discussion describing how the applicant meets the eligibility requirements.

(5) *Proposal Narrative.* The narrative portion of the proposal must include, but is not limited to, the following:

(i) *Project Title.* The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) *Information Sheet.* A separate one page information sheet listing each of the evaluation criteria referenced in the RFP followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) *Goals of the Project.* The first part of this section should list each Producer Service to be offered by the Center. The second part of this section should list one or more specific goals relating to increasing and improving the ability of identified local agricultural producers to develop a market or process for Value-Added agricultural commodities or products.

(iv) *Work Plan.* Actions that must be taken in order for the Producer Services to be available from the Center. Each action listed should include a target date by which it will be completed. General start up tasks should be listed, followed by specific tasks listed for each Producer Service to be offered, as well as tasks associated with the start of operations. The tasks associated with the start of operations should include a focused marketing and delivery plan directed to the local agricultural producers that were identified in paragraph (c)(5)(iii) of this section. The actions to be taken should include steps for identifying customers, acquiring personnel and contracting for services to the Center, including arrangements for strategic alliances.

(v) *Performance Evaluation Criteria.* Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Agricultural Community Support. Evidence of support from the local agricultural community should be included in this section. Letters in support should reflect that the writer is familiar with the provisions of the Plan for the Center, including the stated goals.

Evidence of support can take the form of making employees available to the Center, service as a board member and other in-kind contributions.

(vii) *Strategic Coordination and Alliances.* Describe arrangements in place or planned with end users (processing and distribution companies and regional grocers) as well as arrangements with entities having technical research capabilities, broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community.

(viii) *Capacity.* Evidence of the ability of the grantee(s) to successfully establish and operate a Center. A description of the grantee's track record in providing services similar to those listed for Producer Services or evidence that the entity has the capability to provide Producer Services. Resumes of key personnel should be included in this section. Past successes should be described in detail, with a focus on lessons learned, best practices, familiarity with producer problems in Value-Added ventures, and how these barriers are best overcome should be elaborated on in this section. For every challenge identified, the applicant should demonstrate how they are addressed in the Work Plan (*see* paragraph (c)(5)(iv) of this section). All successes should include a monetary estimate of the Value-Added achieved.

(ix) *Legal structure.* Provide a description of the legal relationship between the grantee(s) and the proposed Center. If the Center is to be an independent corporate entity, provide copies of the corporate charter, bylaws and other relevant organizational documents. Describe how funds for the Center will be handled and include copies of the agreements documenting the legal relationships between the Center and related parties. If the Center is not to be an independent legal entity, provide copies of the corporate governance documents that describe how members of the Board of Directors for the Center are to be determined.

(x) *Evaluation Criteria.* Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form. Supporting documentation, as applicable, should be included in this section, or a cross reference to other sections in the application should be provided, as applicable.

(xi) Verification of Adequate Resources. Present a budget to support the work plan showing sources and uses of funds during the start up period prior to the start of operations and for the first year of full operations. Present a copy of a bank statement evidencing sources of funds equal to amounts required in excess of the grant requested, or, in the alternative, a copy of confirmed funding commitments from credible sources such that USDA is satisfied that the Center has adequate resources to complete a full year of operation. Include information sufficient to facilitate verification by USDA of all representations.

(xii) Certification of Adequate Resources Applicants must certify that non-Federal funds identified in the budget pursuant to paragraph (c)(5)(xi) of this section will be available and funded commensurately with grant funds.

§ 4284.1011 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further, and may be returned to the applicant. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.1012 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, Agency officials will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

(c) The Administrator reserves the right to award additional points, as specified in the applicable RFP, to accomplish agency objectives (e.g., to ensure geographic distribution, put emphasis on a specific commodity, or to accomplish presidential initiatives.) The maximum number of points that can be added to an application under this paragraph cannot exceed ten percent of the total points the application originally scored.

(d) After giving effect to the Administrator's point awards, applications will be funded in rank order until all available funds have been obligated.

§ 4284.1013 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Ability to Deliver.* The application will be evaluated as to whether it evidences unique abilities to deliver Producer Services so as to create sustainable Value-Added ventures. Abilities that are transferable to a wide range of agricultural Value-Added commodities are preferred over highly specialized skills. Strong skills must be accompanied by a credible and thoughtful plan.

(b) *Successful Track Record.* The applicant's track record in achieving Value-Added successes.

(c) *Work Plan/Budget.* The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the strength of non-Federal funding commitments.

(d) *Qualifications of personnel.* Proposals will be reviewed for whether the key personnel who are to be responsible for performing the proposed tasks have the necessary qualifications and whether they have a track record of performing activities similar to those

being proposed. If a consultant or others are to be hired, points may be awarded for consultants only if the proposal includes evidence of their availability and commitment as well. Proposals using in-house employees with strong track records in innovative activities will receive higher points relative to proposals that out-source expertise.

(e) *Local support.* Proposed Centers must show local support and coordination with other developmental organizations in the proposed service area and with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other rural amenities. Proposed Centers that show strong support from potential beneficiaries and coordination with other developmental organizations will receive more points than those not evidencing such support.

(f) *Future support.* Applicants that can demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

§ 4284.1014 Grant closing.

(a) *Letter of Conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's ''Letter of Intent to Meet Conditions,'' 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.

(c) *Grant agreement.* The Agency and the grantee must enter into an ''Agriculture Innovation Center Grant Agreement'' prior to the advance of funds.

§§ 4284.1015–4284.1099 [Reserved]

§ 4284.1100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0045.

Subpart L—Rural Innovation Stronger Economy (RISE) Grant Program

SOURCE: 86 FR 31589, June 15, 2021, unless otherwise noted.

§ 4284.1101 Purpose.

This subpart contains the procedures and requirements for providing the following financial assistance under the Rural Innovation Stronger Economy (RISE) program:

(a) Grants for the purpose of constructing, purchasing, or equipping a building to serve as an innovation center in order to establish job accelerators.

(b) Grants for the purpose of establishing and supporting job accelerators and related programs.

§ 4284.1102 Organization of subpart.

This subpart is organized into distinct sections as described in paragraphs (a) and (b) of this section.

(a) Sections 4284.1103 through 4284.1111 discuss definitions; exception authority; review or appeal rights; conflict of interest; USDA departmental regulations; other applicable laws; ineligible applicants; general applicant, application, and funding provisions; and notifications, which are applicable to funding the program under this subpart.

(b) Sections 4284.1112 and 4284.1113 discuss, respectively, applicant and project eligibility. Section 4284.1114 addresses funding provisions for these grants. Sections 4284.1115 through 4284.1120 address grant application content and required documentation, scoring, selection, awarding and administering grant applications, and servicing of grant awards.

§ 4284.1103 Definitions.

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

Administrator means the Administrator of Rural Business-Cooperative Service (RBCS) within the Rural Development mission area of the U.S. Department of Agriculture (USDA).

Agency means RBCS or its successor agency assigned by the Secretary of Agriculture to administer the RISE grant 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.

Applicant means the lead applicant acting on behalf of a rural jobs accelerator partnership as stated in 4282.1112, that is seeking a RISE grant. The lead applicant will enter into a financial assistance agreement with the Agency, receive the RISE grant funding and take ownership of any assets purchased with grant funds.

Broadband service. Defined within the meaning of Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), broadband service means any technology identified by the Administrator as having the capacity to provide transmission facilities and capacity that enable the subscriber to receive a minimum level of broadband service. The minimum level of broadband service for the purpose of reviewing the application will be defined by the minimum transmission capacity that was required by Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) at the time the application was received by the Agency.

Complete application means an application that contains all parts necessary for the Agency to determine applicant and project eligibility, the financial feasibility and technical merit of the project, and contains sufficient information to determine a priority score for the application.

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

District organization means an organization as defined in Section 300.3 of Title 13, Code of Federal Regulations (or a successor regulation).

Eligible project costs means the portion of total project costs approved by the Agency for projects that are eligible to be paid with RISE funds.

Federal fiscal year (FY) means the 12-month period beginning October 1 of any given year and ending on September 30 of the following year; it is designated by the calendar year in which it ends.

Financial assistance agreement means Form RD 4280–2, ''Rural Business-Cooperative Service Financial Assistance Agreement, or successor form and is an agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

High-wage job means a job that provides a wage that is greater than the median wage for the applicable region, as determined by the Department of Labor.

Indian tribe means the term as defined in 25 U.S.C. 5304(e).

Industry cluster means a broadly defined network of interconnected firms and supporting institutions in related industries that accelerate innovation, business formation, and job creation by taking advantage of assets and strengths of a region in the business environment.

Innovation center means a cross-functional place for the planning and creation of new ideas and opportunities for individual and group collaboration that leads to supporting deployment of innovative processes, technologies, services and products for economic development. Innovation centers may be utilized for a wide array of purposes including short-term housing for business owners or workers; co-working space, which may include space for remote work; space for business utilization with a focus on entrepreneurs and small and disadvantaged businesses but may include collaboration with companies of all sizes; job training programs; and efforts to utilize the innovation center as part of the development of a community, among other uses deemed appropriate by the Agency.

Institution of higher education means the term as defined in 20 U.S.C. 1002(a).

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

Jobs accelerator means a center or program located in or serving a rural low-income community that may provide co-working space, in-demand skills training, entrepreneurship and business support, and other initiatives as described in Part 4284.1113(b).

Lead applicant means an entity as defined in Part 4284.1112(b) and is responsible for the rural jobs accelerator partnership plus administration of the grant proceeds and activities.

Letter of conditions means a document prepared by the Agency establishing conditions that must be agreed to by the applicant before any obligation of grant funds can occur.

Low income community means a community as defined in section 45D(e) of the Internal Revenue Code of 1986, and any amendments thereto.

Matching funds means non-federal funds provided to meet the total eligible project costs that are not covered by the RISE grant proceeds.

Person means an individual or an entity organized under the laws of a state or a Tribe.

Region means an area identified by the applicant that meets the criteria of § 4284.1112(d) with a population of 50,000 or fewer inhabitants, or for a region with a population of more than 50,000 inhabitants, is comprised of rural areas and urbanized areas, if any, are the subject of a positive determination by the Under Secretary for Rural Development with respect to a rural-in-character petition, including such a petition submitted concurrently with the application of the partnership for a grant under this section.

Rural and rural area means any area of a state not in a city or town that has a population of more than 50,000 inhabitants according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. A rural and rural area shall be determined as defined in 7 U.S.C. 1991(a)(13).

Rural in character means:

(1) A determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development in compliance with 7 U.S.C. 1991(a)(13)(D). The process to request a determination under this provision is outlined in this definition. Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to the Administrator on behalf of the Under Secretary. The petition shall document 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 Administrator will review its merits and 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 petition will be forwarded to the Under Secretary who 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. 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.

(2) 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 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 gubernatorial comments were submitted with the request. A public notice will be published by the State Office in a local newspaper and the request will be posted on the Agency's website. There is no appeal process for requests made on the initiative of the State Director.

Rural jobs accelerator partnership means a partnership formed on or after December 20, 2018, which meets eligibility criteria found in § 4284.1112.

Secretary means the Secretary of Agriculture and, to the extent of delegated authorities, the Under Secretary for Rural Development.

Small and disadvantaged business means a small business concern owned and controlled by socially and economically disadvantaged individuals as defined in Section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

Small business means:

(1) An entity that meets Small Business Administration (SBA) size standards in accordance with 13 CFR part 121 and criteria of 13 CFR 121.301 as applicable to financial assistance programs, including paragraph (i) or (ii) of this definition. 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.

(2) To be considered a small business, either of the following conditions must be met:

(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 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 SBA's table of size standards found in 13 CFR 121.201. Number of employees and annuals 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.

State means any of the 50 States of the United 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.

Total project costs mean the sum of all costs associated with a completed project.

§ 4284.1104 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 conflict with applicable law.

§ 4284.1105 Review or appeal rights.

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.

§ 4284.1106 Conflict of interest.

(a) *General.* A situation in which a person has competing personal, professional, or financial interests that prevents the person from acting impartially.

(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.

§ 4284.1107 Statute and regulation references.

All references to statutes and regulations are to include any and all successor statutes and regulations.

§ 4284.1108 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 nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination 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 or 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 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.

(2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

(d) *Environmental analysis.* 7 CFR part 1970 outlines environmental procedures and requirements for this subpart. 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. The applicant will be notified of all specific compliance requirements, including:

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds or the applicant taking any action;

(2) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review. An environmental review may include the publication of public notices, and consultation with State and Tribal Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(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 a request for a waiver of the 180-day timeline is requested and the time for filing is extended by the designated officials of USDA or the Agency.

(3) *Filing a complaint.* To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(i) *Mail:* U.S. Department of Agriculture, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(ii) *Fax:* (202) 690–7442; or

(iii) *Email: OAC@usda.gov.*

§ 4284.1109 Ineligible applicants.

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

(a) If the applicant 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 is not eligible to receive a grant until the judgment is paid in full or otherwise satisfied or the delinquency is resolved. The Agency will check the Do Not Pay System to verify this information.

(b) If the applicant is debarred or suspended from receiving Federal assistance, the applicant is not eligible to receive a grant under this subpart. The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended.

§ 4284.1110 General applicant, application, and funding provisions.

(a) *Satisfactory progress.* A lead applicant that has received one or more grants under this program must make satisfactory progress toward completion of any previously funded projects before the lead applicant will be considered for subsequent funding. Satisfactory progress is defined as 50% or greater of the previous RISE award being expended at the time the Agency makes its eligibility determination for a subsequent application.

(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 for financial assistance under this subpart may be submitted at any time with awards made annually based on the application's score and subject to available funding.

(c) *Limit on number of applications.* An applicant can apply for and compete only one RISE project under this subpart per Federal fiscal year, unless otherwise noted in a FEDERAL REGISTER notice.

(d) *Application modification.* Once submitted and prior to Agency award, if an applicant significantly modifies its application or scope of work, 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 application, and the application will be processed by the Agency as a new application under this subpart. Applications that are modified due only to partial funding being available for the selected award are not subject to this provision.

(e) *Incomplete applications.* Applicants must submit a complete application in compliance with § 4284.1115 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 return the documents, with 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 § 4284.1118, as applicable.

(f) *Application withdrawal.* During the period between the submission of an application and the execution of grant 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 is no longer requesting financial assistance for the project. When an applicant withdrawal request is received by the Agency, the selection will be rescinded and/or the application withdrawn from further processing and funding consideration.

(g) *Time limit on use of grant funds.* Except as provided in paragraph (g)(1) of this section, grant funds not expended within the initial grant term of 4 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 4-year grant time limit if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control and that the grantee has established an active jobs accelerator and related programming. Grantees must submit a request for the no-cost extension no later than 90 days before the expiration date of the Financial Assistance Agreement. This request must describe the extenuating circumstances that were beyond its control to complete the project for which the grant was awarded, elements of completion that are required and their timeframe, and why an approval is in the government's best interest. The Agency may extend the grant term up to an additional two-year period. Additional extensions will not be granted.

(2) *Return of funds to the Agency.* Funds that exceed the amount the grantee is entitled to receive under the financial assistance agreement or that are remaining after grant closeout will be returned to the Agency.

§ 4284.1111 Notifications.

(a) *Eligibility.* If an applicant or its project is determined by the Agency to be ineligible at any time, the Agency will inform the applicant, as applicable, in writing of the decision, reasons therefore, and any applicable appeal rights. No further processing of the application or disbursement of grant proceeds, if funds have been previously awarded, will occur.

(b) *Funding determinations.* Each applicant, as applicable, will be notified of the Agency's funding decision on its application. If the Agency's decision is to not fund an application, the Agency will notify the applicant in writing including the reasons for the determination and any applicable appeal or review rights.

§ 4284.1112 Rural jobs accelerator partnership eligibility.

A rural jobs accelerator partnership (Partnership) organizes key community and regional stakeholders into a working group that focuses on the shared goals and needs of the targeted industry cluster(s). To be eligible for a RISE grant under this subpart, the Partnership must be formed on or after December 20, 2018, and meet each of the criteria specified in paragraphs (a) through (d) of this section. The Agency will determine a Partnership's eligibility based on the criteria herein.

(a) The Partnership must include one or more representatives of the following:

(1) A State, Tribal or local government;

(2) A State, Tribal, or local government entity;

(3) A land-grant college or university or other institution of higher education, as defined in the Higher Education Act of 1965 (20 U.S.C. 1001);

(4) A rural non-profit cooperative; or

(5) A private entity, which may include a business in an industry cluster, economic development or community development organization, financial institution including a community development financial institution, philanthropic organization or labor organization.

(b) The Partnership must have a lead applicant represented by one of the following:

(1) A district organization;

(2) An Indian Tribe or a political subdivision of a Tribe, including a special

purpose unit of a tribal government engaged in economic development activities, or a consortium of Indian Tribes;

(3) A State or a political subdivision of a State, including a special purpose unit of a State or local government engaged in economic development activities, or a consortium of political subdivisions;

(4) An institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a consortium of institutions of higher education; or

(5) A public or private nonprofit organization.

(c) The Partnership and its project must serve a rural region, as defined.

(d) The Partnership must clearly define the region that the partnership represents and ensure that the Region encompasses each of the following:

(1) Is large enough to contain critical elements of the industry cluster prioritized by the partnership;

(2) Is small enough to enable close collaboration among members of the partnership;

(3) Includes a majority of communities that are located in the following:

(i) A nonmetropolitan area that qualifies as a low-income community; and

(ii) An area that has access to or has a plan to achieve broadband service, as defined; and

(4) Has a population of 50,000 or fewer inhabitants or, for a region with a population of more than 50,000 inhabitants, is comprised of rural areas and urbanized areas, if any, are the subject of a positive determination by the Under Secretary for Rural Development with respect to a rural-in-character petition, including such a petition submitted concurrently with the application of the partnership for a grant under this section.

(e) One or more members of the Partnership must be located in the targeted region. The Partnership may consist of industry entities and other partners outside of the targeted region.

§ 4284.1113 Project eligibility.

For a project to be eligible to receive a RISE grant under this subpart, the proposed project must meet the requirements specified in paragraphs (a) through (e) of this section. The applicant project outcome must accelerate the formation of new businesses with high-growth potential, improve the ability of rural businesses and distressed rural communities to create high-wage jobs, and strengthen rural regional economies by engaging in one or more of the following eligible uses:

(a) The construction or purchase of a building to serve as an innovation center located in a rural low-income community which establishes and/or supports a jobs accelerator and any equipment needs of the innovation center to support the jobs accelerator;

(b) Be for the support of programs to be carried out at or in direct partnership with the jobs accelerator or in support of jobs accelerator initiatives including one or more of the following:

(1) Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high-wage job creation, new business formation, business expansion, and economic growth of rural communities;

(2) Integrating rural small businesses into a supply chain;

(3) Creating or expanding commercialization activities for new business formation in rural areas;

(4) Identifying and building assets in rural communities that are crucial to supporting regional economies;

(5) Facilitating the repatriations of high-wage jobs to the United States;

(6) Supporting the deployment of innovative processes, technologies, and products;

(7) Enhancing the capacity of rural small businesses in regional industry clusters, including small and disadvantaged businesses;

(8) Increasing United States exports and business interaction with international buyers and suppliers;

(9) Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners in the region to meet the needs of employers and prepare workers for high-wage jobs in the identified industry clusters, including the upskilling of incumbent workers;

(10) Ensuring rural communities have the capacity and ability to carry out

projects relating to housing, community facilities, infrastructure, or community and economic development to support regional industry cluster growth;

(11) Any activities that the Agency may determine to be appropriate, as specified in a FEDERAL REGISTER notice.

(c) Not more than 10 percent of a RISE grant awarded under this section shall be used for indirect costs of the applicant associated with administering the RISE grant. The Agency may increase this percentage as a documented exception on a case by case basis.

(d) The innovation center may be physically located in a rural area as defined in § 4284.1103 or in a non-rural area; as long as assistance being provided is to residents located in a rural area. The innovation center must be located in a rural low-income community if grant funds are used for the construction or purchase of an innovation center.

(e) 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. Projects involving the construction of an innovation center as an eligible purpose are subject to the environmental requirements of 7 CFR part 1970.

§ 4284.1114 RISE grant funding.

(a) *Grant amounts.* The amount of grant funds that will be made available to a Partnership under this subpart will not exceed 80 percent of eligible project costs. The Federal share of the cost of any activity carried out using a grant under this section shall not be greater than 80 percent.

(1) *Minimum request.* Unless otherwise specified in a FEDERAL REGISTER notice, the minimum request for a RISE grant application is $500,000.

(2) *Maximum request.* Unless otherwise specified in a FEDERAL REGISTER notice, the maximum request for a RISE grant application is $2,000,000.

(b) *Matching funds.* The applicant is responsible for securing the matching funds for total eligible project costs that are not covered by grant funds. The non-Federal share of the total eligible project costs of any activity carried out using a grant under this section may be in the form of third-party equity contributions including donations and in-kind contributions of fairly-valued goods or services.

(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. The applicant is responsible for any expenses incurred in developing its application. 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 RISE grant project. Any building or equipment purchased with grant proceeds must be owned and controlled by the lead applicant. The following is a list of eligible project costs:

(1) Costs directly related to the purchase or construction of an innovation center;

(2) Costs directly related to operations of an innovation center including purchase of equipment, office supplies, and administrative costs including salaries directly related to the project;

(3) Costs directly associated with support programs to be carried out at or in direct partnership with job accelerators;

(4) Reasonable and customary travel expenses directly related to job accelerators and at rates in compliance with 2 CFR 200.474;

(5) Utility costs, operating expenses of the innovation center and job accelerator programs and associated programs;

(6) Administrative costs of the grantee will not exceed 10% of the grant amount for the duration of the project.

(d) *Ineligible project costs.* Ineligible project costs and uses of funds for RISE projects include, but are not limited to:

(1) Costs associated with preparation of an application package under this notice;

(2) Costs incurred prior to Agency receipt of a complete application for the grant request made under a funding notice;

(3) Funding of any political or lobbying activities;

(4) Payment for assistance to any private business enterprise which does not create and/or support jobs in a rural area of the United States;

(5) Payment of any judgment or debt owed to the United States;

(6) 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;

(7) 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;

(8) Pass through grants; and

(9) costs associated with hemp production, unless a hemp producer has a valid license issued from an approved State, Tribal or Federal plan as per Section 10113 of the Agriculture Improvement Act of 2018, Public Law 115–334 (verification of valid hemp licenses will occur at the time of award).

§ 4284.1115 RISE grant applications—content.

(a) A potential applicant for RISE may submit a concept proposal not less than 60 days in advance of the application submittal deadline as published in the FEDERAL REGISTER for review by the Agency. This concept proposal will be evaluated, and an encouragement or discouragement letter will be issued to the potential applicant. If a discouragement letter is issued, it will detail any weaknesses evaluated in the Agency's review, though a complete application may still be submitted prior to the application deadline. The concept proposal may be up to 10 pages in length using a minimum of 11-point font. The concept proposal should be in a narrative format and must include the following:

(1) Partnership information including the members and structure of the Partnership, the date formalized, and the governance or leadership board. The information will identify the lead applicant and each partner's ties to the region, their roles in the delivery of the RISE program and any history of previous collaboration between partners. The amount and source of anticipated matching funds will also be provided.

(2) Describe the geographic region to be served including the total population, economic characteristics of the region such as unemployment rates and income levels. Industry sectors, their status, size and economic contribution to the region and all communities including metropolitan statistical areas and nonmetro low income communities within the region should be identified. The availability and planned enhancements of broadband service and other assets of the region should also be identified. If the region to be served has a population of more than 50,000 inhabitants, the applicant must document why they believe 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.

(3) Identify the industry cluster(s) that will be prioritized by the Partnership with information on the firms and support industries in those clusters. Describe the status of the industry (as emerging, existing, or declining) any existing interconnection and networks within the industry cluster and describe participation and scale of small and disadvantaged businesses within the industry cluster. Describe the opportunities or potential of industry growth in the region and competitive advantages of the region and industry cluster should be highlighted along with opportunities within the industry for the creation of or upgrading to high-wage jobs.

(4) An executive summary, project plan and scope of work must be provided with the applicant's strategy, activities, budget, goals and objectives for the use of RISE funds. The applicant should also provide information on the sustainability of the partnership and jobs accelerator at the conclusion of the RISE grant period.

(b) Unless otherwise specified in a FEDERAL REGISTER notice, applicants may only submit one RISE grant application each Federal fiscal year.

(1) The lead applicant must be registered in the System for Award Management (SAM) and is responsible for submitting a complete application as specified in (b)(2)(i) through (b)(2)(xiv) of this section.

(2) There are no specific limitations on the number of pages or other formatting requirements of an application. Applicants, who submitted a concept proposal to the Agency, will not need to resubmit the information found in (b)(2)(ix) below. The Agency will review and retain this information for application submittal. A complete application will consist of the following components unless otherwise specified in a FEDERAL REGISTER notice:

(i) Form SF–424, ''Application for Federal Assistance;''

(ii) Form SF–424A, ''Budget Information—Non-Construction Programs,'' if applicable;

(iii) Form SF–424C, ''Budget Information—Construction Programs,'' if applicable;

(iv) Form SF–424D, ''Assurances—Construction Programs,'' if applicable;

(v) RD Form 400–1, ''Equal Opportunity Agreement,'' for construction projects only;

(vi) Identify the ethnicity, race, and gender characteristics of the lead applicant's leadership. This information is optional and is not a required component for a complete application;

(vii) Certification that the lead 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 exists;

(viii) The lead applicant must identify whether or not the lead applicant has a known relationship or association with an Agency employee and, if there is a known relationship, the lead applicant must identify each Agency employee with whom the lead applicant has a known relationship;

(ix) All items required in paragraph (a) of this section must be provided with the application (applicants must provide updates, as appropriate, to any items previously submitted as a concept proposal under paragraph (a));

(x) Readiness demonstration, which shall be comprised of the following items:

(A) Description of readiness of all partners of the Partnership to contribute to the project including their ability to coordinate activities, finances and outcomes of the project.

(B) Evidence of a formal agreement among partners of the Partnership for delivery of the RISE program.

(C) Evidence of demonstrated readiness in administering the RISE grant, if awarded, including demonstration of potential success in establishment of a jobs accelerator project, which targets an industry cluster and the initiatives of the RISE grant. The application should indicate when activities related to the expected outcomes will commence.

(D) Description of how the project will be marketed in the region and how the Partnership will capture any program impacts and success stories; and

(E) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task.

(xi) Provide documentation on how the RISE project will impact the initiatives below, as applicable, including a brief description of how and when the initiative will be delivered:

(A) Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high-wage job creation, new business formation, business expansion, and economic growth;

(B) Integrating small businesses into a supply chain;

(C) Creating or expanding commercialization activities for new business formation;

(D) Identifying and building assets in rural communities that are crucial to supporting regional economies;

(E) Facilitating the repatriation of high-wage jobs to the United States;

(F) Supporting the deployment of innovative processes, technologies, and products;

(G) Enhancing the capacity of small businesses in regional industry clusters, including small and disadvantaged businesses;

(H) Increasing United States exports and business interaction with international buyers and suppliers;

(I) Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners to meet the needs of employers and prepare workers for high-wage jobs in the identified industry clusters, including the upskilling of incumbent workers;

(J) Ensuring rural communities have the capacity and ability to carry out projects related to housing, community facilities, infrastructure, or community and economic development to support regional industry cluster growth;

(xii) Potential to produce high-wage jobs and benefit rural small and disadvantaged businesses, including a description of the following:

(A) Describe how the project will develop the skills and expertise of the local workforce, entrepreneurs and institutional partners to meet the needs of employers and prepare high-wage jobs in the targeted industry cluster(s), which may also include the upskilling of incumbent worker;

(B) Demonstrate how the project will benefit the skills and expertise of small and disadvantaged businesses, as applicable;

(C) Demonstrate any participation of higher education, applied research institutions, workforce development entities and community-based organizations, that are willing to partner with the project to provide workers with skills relevant to the industry cluster needs of the region, with an emphasis on the use of on-the-job training, classroom occupational training or incumbent worker training, as applicable; and

(D) Demonstrate any participation of investment organizations, venture development organizations, venture capital firms, revolving loan funders, angel investment groups, community lenders, community development financial institutions, rural business investment companies, small business companies (as defined in Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662)), philanthropic organizations, and other institutions focused on expanding access to capital, are committed partners in the job accelerator partnership and willing to potentially invest in projects emerging from the jobs accelerator.

(xiii) Describe the targeted region, including the following information:

(A) Provide the latest Census Bureau information on the targeted region's median household income.

(B) Provide the latest Census Bureau information on the targeted region's educational attainment, specifically the percentage of the population who hold a bachelor's degree.

(C) Discuss how any direct career training will be provided to existing residents of the region (existing residents being those persons who live in the region at the time of application submission).

(D) Discuss any local support for the RISE project.

(E) Discuss the entrepreneurial commitment to the RISE project.

(F) Discuss any innovative processes and technologies to be utilized in the targeted industry cluster(s) of the RISE project.

(G) Discuss the initial and continuing capital investment in the RISE project.

(H) Discuss any demand for regional and global markets of the product and/or service provided by the targeted industry cluster.

(I) Discuss if the region contains any areas or communities that qualify for federal initiatives.

(J) Elaborate on the current broadband service within the region and any plans to leverage the current broadband service or enhance broadband service in the region through the RISE project.

(xiv) Financial information, including the following:

(A) Identification of matching funds and other sources of funds for the project. Provide written commitments for matching funds and other sources of funds at the time the application is submitted.

(B) Current financial statements and a narrative description demonstrating financial feasibility and sustainability of the project, all of which demonstrate sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion.

(c) Upon receipt of a complete application, the Agency will determine if

the applicant and project are eligible and whether the intended outcomes described meet the requirements of the RISE program. If the application is ineligible or not feasible, the Agency will inform the applicant in writing of the reasons for the Agency's determination and no further evaluation of the application will occur.

§ 4284.1116 [Reserved]

§ 4284.1117 Scoring RISE grant applications.

The Agency will score each complete and eligible RISE application using the criteria specified in paragraphs (a) through (g) of this section, unless otherwise specified in a FEDERAL REGISTER notice, with a maximum score of 100 points possible. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. Points shall be awarded at the discretion of the Agency to scoring criteria with a minimum and maximum number of points available. Applicants that demonstrate the experience or ability to deliver the stated criteria will be awarded higher points in that criteria.

(a) *Demonstrated readiness.* The Partnership demonstrated readiness in administering the RISE grant successfully and shows strong documentation indicating the potential for success in establishing a jobs accelerator project which targets an industry cluster and the initiative(s) of the RISE grant program. Points are awarded on a scale of 0 to 10 with a maximum of 10 points being awarded.

(b) *Targeted initiatives.* A maximum of 15 points will be awarded for this criterion based on meeting the targeted initiatives as stated in § 4284.1115(b)(2)(xi) with action narratives outlined in the application on how and when the initiatives will be delivered. More points will be awarded for reasonable initiatives that can be delivered within 12 months of the grant award and for those projects leveraging improvements in high-speed broadband service to the region.

(c) *Project support.* Points will be awarded for the strength of local support of the RISE project and entrepreneurial commitment. A maximum of 15 points can be awarded for application materials that indicate the strength of support for the RISE project. Points will be awarded from the partnership's demonstration of its sources of funding, personnel and technical resources committed to the project, and a focus on the inclusion of institutional partners expanding access to capital and willingness to potentially invest in projects emerging from the jobs accelerator. Points shall also be awarded for demonstrated resources that will sustain the project beyond the term of the RISE grant period.

(d) *Targeted region.* A maximum of 20 points will be awarded for this criterion based on the region's demographics according to the latest census information. The applicant must provide adequate documentation to the latest census information to receive points.

(1) If the targeted region has a median household income of:

(i) 50% or less of state median household income; 5 points will be awarded;

(ii) Over 50% and up to 80% of state median household income; 3 points will be awarded.

(2) If the targeted region residents have the educational attainment of a bachelor's degree by:

(i) 10% or less of the population; 5 points will be awarded;

(ii) Over 10% and up to 30% of the population; 3 points will be awarded.

(3) Existing residents of the targeted region will receive direct career training for new employment or upscaling to a high-wage job; 5 points will be awarded.

(4) If the identified region has fewer than 50,000 residents according to the most recent decennial census; 5 points will be awarded.

(e) *RISE grant funds requested.* A maximum of 10 points will be awarded for this criterion if:

(1) The RISE grant request is for $500,000 to $750,000; 10 points will be awarded.

(2) The RISE grant request is for over $750,000 and up to $1,000,000; 5 points will be awarded.

(f) *Regional impact.* Points are awarded on a scale of 0 to 5 points for each

category, with a total maximum of 20 points being awarded for this criterion. To receive points, the applicant must provide documentation to warrant strength on the following criteria, with points awarded for each:

(1) Targeted industry(ies) in the region is classified as an emerging industry;

(2) Applicant demonstrates that the targeted industry(ies) in the region hold a competitive advantage or will enhance their competitive advantage through the RISE project;

(3) Applicant demonstrates that industry provides significant support of regional assets, including broadband, and provides community and economic development support within the region;

(4) The RISE project's forecasted outcomes align with RISE objectives; and

(5) The RISE project will target support to existing industry(ies), whose significance in the region may be stagnant or on the decline but can be enhanced through the benefits of the RISE project.

(g) *Administrator points.* A maximum of 10 points will be awarded, with justification, at the discretion of the Agency Administrator, as announced in a FEDERAL REGISTER notice.

§ 4284.1118 Selecting RISE grant applications for award.

Unless otherwise provided for in a FEDERAL REGISTER notice, RISE grant applications will be evaluated, assigned priority points as described in § 4284.1117 and ranked from highest to lowest score for funding consideration, subject to the availability of funding.

§ 4284.1119 Awarding and Administering RISE Grants.

The Agency will award and administer RISE grants in accordance with departmental regulations and with the procedures and requirements specified in this part.

(a) *Bonding and insurance.* The applicant must provide satisfactory evidence to the Agency that all officers of the applicant organization are authorized to receive and/or disburse Federal funds and are covered by such bonding and/or insurance requirements as are normally required by the applicant.

(b) *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 it accepts the conditions of the grant; or if certain conditions cannot be met, the applicant may propose alternate conditions in writing to the Agency. The Agency must resolve or concur with any changes proposed by the applicant to the letter of conditions before the application will be further processed.

(c) *Evidence of matching funds.* The applicant is responsible for providing documentation that the required matching funds for the project have been received or remain committed at the date a financial assistance agreement is executed with the Agency.

(d) *SAM requirements.* Each applicant applying for grant funds (unless an exception, as outlined in 2 CFR 25.110(a) through (d), is approved by the Agency) is required to:

(1) Be registered in SAM before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

(e) *Financial assistance agreement.* Once the requirements specified in paragraphs (a) through (d) of this section have been met, the financial assistance agreement can be executed by the lead applicant and the Agency. The applicant 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.

(f) *Grant approval.* The lead applicant will be sent an executed copy of the executed Form RD 1940–1, ''Obligation of

Funds,'' and the financial assistance agreement.

§ 4284.1120 Servicing RISE grants.

The Agency will service RISE grants in accordance with the requirements specified in departmental regulations, the financial assistance agreement, 7 CFR part 1951, subparts E and O, other than 7 CFR 1951.709(d)(1)(i)(B)(iv), and the requirements in § 4284.1120, except as specified in paragraphs (a) through (d) 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 an award, the Agency will not approve the changes.

(1) *Prior Agency 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 notification prior to disbursement of funds. If project costs decrease, the Agency will reduce the grant amount, if necessary, to maintain a maximum grant amount of no greater than 80 percent of total project activities as required in § 4284.1114(a).

(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. Any 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 a written request to the Agency for approval. The proposed new contractor or vendor must have qualifications and experience acceptable to the Agency. The written request must contain sufficient information 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 will be allowed to 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:

(i) Continue with the original contractor or vendor;

(ii) Find another contractor or vendor that has qualifications and experience acceptable to the Agency to complete the project; or

(iii) 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. Any Agency decision will be provided in writing to the lead applicant.

(c) *Transfer of Applicant or Ownership.* Any change to the jobs accelerator partnership prior to the obligation of funds must be approved by the Agency and will only be considered if the partnership entities are eligible in accordance with § 4284.1112. After the project is obligated and operational, the applicant 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 lead applicant entity under this subpart; and

(2) 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 of acquired asset requirements as outlined in 2 CFR part 200 and departmental regulations.

(e) *Financial management system and records.* The grantee must provide for financial management systems and maintain records as specified in paragraphs (e)(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 three (3) years after completion of the grant period, 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 2 CFR part 200, subpart F. 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.* The Agency will determine, based on the applicable departmental regulations, whether disbursement of a grant will be by advance or reimbursement. Any funds disbursed in advance of the expense shall be used within three months and the financial need substantiated in writing by the grantee. Form SF–270 or Form SF–271 must be completed by the grantee and submitted to the Agency no more often than monthly to request either an advance or reimbursement of funds.

(h) *Reporting Requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (h) (1) and (2) 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) *Performance reports.* Grantees shall submit a performance report semi-annually for the first two years, and then annually thereafter, with the first report submitted no later than six months after receiving a grant under this section. This report will include, but not be limited to, the following:

(i) All activities funded with the grant funds;

(ii) Evaluation of progress towards strategic initiatives identified in the application for the grant, including a discussion of any issues which may have occurred;

(iii) Measurement of progress using performance measures during the project period, which may include the following:

(A) High-wage jobs created;

(B) High-wage jobs retained;

(C) Private investment leveraged;

(D) Businesses improved;

(E) Businesses retained;

(F) New business formations;

(G) New products, prototypes and/or services commercialized;

(H) Improvement of the value of existing products or services under development;

(I) Regional collaboration as measured by the number of organizations actively engaged in the industry cluster and/or the number of symposia held by the industry cluster, including organizations that are not located in the immediate region defined by the partnership and/or the number of further cooperative agreements;

(J) Number of educations and training activities relating to the innovation;

(K) Number of innovative products, services and/or prototypes launched;

(L) Number of jobs relocated from outside of the United States to the region;

(M) Amount and number of new equity investments in industry cluster firms;

(N) Amount and number of new loans to industry cluster firms;

(O) Dollar increase in exports resulting from the project activities;

(P) Percentage of employees for which training was provided;

(Q) Improvement in sales of participating businesses;

(R) Improvement in wages paid at participating businesses;

(S) Improvement in income of participating workers;

(T) Any measure determined appropriate by the Agency; and

(U) Broadband development in the targeted region.

(iv) Initiatives and timetable established for the next reporting period; and

(v) Any additional information as found in the annual FEDERAL REGISTER notice.

§§ 4284.1121—4284.1130 [Reserved]

§ 4284.1131 OMB control number.

The information collection requirements in this subpart are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0570–0075.

PART 4285—COOPERATIVE AGREEMENTS

Subpart A—Federal-State Research on Cooperatives Program

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4285.100 OMB control number.

AUTHORITY: 7 U.S.C. 1623; Public Law 103–111, 107 Stat. 1046; 7 U.S.C. 2201; USDA Secretary's Memorandum 1020–39, dated September 30, 1993; and Public Law 103–211, 108 Stat. 3.

SOURCE: 59 FR 38342, July 28, 1994, unless otherwise noted.

Subpart A—Federal-State Research on Cooperatives Program

§ 4285.1 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Federal-State Research on Cooperatives cooperative agreement funds to finance programs of research on cooperatives as authorized under Section 204 (b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). The primary purpose of this matching fund program, via cooperative agreements, is to encourage State Departments of Agriculture and State Agricultural Experiment Stations in conducting research related to agricultural cooperatives.

§ 4285.2 Cooperative agreement purposes.

Rural Development Administration (RDA) or its successor agency may enter into a cooperative agreement with a State agency to provide funds to the State agency to:

(a) Conduct marketing research related to agricultural cooperatives.

(b) Assist other organizations in conducting marketing research related to agricultural cooperatives.

§ 4285.3 Definitions.

As used in this part:

Agreement period. The total period of time approved by the Assistant Administrator for Cooperative Services for conducting the proposed project as outlined in an approved application. The time period is normally no more than 3 years, renewable for cause not to exceed a total of 4 fiscal years.

Agricultural products. Agricultural products include agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed or manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof.

Assistant Administrator for Cooperative Services. The Assistant Administrator for Cooperative Services, Rural Development Administration or its successor agency, USDA or any authorized delegate.

Awarding official. The Assistant Administrator for Cooperative Services or authorized delegate.

Cooperative agreement. A legal instrument reflecting a relationship between the United States Government and a State where:

(1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State agency to carry out research related to cooperatives; and

(2) Substantial involvement is anticipated between RDA or its successor agency, acting for the Federal Government, and the State or other recipient during performance of the research in the agreement.

Cooperator. The State agency designated in the cooperative agreement award document as the responsible legal entity to whom a cooperative agreement is awarded under this part.

Department. The U.S. Department of Agriculture.

Methodology. The research approach to be followed to carry out the project.

Principal investigator. A single individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the cooperative agreement application and approved by the Assistant Administrator for Cooperative Services.

Project. The particular activity within the scope of one or more of the research program areas identified in the annual program solicitation that is supported by a cooperative agreement under this part.

State agencies. State agencies include, among others, State Agricultural Experiment Stations and State Departments of Agriculture in the 50 States, the Virgin Islands, and Guam, and other appropriate State agencies. Final determination of whether certain 1890 or 1862 Land Grant institutions qualify as state agencies will be determined on a case-by-case basis by the Office of the General Counsel (OGC), USDA.

§§ 4285.4–4285.23 [Reserved]

§ 4285.24 Eligibility.

To enter into a cooperative agreement for these funds, the applicant must:

(a) Be a State Agency as defined in § 4285.3 of this subpart;

(b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of economic, business management, or other needed research area; or

(2) Have the necessary administrative and supervisory controls in place to assure an agreed upon contracting organization has the proven ability to perform responsibly in the field of economic, business management, or other needed research area;

(c) Legally obligate itself to administer cooperative agreement funds, provide adequate accounting of the expenditure of such funds, and comply with the cooperative agreement;

(d) Provide at least 50 percent of the funds necessary to conduct the research from non-federal funds; and

(e) Agree to conduct proposed research related to cooperatives and agricultural marketing.

§ 4285.25 Authorized use of cooperative agreement funds.

Funds received for research under cooperative agreements in this program shall only be used for:

(a) Payment of salaries and necessary employee benefits of personnel as agreed upon in the Cooperative Agreement. Included are salaries and benefits of State employees assigned full-time to one or more projects, or the percent of the salaries and benefits related to project work for State employees assigned part-time to research on one or more projects. Salaries and benefits include basic salary, other compensation such as holiday pay, sick or annual leave, and personnel benefits (quarters allowance, payments to other funds such as employees' life insurance, health benefits, retirement, Federal Insurance Contributions Act (FICA), accident compensation, and similar payments). For any of the benefit items when the State usually pays the employer share, Federal funds may be used to pay the proportionate share of such employer contributions.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment rental. The purchase of office equipment is permissible when the cooperator determines it to be more economical than renting. However, as a general rule, these types of expenses would be classified as indirect costs in multiple funded organizations and would not be an allowable expense. Planned purchases of equipment costing more than $200 per unit must be approved by RDA or its successor agency. Equipment purchased becomes State property pursuant to the cooperative agreement.

(c) Payment of necessary and reasonable costs of printing publications of research project results. However, all such publications should show the RDA or its successor agency as cooperator in the project and bear the following statement: ''State funds for this project (publication) were matched with Federal funds under the Federal-State Research on Cooperatives Program of the U.S. Department of Agriculture, Rural Development Administration or its successor agency, Cooperative Services, as provided by the Agricultural Marketing Act of 1946 and (appropriate) fiscal year appropriations.''

(d) Purchase of office supplies (such as paper, pens, pencils, and trade magazines) and postage needed for project activities.

(e) Payment of necessary and reasonable travel expenses.

§§ 4285.26–4285.45 [Reserved]

§ 4285.46 Prohibited use of cooperative agreement funds.

(a) The Agricultural Marketing Act prohibits the use of Federal funds to pay for newspaper or periodical space and radio and television time, either directly to the media or indirectly though an advertising agency or other firm. County and State fair exhibits, as well as commodity months and weeks, are also excluded as the research on cooperatives program activities.

(b) Federal funds cannot be used to purchase products or samples of products to give away to the public.

(c) Federal program funds cannot be used to purchase:

(1) Promotional pieces such as point-of-sale materials, promotional kits, billboard space and signs, streamers, automobile stickers, table tents, and placemats; or

(2) Promotion items of a personal gift nature.

(d) Cooperative agreement funds cannot be used to conduct general publicity or information programs designed to build the image of the State's agriculture or of a particular State Department of Agriculture or Agricultural Experiment Station.

(e) Project funds cannot be used to pay for the salary and travel of employees of cooperatives, trade associations, commodity groups, and other industry organizations, or of State personnel while engaged in managing market orders, cooperatives, or other group endeavors.

(f) Commissioners, Directors, and Secretaries of State Departments of Agriculture, Agricultural Experiment Stations, and other State agencies cannot charge their salaries and travel to project funds, with the exception of travel to workshops or conferences devoted to the Federal-State Research On Cooperatives Program.

(g) Funds made available for this program shall not be subject to reduction for indirect costs or for tuition remission.

§ 4285.47 Limitations.

The amount of funds available for the cooperative agreements under this program is limited to the amount appropriated for the fiscal year.

§§ 4285.48–4285.57 [Reserved]

§ 4285.58 How to apply for cooperative agreement funds.

(a) A program solicitation will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, and/or any other appropriate means, as early as practicable each fiscal year in which funds are appropriated for the program.

(b) The annual program solicitation will contain information sufficient to enable all eligible applicants to prepare proposals including:

(1) Desired research topics. The FY–94 solicitation will encourage studies:

(i) To improve the efficiency and effectiveness of marketing of agricultural cooperatives;

(ii) To measure the impact of rural cooperatives on the local economies;

(iii) That help identify opportunities to develop cooperatives for new or alternative market uses of agricultural products;

(iv) That help identify ways to develop agricultural marketing cooperatives; and

(v) Addressing other cooperative marketing objectives;

(2) Explanation of eligibility requirements as outlined in § 4285.24 of this subpart;

(3) The notice of availability of application forms and instructions for submission of applications;

(4) The notice of deadline dates for postmarking proposal packages.

(c) *Format for proposals.* Unless otherwise indicated by the Department in the annual program solicitation, the following information must be submitted for the preparation of proposals under this program:

(1) Form SF–424, ''Application for Federal Assistance.''

(2) Form SF–424A, ''Budget Information—Non-Construction Programs.''

(3) Form SF–424B, ''Assurances—Non-Construction Programs.''

(4) *Statement of Work.* The application must include a narrative statement describing the nature of the proposed research. The Statement of Work must include at least the following:

(i) Title of the Project. The title of the proposal must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the name(s) of the principal investigator(s). Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale behind the proposed research must be presented. The need for the proposed research must be clearly related to marketing and to the needs of agricultural cooperatives.

(iv) Objectives of the project. The specific description of the overall project goal(s) and supporting objectives must be presented.

(v) Procedures for conducting the research. The hypotheses or questions being asked and the methodology being applied to the proposed project must be described. A description of any subcontracting arrangements that will be used for conducting the research must be included. A tentative schedule for conducting major steps involved in the investigation must also be included.

(vi) The expected output of the project. A description of how the results of the research will be disseminated should be presented. Responsibility for publishing any research reports or other types of output should also be identified.

(5) *Collaborative arrangements.* If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (*i.e.,* letters of intent) should be provided to assure reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(6) *Personnel support.* To assist reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following must be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum Vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, it should not include meetings attended, seminars given, or personal data such as birth date, martial status, or community activities; and

(iii) Publication List(s). A chronological list of all publications in refereed journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Also list other non-refereed technical publications that have relevance to the proposed project. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

§§ 4285.59–4285.68 [Reserved]

§ 4285.69 Evaluation and disposition of applications.

(a) *Evaluation.* (1) All proposals received from eligible applicants and postmarked in accordance with deadlines established in the annual program solicitation shall be evaluated by the Assistant Administrator for Cooperative Services through an RDA or its successor agency staff panel. The Assistant Administrator for Cooperative Services will select the evaluation panel from staff determined to be highly qualified in the subject matter areas that were emphasized in the current year's solicitation and from those with no potential conflict of interest with the applicants.

(2) Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (e.g., relationship of proposal to research topic(s) listed in solicitation). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(3) Proposals will be ranked based on evaluation criteria established in § 4285.70 of this subpart, and financial support levels will be recommended to the Assistant Administrator for Cooperative Services by the panel within the limitation of the total funding available in the fiscal year. The purpose of these evaluations is to provide information upon which the Assistant Administrator for Cooperative Services may make informed judgments in selecting proposals. Such recommendations are advisory only and are not binding on the awarding official of RDA or its successor agency. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* (1) On the basis of the Assistant Administrator for Cooperative Services's evaluation of an application in accordance with paragraph

(a) of this section, the Assistant Administrator for Cooperative Services will either:

(i) Approve support using currently available funds;

(ii) Defer support due to lack of funds or need for further evaluation; or

(iii) Disapprove support for the proposed project in whole or in part.

(2) With respect to any approved project, the Assistant Administrator for Cooperative Services will determine the project period during which the project may be funded.

(3) Any deferral or disapproval of an application will not preclude its reconsideration or reapplication during subsequent fiscal years. However, applicants must reapply if reconsideration is desired.

(4) The Assistant Administrator for Cooperative Services will not make a cooperative agreement funding award, based upon an application covered by this part, unless the application has been properly reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

§ 4285.70 Evaluation criteria.

(a) In evaluating the proposal, the RDA or its successor agency staff review panel and the awarding official will take into account the degree to which the proposal demonstrates the following:

(1) Focus on a practical solution to a significant problem involving one or more of the following on a cooperative business basis: the preparation for market, processing, packaging, handling, storing, transporting, distributing, or marketing of agricultural products. (35%)

(2) Adequacy, soundness, and appropriateness of the proposed approach to solve the identified problem. (30%)

(3) Feasibility and probability of success of project solving the problem. (10%)

(4) Qualifications, experience in related work, competence, and availability of project personnel to direct and carry out the project. (25%)

(b) In addition, the cost relative to the expected research results will be considered in determining the awarding of the agreements.

§§ 4285.71–4285.80 [Reserved]

§ 4285.81 Cooperative agreement awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make awards for cooperative agreements to those applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Assistant Administrator for Cooperative Services as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this part shall be expended solely in accordance with the methods identified in approved application and budget, the regulations of this part, the terms and conditions of the award, the Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, and 421.

(b) *Cooperative agreement award document and notice of award*—(1) *Cooperative agreement award document.* The award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Assistant Administrator for Cooperative Services has competitively awarded funds under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying cooperative agreement number assigned by RDA or its successor agency;

(v) Project period, specifying the amount of time the Agency intends to support the project without requiring recompetition for funds;

(vi) Total amount of Agency financial assistance approved by the Assistant Administrator for Cooperative Services during the project period;

(vii) Legal authority(ies) under which the cooperative agreement is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the cooperative agreement award; and

(ix) Other information or provisions deemed necessary by RDA or its successor agency to carry out its agreement activities or to accomplish the purpose of a particular cooperative agreement.

(2) *Notice of award.* The notice of award of funds for the cooperative agreement will be in the form of a letter providing pertinent instructions or information to the cooperator.

(c) *Types of cooperative agreement instruments.* The types of cooperative agreements shall be as follows:

(1) *New agreement.* This is an agreement instrument by which RDA or its successor agency agrees to support a specified level of effort for a project not supported previously under this program. This type of agreement is approved on the basis of an RDA or its successor agency Staff evaluation review and recommendation.

(2) *Renewal agreement.* This is an agreement instrument by which RDA or its successor agency agrees to provide additional funding for a project beyond the period approved in an original or amended agreement, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it must include a summary of progress to date from the previous agreement period. A renewal agreement shall be based upon new application, de novo review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Supplemental agreement.* This is an instrument by which RDA or its successor agency agrees to provide small amounts of additional funding under a new or renewal cooperative agreement as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually one year or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature will not require additional review.

(d) *Obligation of the Federal Government.* The approval of any application or the award of any funds for a cooperative agreement shall not commit nor obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(e) *Obligation of the cooperator.* The cooperator shall be responsible for:

(1) Making a brief quarterly progress reports at the end of each December, March, June and September to the FSROC program staff for the duration of the research project;

(2) Presenting a final administrative report on the project at the end of the research project; and

(3) Preparing and publishing a report(s) of research findings for dissemination to interested producers, cooperatives, and agencies. Include recognition to financial and other assistance received from the FSROC program.

[59 FR 38342, July 28, 1994, as amended at 79 FR 76018, Dec. 19, 2014]

§ 4285.82 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The cooperator may not, in whole or in part, delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement funds.

(b) *Change in project plans.* (1) The permissible changes by the cooperator, principal investigator(s), or other key project personnel in the approved cooperative agreement shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the cooperator and/or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the Assistant Administrator for Cooperative Services for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by cooperator and approved in writing by the

Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes. Normally, no requests for such changes outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or realignment of other key project personnel shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes, except as may be allowed in the terms and conditions of a cooperative agreement award.

(c) *Changes in project period.* The project period determined pursuant to §4285.81(b) of this subpart may be extended by the Assistant Administrator for Cooperative Services without additional financial support, for such additional period(s) as the Assistant Administrator for Cooperative Services determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall not exceed four (4) years and shall be further conditioned upon prior request by the cooperator and approval in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, except as may be allowed in the terms and conditions of a cooperative agreement award.

(d) *Changes in approved budget.* The terms and conditions of a cooperative agreement will prescribe circumstances under which written Agency approval must be requested and obtained prior to instituting changes in an approved budget.

§§ 4285.83–4285.92 [Reserved]

§ 4285.93 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to cooperative agreement proposals considered for review or to agreements awarded under this part. These include but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

(c) 7 CFR Part 15, Subpart A—USDA implementation of title VI of the Civil Rights Act of 1964 in order to assure nondiscrimination;

(d) 7 CFR Part 1473—National Agricultural, Research, Extension, and Teaching Policy Act Amendments of 1981 if the project involves a college or university;

(e) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(f) 2 CFR part 415, General Program Administrative Regulations;

(g) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(h) 2 CFR part 418, New Restrictions on Lobbying;

(i) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance);

(j) 7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions; 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

(k) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[59 FR 38342, July 28, 1994, as amended at 79 FR 76018, Dec. 19, 2014]

§ 4285.94 Other conditions.

Post-award requirements. Upon awarding the cooperative agreement, the post-award and audit requirements of 2 CFR part 200, as adopted by USDA in 2 CFR part 400 apply.

[79 FR 76018, Dec. 19, 2014]

§§ 4285.95–4285.99 [Reserved]

§ 4285.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0005. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 36 hours per response with an average of 3.48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0570–0005), Washington, DC 20503.

PART 4287—SERVICING

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4287.400 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1932(a); 7 U.S.C. 1989.

SOURCE: 61 FR 67648, Dec. 23, 1996, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Servicing Business and Industry Guaranteed Loans

SOURCE: 81 FR 36020, June 3, 2016, unless otherwise noted.

§ 4287.101 Introduction.

(a) As of October 1, 2020, this subpart is specifically applicable to and only

contains regulations for servicing Business and Industry (B&I) Loans guaranteed by the Agency prior to October 1, 2020 and Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID–19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Other than B&I CARES Act Program Loans and B&I loans guaranteed by the Agency prior to October 1, 2020, this subpart is no longer used for servicing B&I loans guaranteed by the Agency. Requirements for B&I loans guaranteed by the Agency after October 1, 2020 (other than B&I CARES Act Loans) may be found at 7 CFR part 5001.

(b) The lender is responsible for servicing the entire loan and must remain mortgagee and secured party of record, notwithstanding the fact that another party may hold a portion of the loan.

(c) Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms and regulations referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *http://www.rd.usda.gov/publications*. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the Agency.

[81 FR 36020, June 3, 2016, as amended at 85 FR 62196, Oct. 2, 2020]

§ 4287.102 Definitions and abbreviations.

The definitions and abbreviations contained in § 4279.2 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of this chapter applies to this subpart.

§§ 4287.104–4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of this chapter applies to this subpart.

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The lender may contract for services but is ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations. Form RD 4279–4, ''Lender's Agreement,'' is the contractual agreement between the lender and the Agency that sets forth some of the lender's loan servicing responsibilities. These responsibilities include, but are not limited to, periodic borrower visits, the collection of payments, obtaining compliance with the covenants and provisions in the loan agreement, obtaining and analyzing financial statements, ensuring payment of taxes and insurance premiums, maintaining liens on collateral, keeping an inventory accounting of all collateral items, and reconciling the inventory of all collateral sold during loan servicing, including liquidation.

(a) *Lender reports and annual renewal fee.* The lender must report the outstanding principal and interest balance and the current loan classification on each guaranteed loan semiannually (at June 30 and December 31), using either the USDA Lender Interactive Network Connection (LINC) system or Form RD 1980–41, ''Guaranteed Loan Status Report.'' The lender must transmit the annual renewal fee to the Agency in accordance with § 4279.120(b) of this chapter calculated based on the December 31 semiannual status report.

(b) *Loan classification.* The lender must provide the loan classification or rating under its regulatory standards as of loan closing, using either the LINC system or Form 1980–19, ''Guaranteed Loan Closing Report.'' When the lender changes the loan classification in the future, the lender must notify the Agency within 30 days, in writing, of any change in the loan classification.

(c) *Agency and lender conference.* At the Agency's request, the lender must consult with the Agency to ascertain

how the guaranteed loan is being serviced and that the conditions and covenants of the loan agreement are being enforced.

(d) *Borrower financial reports.* The lender must obtain, analyze, and forward to the Agency the borrower's and any guarantor's annual financial statements required by the loan agreement within 120 days of the end of the borrower's fiscal year. States, local government, Indian tribes, institution of higher education, and nonprofit organization borrowers who meet the Federal awards expended threshold established in 2 CFR part 200, subpart F, during their fiscal year must submit an audit conducted in accordance with 2 CFR part 200, subpart F. When the borrower's audit is conducted in accordance with 2 CFR part 200, subpart F, audits must be submitted no later than nine months after the end of the borrower's fiscal year or 30 days after the borrower's receipt of the auditor's report, whichever is earlier. The lender must analyze these financial statements and provide the Agency with a written summary of the lender's analysis, ratio analysis, and conclusions, which, at a minimum, must include trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the lender, any routine servicing actions performed, and other indications of the financial condition of the borrower. Spreadsheets of the financial statements must also be included. Following the Agency's review of the lender's financial analysis, the Agency will provide a written report of any concerns to the lender. Any concerns based upon the Agency's review must be addressed by the lender. If the lender makes a reasonable attempt to obtain financial statements but is unable to obtain the borrower's cooperation, the failure to obtain financial statements will not impair the validity of the Loan Note Guarantee.

(e) *Protection of Agency interests.* If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency to rectify the situation. In determining any loss, the Agency will assess against the lender any cost to the Agency associated with such action.

[81 FR 36020, June 3, 2016, as amended at 87 FR 58021, Sept. 23, 2022]

§§ 4287.108–4287.111 [Reserved]

§ 4287.112 Interest rate changes.

(a) The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The lender must obtain prior Agency concurrence and provide a copy of the modification agreement to the Agency. If any of the guaranteed portion has been purchased by the Agency, the Agency (as a holder) will affirm or reject interest rate change proposals in writing.

(b) No increases in interest rates will be permitted, except the normal fluctuations in approved variable interest rates, unless a temporary interest rate reduction occurred or to change from a variable rate to a fixed rate. Variable rates can be changed to a fixed rate at the request of the borrower, lender, agreement of the holder, if any, and with the Agency's prior written concurrence. After the rate change, the rate must meet the requirements of 7 CFR 4279.125.

(c) The interest rate, after adjustments, must comply with the interest rate requirements set forth in § 4279.125 of this chapter.

(d) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes shall be issued. The lender must provide copies of all legal documents to the Agency.

[81 FR 36020, June 3, 2016, as amended at 87 FR 58021, Sept. 23, 2022]

§ 4287.113 Release of collateral.

(a) Within the parameters of paragraph (c) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate

guarantees) without Agency concurrence if the proceeds generated are used to pay down debt in order of lien priority, reduce the guaranteed loan or to acquire replacement collateral. Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and proceeds used for the normal course of business operations may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan is not in monetary default or liquidation.

(b) If a release of collateral does not meet the requirements of paragraph (a) of this section, the lender must complete a written evaluation to justify the release and obtain written Agency concurrence in advance of the release.

(c) Collateral must remain sufficient to provide for adequate collateral coverage for the outstanding guaranteed loan(s). For a release of collateral request when the Borrower is not in monetary default or liquidation, the lender must support all releases of chattel collateral with a value exceeding $250,000 and real estate collateral with a value exceeding $500,000 with a current appraisal on the collateral being released and otherwise meets the requirements of § 4279.144 of this chapter. All other release of collateral requests must meet the appraisal requirements of § 4279.144 of this chapter. The cost of this appraisal will not be paid for by the Agency. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it has been determined that the Agency may be adversely affected by the release of collateral. The sale or release of the collateral must be based on an arm's length transaction, and there must be adequate consideration for the release of collateral. Such consideration may include, but is not limited to:

(1) Application of the net proceeds from the sale of collateral to the borrower's debts in order of their lien priority against the sold collateral;

(2) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value for which the lender will obtain as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of collateral to the borrower's business operation in such a manner that a significant improvement to the borrower's debt service ability will be clearly demonstrated. The lender's written request must detail how the borrower's debt service ability will be improved; or

(4) Assurance that the release of collateral is essential for the success of the business, thereby furthering the goals of the program. Such assurance must be supported by written documentation from the lender acceptable to the Agency.

[81 FR 36020, June 3, 2016, as amended at 87 FR 58021, Sept. 23, 2022]

§§ 4287.114–4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred with in writing by the Agency in advance of the subordination. The lender's subordination proposal must include a financial analysis of the servicing action and be fully supported by current financial statements of the borrower and guarantors that are less than 90 days old.

(a) The subordination of lien position must enhance the borrower's business and not adversely affect the potential for collection of the B&I loan through repayment or liquidation.

(b) The lien to which the guaranteed loan is subordinated is for a fixed dollar limit and for a fixed term after which the guaranteed loan lien priority will be restored.

(c) Collateral must remain sufficient to provide for adequate collateral coverage. The Agency may require a current independent appraisal in accordance with § 4279.144 of this chapter.

(d) Lien priorities must remain for the portion of the collateral that was not subordinated.

(e) A subordination to a line of credit cannot exceed 1 year. The term of the line of credit cannot be extended.

§ 4287.124 Alterations of loan instruments.

The lender must neither alter nor approve any alterations or modifications of any loan instrument without the prior written approval of the Agency.

§§ 4287.125–4287.132 [Reserved]

§ 4287.133 Sale of corporate stock.

Any sale or transfer of corporate stock must be approved by the Agency in writing and must be to an eligible individual or entity in accordance with § 4279.108(a) and 4279.108(b) of this chapter. In the event a portion of the borrower's stock is sold or transferred, the Agency may require personal or corporate guarantees from those then owning a 20 percent or more interest in the borrower in accordance with § 4279.132 of this chapter.

§ 4287.134 Transfer and assumption.

The lender may request a transfer and assumption of a guaranteed loan in situations where the total indebtedness, or less than the total indebtedness, is transferred to another eligible borrower on the same or different terms. A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted. Additionally, no transfer and assumption is permitted when the Agency has repurchased 100 percent of the guaranteed portion of the loan.

(a) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to an eligible borrower. The lender must provide credit reports for each individual or entity owning 20 percent or more interest in the transferee, along with such other documentation as the Agency may request to determine eligibility. In accordance with § 4279.132 of this chapter, the Agency will require personal and/or corporate guarantee(s) from all owners that have a 20 percent or more ownership interest in the transferee. When warranted by an Agency assessment of potential financial risk, the Agency may also require guarantees of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and may require security for any guarantee. The new borrower must sign Form RD 4279–1, ''Application for Loan Guarantee,'' and any guarantors of the guaranteed loan must sign Form RD 4279–14, ''Unconditional Guarantee.''

(b) *Terms.* Loan terms may be changed with the concurrence of the Agency, all holders, and the transferor (including guarantors) if the transferor has not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4279.126 of this chapter.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the fair market value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement of the transferee. The Agency will not pay for the appraisal. If the transfer is for less than the debt, for a release of liability, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) *Proceeds.* The lender must credit any proceeds received from the sale of collateral before a transfer and assumption to the transferor's guaranteed loan debt in order of lien priority before the transfer and assumption is closed.

(e) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered a new loan application, which requires submission of a complete Agency application in accordance with § 4279.161(b) of this chapter.

(f) *Credit quality.* The lender will provide a credit analysis of the proposal that addresses capacity (sufficient cash flow to service the debt), capital (net worth), collateral (assets to secure the debt), conditions (of the borrower, industry trends, and the overall economy), and character (integrity of the

transferee management) in accordance with § 4279.131 of this chapter.

(g) *Appraisals.* If the proposed transfer and assumption is for the full amount of the Agency guaranteed loan, the Agency will not require an appraisal, unless a guarantor is being released from liability in accordance with paragraph (c) of this section. If the proposed transfer and assumption is for less than the full amount of the Agency guaranteed loan, the Agency will require an appraisal on all of the collateral being transferred, and the amount of the assumption must not be less than this appraised value. The lender is responsible for obtaining this appraisal, which must conform to the requirements of § 4279.144 of this chapter. The Agency will not pay the appraisal fee or any other costs associated with this transfer.

(h) *Documents.* Prior to Agency approval, the lender must provide the Agency a written legal opinion that the transaction can be properly and legally transferred and assurance that the conveyance instruments will be appropriately filed, registered, and recorded.

(1) The lender must not issue any new promissory notes. The assumption must be completed in accordance with applicable law and must contain the Agency case number of the transferor and transferee. The lender must provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new loan agreement, consistent in principle with the original loan agreement, must be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) Upon execution of the transfer and assumption, the lender must provide the Agency with a written legal opinion that the transfer and assumption is completed, valid, and enforceable, and certification that the transfer and assumption is consistent with the conditions outlined in the Agency's conditions of approval for the transfer and complies with all Agency regulations.

(i) *Loss/repurchase resulting from transfer.* (1) Any resulting loss must be processed in accordance with § 4287.158.

(2) If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78 of this chapter.

(j) *Related party.* If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(k) *Cash downpayment.* The lender may allow the transferee to make cash downpayments directly to the transferor provided:

(1) The transfer and assumption is made for the total indebtedness;

(2) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(3) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan, as well as any other indebtedness; and

(4) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(l) *Annual renewal fees.* The lender must pay any annual renewal fee published in the FEDERAL REGISTER and then in effect at the time the loan is closed for the duration of the Loan Note Guarantee. Annual renewal fees are due for the entire year even if the Loan Note Guarantee is terminated before the end of the year.

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender is prohibited from selling or transferring the entire loan without the prior written approval of the Agency. Because the Loan Note Guarantee is associated with a specific promissory note and cannot be transferred to a new promissory note, the lender must transfer the original

promissory note to the new lender, who must agree to its current loan terms, including the interest rate, secondary market holder (if any), collateral, loan agreement terms, and guarantors. The new lender must also obtain the original Loan Note Guarantee, original personal and corporate guarantee(s), and the loan payment history from the transferor lender. If the new lender wishes to modify the loan terms after acquisition, the new lender must submit a request to the Agency.

(a) The Agency may approve the substitution of a new lender if:

(1) The proposed substitute lender:

(i) Is an eligible lender in accordance with §4279.29 of this chapter and is approved as such;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) The substitution of the lender is requested in writing by the borrower, the proposed substitute lender, and the original lender of record, if still in existence.

(b) The Agency will not pay any loss or share in any costs (*e.g.*, appraisal fees and environmental assessments) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes situations where a lender is merged with or acquired by another lender and situations where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(c) Where the lender has failed and been taken over by the FDIC and the loan is liquidated by the FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if the FDIC were an approved substitute lender.

(d) In cases where there is a substitution of the lender, the Agency and the new lender must execute a new Form RD 4279–4, ''Lender's Agreement,'' unless a valid Lender's Agreement already exists with the new lender.

§4287.136 Lender failure.

(a) *Uninsured lender.* The lender or insuring agency cannot arbitrarily change the Lender's Agreement and related documents on the guaranteed loan, and the Agency will make the successor to the failed institution aware of the statutory and regulatory requirements. If the acquiring institution is not an eligible lender as set forth in §4279.29 of this chapter, the Loan Note Guarantee will not be enforceable, and the institution must promptly apply to become an eligible lender. The failure of the uninsured lender to become an eligible lender will result in the Loan Note Guarantee being unenforceable. A new lender approved by the Agency will be afforded the benefits of the Loan Note Guarantee in the sharing of any loss and eligible expenses subject to the limits that are set forth in the regulations governing the program.

(b) *Insured lender.* The FDIC and the Agency have entered into an Inter-Agency Agreement and all parties are to abide by this Agreement or successor document(s). This document sets forth the duties and responsibilities of each Agency when an institution fails. The lender must take such action that a reasonably prudent lender would take if it did not have a Loan Note Guarantee to protect the lender and Agency's mutual interest.

§§4287.137–4287.144 [Reserved]

§4287.145 Default by borrower.

The lender's primary responsibilities in default are to act prudently and expeditiously, to work with the borrower to bring the account current or cure the default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in a manner that will minimize any potential loss. The lender may initiate liquidation subject to submission and approval of a complete liquidation plan.

(a) The lender must notify the Agency when a borrower is more than 30 days past due on a payment and the delinquency cannot be cured within 30

days or when a borrower is otherwise in default of covenants in the loan agreement by promptly submitting Form RD 1980–44, ''Guaranteed Loan Borrower Default Status,'' or processing the Default Status report in LINC. The lender must update the loan's status each month using either Form RD 1980–44 or the LINC Default Status report until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender must meet with the Agency and, if practical, the borrower to discuss the situation.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Curative actions (subject to the rights of any holder and Agency concurrence) include, but are not limited to:

(i) Deferment of principal and/or interest payments;

(ii) An additional unguaranteed temporary loan by the lender to bring the account current;

(iii) Reamortization of or rescheduling the payments on the loan;

(iv) Transfer and assumption of the loan in accordance with § 4287.134;

(v) Reorganization;

(vi) Liquidation; and

(vii) Changes in interest rates with the Agency's, the lender's, and any holder's approval. Any interest payments must be adjusted proportionately between the guaranteed and unguaranteed portion of the loan.

(2) The term of any deferment, rescheduling, reamortization, or moratorium will be limited to the lesser of the remaining useful life of the collateral or remaining limits as set forth in § 4279.126 of this chapter (excluding paragraph (c)). During a period of deferment or moratorium on the guaranteed loan, the lender's unguaranteed loan(s) and any stockholder loans must also be under deferment or moratorium. Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for success and the remaining life of the collateral supports the action.

(3) In the event of a loss or a repurchase, the lender cannot claim default or penalty interest, late payment fees, or interest on interest. If the restructuring includes the capitalization of interest, interest accrued on the capitalized interest will not be covered by the guarantee. Consequently, it is not eligible for repurchase from the holder and cannot be included in the loss claim.

(c) Debt write-downs for an existing borrower, where the same principals retain control of and decisionmaking authority for the business, are prohibited, except as directed or ordered under the Bankruptcy Code.

(d) For loans closed on or after August 2, 2016, in the event of a loss, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date.

(e) For loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual. The guarantee will not cover interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter.

(f) For repurchases of guaranteed loans, refer to § 4279.78 of this chapter.

§§ 4286.146–4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Lenders must exercise sound judgment in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Lenders cannot make protective advances in lieu of additional loans. A protective advance claim will be paid only at the time of the final report of loss payment.

(a) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued interest times the percentage of guarantee regardless of any protective advances made.

(b) In the event of a final loss, protective advances will accrue interest at the note rate and will be guaranteed at the same percentage of guarantee as provided for in the Loan Note Guarantee. The guarantee will not cover interest on the protective advance accruing after 90 days from the most recent delinquency effective date.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when the cumulative total of protective advances exceeds $200,000 or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less.

§4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure within a reasonable period of time, the lender, with Agency consent, must liquidate the loan. In accordance with §4287.145(d), for loans closed on or after August 2, 2016, in the event of a loss, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date.

(a) *Decision to liquidate.* A decision to liquidate must be made when the lender determines that the default cannot be cured through actions such as those contained in §4287.145, or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when one or more of the following exist:

(1) A loan is 90 days behind on any scheduled payment and the lender and the borrower have not been able to cure the delinquency through actions such as those contained in §4287.145.

(2) It is determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender is uncooperative in resolving the problem or the Agency or lender has reason to believe the borrower is not acting in good faith, and it would improve the position of the guarantee to liquidate immediately.

(b) *Repurchase of loan.* When the decision to liquidate is made, if any portion of the loan has been sold or assigned under §4279.75 of this chapter and not already repurchased, provisions will be made for repurchase in accordance with §4279.78 of this chapter.

(c) *Lender's liquidation plan.* The lender is responsible for initiating actions immediately and as necessary to assure a prompt, orderly liquidation that will provide maximum recovery. Within 30 days after a decision to liquidate, the lender must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include at least the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger, if available, that reflects the current loan balance, accrued interest to date, and the method of computing the interest;

(2) A full and complete list of all collateral, including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from guarantors;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's most recently available financial statements;

(6) Copies of each guarantor's most recently available financial statements;

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the Agency on the progress of liquidation, not to exceed every 60 days;

(9) Estimated protective advance amounts with justification;

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined. A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and

the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and must be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens;

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(12) Legal opinions, if needed by the lender's legal counsel; and

(13) An estimate of fair market and potential liquidation value of the collateral. If the value of the collateral is $250,000 or more, the lender must obtain an independent appraisal report meeting the requirements of § 4279.144 of this chapter for the collateral securing the loan, which reflects the fair market value and potential liquidation value. For collateral values under this threshold, lenders must follow their primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value. The liquidation appraisal of the collateral must evaluate the impact on market value of any release of hazardous substances, petroleum products, or other environmental hazards. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender. In order to assure prompt action, the liquidation plan can be submitted with an estimate of collateral value, and the liquidation plan may be approved by the Agency subject to the results of the final liquidation appraisal.

(d) *Approval of liquidation plan.* The lender's liquidation plan must be approved by the Agency in writing. The lender and Agency must attempt to resolve any Agency concerns. If the liquidation plan is approved by the Agency, the lender must proceed expeditiously with liquidation and must take all legal action necessary to liquidate the loan in accordance with the approved liquidation plan. The lender must update or modify the liquidation plan when conditions warrant, including a change in value based on a liquidation appraisal. If the liquidation plan is not approved by the Agency, the lender must take such actions that a reasonably prudent lender would take without a guarantee and keep the Agency informed in writing. The lender must continue to develop a liquidation plan in accordance with this section.

(e) *Acceleration.* The lender will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other legal actions required. The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower. The lender must obtain Agency concurrence prior to the acceleration of the loan if the sole basis for acceleration is a nonmonetary default. In the case of monetary default, prior approval by the Agency of the lender's acceleration is not required, although Agency concurrence must still be given not later than at the time the liquidation plan is approved. The lender will provide a copy of the acceleration notice or other acceleration document to the Agency.

(f) *Filing an estimated loss claim.* When the lender owns any of the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation is expected to exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, for loans closed on or after August 2, 2016, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date. The Agency will promptly process the loss claim in accordance with applicable Agency regulations as set forth in § 4287.158.

(g) *Accounting and reports.* The lender must account for funds during the period of liquidation and must, in accordance with the Agency-approved liquidation plan, provide the Agency with reports on the progress of liquidation

including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(h) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender must transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds using Form RD 1980–43, ''Lender's Guaranteed Loan Payment to Rural Development.''

(i) *Abandonment of collateral.* When the lender adequately documents that the cost of liquidation would exceed the potential recovery value of certain collateral and receives Agency concurrence, the lender may abandon that collateral. When the lender makes a recommendation for abandonment of collateral, it must comply with 7 CFR part 1970, ''Environmental Policies and Procedures.''

(j) *Personal or corporate guarantees.* The lender must take action to maximize recovery from all personal and corporate guarantees, including seeking deficiency judgments when there is a reasonable chance of future collection.

(k) *Compromise settlement.* Compromise settlements must be approved by the lender and the Agency. Complete current financial information on all parties obligated for the loan must be provided. At a minimum, the compromise settlement must be equivalent to the value and timeliness of that which would be received from attempting to collect on the guarantee. The guarantor cannot be released from liability until the full amount of the compromise settlement has been received. In weighing whether the compromise settlement should be accepted, among other things, the Agency will weigh whether the comparison is more financially advantageous than collecting on the guarantee.

(l) *Litigation.* In all litigation proceedings involving the borrower, the lender is responsible for protecting the rights of the lender and the Agency with respect to the loan and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the lender is not adequately protecting the rights of the lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the lender, on behalf of the lender, or the Agency with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

§4287.158 Determination of loss and payment.

Unless the Agency anticipates a future recovery, the Agency will make a final settlement with the lender after the collateral is liquidated or after settlement and compromise of all parties has been completed. The Agency has the right to recover losses paid under the guarantee from any party that may be liable.

(a) *Report of loss form.* Form RD 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for reporting and calculating all estimated and final loss determinations.

(b) *Estimated loss.* In accordance with the requirements of §4287.157(f), the lender must prepare an estimated loss claim, based on liquidation appraisal value, and submit it to the Agency. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral.

(1) Such estimate will be prepared and submitted by the lender on Form RD 449–30 using the basic formula as provided on the report, except that the liquidation appraisal value will be used in lieu of the amount received from the sale of collateral. Interest accrual eligible for payment under the guarantee on the defaulted loan will be discontinued when the estimated loss is paid.

(2) A protective advance claim will be paid only at the time of the final report of loss payment.

(c) *Final loss.* Within 30 days after liquidation of all collateral is completed (except for certain unsecured personal

or corporate guarantees as provided for in this section), the lender must prepare a final report of loss and submit it to the Agency. If the lender holds all or a portion of the guaranteed loan, the Agency will not guarantee interest to the lender accruing after 90 days from the most recent delinquency effective date. The Agency will not guarantee interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender must make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts reported as losses on Form RD 449–30.

(1) The lender must make a determination regarding the collectability of unsecured personal and corporate guarantees. If reasonably possible, the lender must promptly collect or otherwise dispose of such guarantees in accordance with § 4287.157(j) prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the lender must file the report of loss when all other collateral has been liquidated. Unsecured personal or corporate guarantees outstanding at the time of the submission of the final loss claim will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency. Debts owed to the Agency (Federal debt) may be collected using DCIA authority. The Agency may consider a compromise settlement of Federal debt after it has processed a final report of loss and issued a 60 day due process letter. Any funds collected on Federal debt will not be shared with the lender.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been accounted for and applied correctly to the loan.

(3) The lender must provide receipts and a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper.

(4) The lender must provide receipts and a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper. Liquidation expenses are recoverable only from liquidation proceeds. The Agency may approve attorney/legal fees as liquidation expenses provided that the fees are reasonable, require the assistance of attorneys, and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its employees.

(5) The lender must support accrued interest by documenting how the amount was accrued. If the interest rate was a variable rate, the lender must include documentation of changes in both the selected base rate and the loan rate.

(6) The Agency will pay loss payments within 60 days after it has reviewed the complete final loss report and accounting of the collateral.

(d) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Liquidation expenses.* The Agency will deduct liquidation expenses from the liquidation proceeds of the collateral. The lender cannot claim any liquidation expenses in excess of liquidation proceeds. Any changes to the liquidation expenses that exceed 10 percent of the amount proposed in the liquidation plan must be approved by the Agency. Reasonable attorney/legal expenses will be shared by the lender and Agency equally, including those instances where the lender has incurred such expenses from a trustee conducting the liquidation of assets. The lender cannot claim the guarantee fee or the annual renewal fee as authorized liquidation expenses, and no in-house

expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(f) *Rent.* The lender must apply any net rental or other income that it receives from the collateral to the guaranteed loan debt.

(g) *Payment.* Once the Agency approves Form RD 449–30 and supporting documents submitted by the lender:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

§§ 4287.159–4287.168 [Reserved]

§ 4287.169 Future recovery.

Unless notified otherwise by the Agency, after the final loss claim has been paid, the lender must use reasonable efforts to attempt collection from any party still liable on any loan that was guaranteed. Any net proceeds from that effort must be split pro rata between the lender and the Agency based on the percentage of guarantee. Any collection of Federal debt made by the United State from any liable party to the guaranteed loan will not be split with the lender.

§ 4287.170 Bankruptcy.

(a) *Lender's responsibilities.* It is the lender's responsibility to protect the guaranteed loan and all of the collateral securing it in bankruptcy proceedings, including taking actions that result in greater recoveries and not taking actions that would not likely be cost-effective. These responsibilities include, but are not limited to, the following:

(1) Monitoring confirmed bankruptcy plans to determine borrower compliance, and, if the borrower fails to comply, seeking a dismissal of the bankruptcy plan;

(2) Filing a proof of claim, where necessary, and all the necessary papers and pleadings concerning the case;

(3) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(4) Requesting modifications of any bankruptcy plan whenever it appears that additional recoveries are likely; and

(5) Keeping the Agency adequately and regularly informed in writing of all aspects of the proceedings.

(6) The lender must submit a default status report when the borrower defaults and every 30 days until the default is resolved or a final loss claim is paid by the Agency. The default status report will be used to inform the Agency of the bankruptcy filing, the plan confirmation date, when the plan is complete, and when the borrower is not in compliance with the plan.

(7) With written Agency consent, the lender and Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings.

(b) *Reports of loss during bankruptcy.* In bankruptcy proceedings, payment of loss claims will be made as provided in this section. Attorney/legal fees and protective advances as a result of a bankruptcy are only recoverable from liquidation proceeds.

(1) *Estimated loss payments.* (i) If a borrower has filed for bankruptcy and all or a portion of the debt has been discharged, the lender must request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the bankruptcy. All subsequent claims of the lender during bankruptcy will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the bankruptcy plan. Once the bankruptcy plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the bankruptcy plan.

(ii) The lender must use Form RD 449–30 to request an estimated loss payment and to revise any estimated loss payments during the course of the bankruptcy plan. The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim.

(iii) Upon completion of a bankruptcy plan, the lender must complete Form RD 1980–44 and forward it to the Agency.

(iv) Upon completion of the bankruptcy plan, the lender must provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the bankruptcy is less than the estimated loss, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender must submit a revised estimated loss claim in order to obtain payment of the additional amount owed by the Agency to the lender.

(2) *Bankruptcy loss payments.* (i) The lender must request a bankruptcy loss payment of the guaranteed portion of the accrued interest and principal discharged by the court for all bankruptcies when all or a portion of the debt has been discharged. Unless a court approves a subsequent change to the bankruptcy plan that is adverse to the lender, only one bankruptcy loss payment is allowed during the bankruptcy. Once the court has discharged all or part of the guaranteed loan and any appeal period has run, the lender must submit the documentation necessary for the Agency to review and adjust the bankruptcy loss claim to reflect any actual discharge of principal and interest.

(ii) The lender must use Form RD 449–30 to request a bankruptcy loss payment and to revise any bankruptcy loss payments during the course of the bankruptcy. The lender must include with the bankruptcy loss claim documentation to support the claim, as well as any revisions to this claim.

(iii) Upon completion of a bankruptcy plan, restructure, or liquidation, the lender must either complete Form RD 1980–44 and forward it to the Agency or enter the data directly into LINC.

(iv) If an estimated loss claim is paid during a bankruptcy and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) *Interest rate losses as a result of bankruptcy reorganization.* (i) For guaranteed loans closed prior to August 2, 2016:

(A) Interest losses sustained during the period of the bankruptcy plan will be processed in accordance with paragraph (b)(1) of this section.

(B) Interest losses sustained after the bankruptcy plan is confirmed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction that extends beyond the period of the bankruptcy plan.

(C) If a bankruptcy loss claim is paid during the operation of the bankruptcy plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(ii) For guaranteed loans closed on or after August 2, 2016, the Agency will not compensate the lender for any difference in the interest rate specified in the Loan Note Guarantee and the rate of interest specified in the bankruptcy plan.

(4) *Final bankruptcy loss payments.* The Agency will process final bankruptcy loss payments when the loan is fully liquidated.

(5) *Application of loss claim payments.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a court attempts to direct the payments to be applied in a different manner, the lender must immediately notify the Agency in writing.

(6) *Protective advances.* If approved protective advances, as authorized by § 4287.156, were incurred in connection with the initiation of liquidation action and were required to provide repairs, insurance, etc., to protect the collateral as a result of delays in the

case of failure of the borrower to maintain the security prior to the borrower having filed bankruptcy, the protective advances together with accrued interest, are payable under the guarantee in the final loss claim.

(c) *Expenses during bankruptcy proceedings.* (1) Under no circumstances will the guarantee cover liquidation expenses in excess of liquidation proceeds.

(2) Expenses, such as reasonable attorney/legal fees and the cost of appraisals incurred by the lender as a direct result of the borrower's bankruptcy filing, are considered liquidation expenses. Liquidation expenses must be reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency. Lender's in-house expenses, which are those expenses that would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee. Liquidation expenses must be deducted from collateral sale proceeds. The lender and Agency will share liquidation expenses equally. To accomplish this, the lender will deduct 50 percent of the liquidation expenses from the collateral sale proceeds.

(3) When a bankruptcy proceeding results in a liquidation of the borrower by a bankruptcy trustee, expenses will be handled as directed by the court, and the lender cannot claim liquidation expenses for the sale of the assets.

(4) If the property is abandoned by the bankruptcy trustee and any relief from the stay has been obtained, the lender will conduct the liquidation in accordance with § 4287.157.

(5) Proceeds received from the partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs associated with the partial sale, such as freight, labor, and sales commissions. Reasonable use of proceeds for this purpose must be documented with the final loss claim.

(6) Reasonable and customary liquidation expenses in bankruptcy may be deducted from liquidation proceeds of collateral.

[81 FR 36020, June 3, 2016, as amended at 81 FR 54477, Aug. 16, 2016]

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

The Loan Note Guarantee will terminate under any of the following conditions:

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.199 [Reserved]

§ 4287.200 OMB control number.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under OMB Control Number 0570–0069 for OMB approval.

Subpart D—Servicing Biorefinery, Renewable Chemical, and Biobased Manufacturing Assistance Guaranteed Loans

SOURCE: 80 FR 36447, June 24, 2015, unless otherwise noted.

§ 4287.301 Introduction.

(a) This subpart supplements 7 CFR part 4279, subpart C by providing additional requirements and instructions for servicing and liquidating all loans guaranteed under 7 CFR part 4279, subpart C.

(b) The Lender is responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan must continue to be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) All loan servicing actions under this subpart, except for those identified in § 4287.307(a) through (g), are subject to Agency concurrence. Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Whenever Agency approval is required, such servicing action must be for Good Cause.

(d) Copies of all forms, regulations, and Instructions referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program.* Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the Agency.

§ 4287.302 Definitions.

The definitions and abbreviations contained in § 4279.202 of this chapter apply to this subpart.

§ 4287.303 Exception authority.

The Administrator may, with the concurrence of the Secretary of Agriculture, 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 Federal government's interest.

§§ 4287.304–4287.305 [Reserved]

§ 4287.306 Appeals.

Borrowers, Lenders, and Holders have appeal or review rights for Agency decisions made under this subpart. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The Borrower, Lender, and Holder can appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the Borrower, the Lender and Borrower must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the Lender may be appealed by the Lender only. An adverse decision that only impacts the Holder may be appealed by the Holder only. A decision by a Lender adverse to the interest of the Borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

§ 4287.307 Routine servicing.

The Lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonable Lender would perform in servicing its own portfolio of loans that are not guaranteed. The guarantee is unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, Negligent Loan Servicing or Grossly Negligent Loan Servicing as established in the Loan Note Guarantee, or failure to maintain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. The Lender may contract for services and may rely on certain written materials (including but not limited to certifications, evaluations, appraisals, financial statements and other reports) to be provided by the Borrower or other qualified third parties (including, among others, one or more independent engineers, appraisers, accountants, consultants or other experts) but is ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations. The Lender's Agreement is the contractual agreement between the Lender and the Agency that sets forth some of the Lender's loan servicing responsibilities. This responsibility includes but is not limited to periodic Borrower visits, the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, ensuring payment of taxes and insurance premiums, and maintaining liens on Collateral, and keeping an inventory accounting of all Collateral items and reconciling the inventory of all Collateral sold during loan servicing, including liquidation.

(a) *Periodic reports.* Each Lender must submit reports by the end of each Calendar Quarter, unless more frequent ones are needed as determined by the Agency to meet the financial interests of the United States, regarding the condition of its Agency guaranteed loan portfolio (including Borrower status and Loan Classification) and any Material Adverse Change in the general financial condition of the Borrower since the last report was submitted. The Lender must report the outstanding principal and Interest balance and the current Loan Classification on each guaranteed loan using either the USDA Lender Interactive Network Connection (LINC) system or Form RD 1980–41, ''Guaranteed Loan Status Report.''

(b) *Default reports.* Lenders must submit monthly Default reports, including Borrower payment history, for each loan in monetary Default using a form approved by the Agency.

(c) *Annual Renewal Fee.* The Lender must transmit the Annual Renewal Fee to the Agency in accordance with §4279.231(b) of this chapter calculated based on the December 31 loan status report.

(d) *Agency and Lender conference.* At the Agency's request, the Lender must consult with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

(e) *Borrower Financial reports.* The Lender must obtain, analyze, and forward to the Agency the Borrower's and any guarantor's financial statements required by the Loan Agreement within 45 days of the end of each Calendar Quarter and audited financial statements within 180 days of the end of the Borrower's fiscal year. The Lender must analyze these financial statements and provide the Agency with a written summary of the Lender's analysis, ratio analysis, and conclusions, which, at a minimum, must include trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the Lender, any routine servicing actions performed, and other indications of the financial condition of the Borrower. Spreadsheets of the financial statements must also be included. Following the Agency's review of the Lender's financial analysis, the Agency will provide a written report of any concerns to the Lender. Any concerns based upon the Agency's review must be addressed by the Lender. If the Lender makes a reasonable attempt to obtain financial statements, but is unable to obtain the Borrower's cooperation, the failure to obtain financial statements will not impair the validity of the Loan Note Guarantee.

(f) *Audits.* Any Public Body, nonprofit corporation or Indian Tribe that receives a guaranteed loan that meets the thresholds established by 2 CFR part 200, subpart F, must provide an audit for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a Public Body, nonprofit corporation, or Indian Tribe in accordance with this paragraph (f) will be considered adequate to meet the audit requirements of the Program for that year.

(g) *Protection of Agency interests.* If the Agency determines that the Lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the Lender must cooperate with the Agency to rectify the situation. In determining any loss, the Agency will assess against the Lender any cost to the Agency associated with such action.

(h) *Additional loans.* The Lender must notify the Agency in writing when the Lender makes any additional expenditures or new loans to the Borrower. The Lender may make additional expenditures or new loans to a Borrower with an outstanding loan guaranteed only with prior written Agency approval. The Agency will only approve additional expenditures or new loans where the expenditure or loan will not violate one or more of the loan covenants of the Borrower's Loan Agreement. Any additional expenditure or

loan made by the Lender must be junior in priority to the BAP loan guaranteed under 7 CFR part 4279 except for Working Capital loans for which the Agency may consider a subordinate lien provided it is consistent with the conditional provisions specified in §4279.235(a) of this chapter and in §4287.323.

§§ 4287.308–4287.311 [Reserved]

§ 4287.312 Interest rate changes.

(a) *Reductions.* The Borrower, Lender, and Holder (if any) may collectively initiate a permanent or temporary reduction in the Interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Lender must obtain prior Agency concurrence and must provide a copy of the modification agreement to the Agency. If any of the guaranteed portion has been purchased by the Agency, the Agency (as a Holder) will affirm or reject Interest rate change proposals in writing.

(1) Fixed rates can be changed to variable rates to reduce the Borrower's Interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(2) The Interest rates, after adjustments, must comply with the requirements for Interest rates on new loans as established by §4279.233 of this chapter.

(3) The Lender is responsible for the legal documentation of Interest rate changes by an endorsement or any other legally effective amendment to the Promissory Note; however, no new Promissory Notes may be issued. The Lender must provide copies of all legal documents to the Agency.

(b) *Increases.* Increases in fixed Interest rates and increases in variable rate basis are not permitted (except the normal fluctuations in approved variable Interest rates), unless a temporary Interest rate reduction occurred. Any increase in rates must be for Good Cause.

§ 4287.313 Release of Collateral.

The Lender must inspect the Collateral as often as necessary to properly service the loan. The Agency must give prior written approval for the release of Collateral, except as specified in paragraph (a) of this section or where the release of Collateral is made of Collateral under the abundance of caution provision of the applicable security agreement, subject to the provisions of paragraph (c) of this section. Appraisals on the Collateral being released are required on all transactions exceeding $250,000 and will be at the expense of the Borrower. The appraisal must meet the requirements of §4279.244 of this chapter. The sale or release of Collateral must be based on an Arm's Length Transaction, unless otherwise approved by the Agency in writing.

(a) Within the parameters of paragraph (c) of this section, Lenders may, over the life of the guaranteed loan, release Collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement Collateral. Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and the proceeds used for the normal course of business operations, may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan has not been accelerated.

(b) If a release of Collateral does not meet the requirements of paragraph (a) of this section, the Lender must complete a written evaluation to justify the release and must obtain written Agency concurrence in advance of the release.

(c) The Lender must support all releases of Collateral with a value exceeding $250,000 with a current appraisal on the Collateral being released. The appraisal must meet the requirements of §4279.244 of this chapter. The cost of this appraisal will not be paid for by the Agency. The Agency may, at its discretion, require an appraisal of the remaining Collateral in cases where it has been determined that the Agency may be adversely affected by the release of Collateral. The sale or release of the Collateral must be at Fair Market Value based on an Arm's Length Transaction, and there

must be adequate consideration for the release of Collateral. Such consideration may include, but is not limited to:

(1) Application of the net proceeds from the sale of Collateral to the Borrower's debts in order of their lien priority in the sold Collateral;

(2) Use of the net proceeds from the sale of Collateral to purchase other Collateral of equal or greater value which the Lender will obtain as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of Collateral to the Borrower's business operation in such a manner that a significant improvement to the Borrower's debt service ability is clearly demonstrated. The Lender's written request must detail how the Borrower's debt service ability will be improved; and

(4) Assurance that the release of Collateral is essential for the success of the business, thereby furthering the goals of the Program. Such assurance must be supported by written documentation from the Lender acceptable to the Agency.

(d) Any release of Collateral must not adversely affect the Project's operation or financial condition.

§§ 4287.314–4287.322 [Reserved]

§ 4287.323 Subordination of lien position.

A Subordination of the Lender's lien position must be requested in writing by the Lender and concurred with in writing by the Agency in advance of the Subordination. The Lender's Subordination proposal must include a financial analysis of the servicing action and be fully supported by current financial statements of the Borrower and guarantors that are less than 90 days old.

(a) The Subordination of the Lender's lien position must enhance the Borrower's business and be in the best financial interest of the Agency.

(b) The lien to which the guaranteed loan is subordinated is for a fixed dollar limit and for a fixed term after which the guaranteed loan lien priority will be restored. Notwithstanding, a Subordination of lien position on inventory and accounts receivable may be made to a line of credit.

(c) Collateral must remain sufficient to provide for adequate Collateral coverage. The Agency may require a current independent appraisal in accordance with § 4279.244 of this chapter.

(d) Lien priorities must remain for the portion of the loan Collateral that was not subordinated.

(e) Subordination of the Lender's lien position must be for Good Cause.

§ 4287.324 Alterations of loan instruments.

The Lender must neither alter nor approve any alterations or modifications of any loan instrument without the prior written approval of the Agency.

§§ 4287.325–4287.333 [Reserved]

§ 4287.334 Transfer and Assumption.

The Lender may request a Transfer and Assumption of a guaranteed loan when the total indebtedness, or less than the total indebtedness, is assumed by another Borrower. If the assumption is for less than the total indebtedness of the guaranteed loan, the Transfer and Assumption must be an Arm's Length Transaction and the transfer must be of all loan Collateral. In the event of Default of the guaranteed loan, a Transfer and Assumption of the Borrower's operation and guaranteed loan can be accomplished before or after the loan goes into liquidation. However, if the Collateral has been purchased through foreclosure or the Borrower has conveyed title to the Lender, no Transfer and Assumption is permitted.

(a) *Documentation of request.* All Transfers and Assumptions cannot be conducted unless the Agency gives prior written approval. An individual credit report must be provided for transferee and its partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility and credit worthiness. The new Borrower must sign Form RD 4279–1.

(b) *Terms.* Loan terms may be changed for Transfer and Assumptions to eligible Borrowers continuing the Project for eligible purposes with the concurrence of the Agency, all Holders, and the transferor (including guarantors). If the transferor has been or will be released from liability, the transferor's concurrence is not required. Any new loan terms must be within the terms authorized by § 4279.234 of this chapter and must be for Good Cause.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence when the Transfer and Assumption is an Arm's Length Transaction and:

(1) The assumption is for the full amount of the loan and all of the loan Collateral is transferred to the transferee; or

(2) The assumption is for less than the full amount of the loan, all of the loan Collateral is transferred to the transferee, and the Lender demonstrates to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) *Proceeds.* The Lender must credit any proceeds received from the sale of Collateral before a Transfer and Assumption to the transferor's guaranteed loan debt in order of lien priority before the Transfer and Assumption are closed.

(e) *Additional loans.* Guaranteed loans to provide additional funds in connection with a Transfer and Assumption must be considered a new loan application, which requires submission of a complete Agency application in accordance with §§ 4279.260 and 4279.261 of this chapter.

(f) *Credit quality.* The Lender must make a complete credit analysis in accordance with § 4279.215 of this chapter.

(g) *Appraisals.* If the proposed Transfer and Assumption is for the full amount of the Agency guaranteed loan and all loan Collateral, the Agency will not require an appraisal. If the proposed Transfer and Assumption is for less than the full amount of the Agency guaranteed loan, the Agency will require an appraisal on all of the Collateral being transferred, and the amount of the assumption must not be less than this appraised value. The Lender is responsible for obtaining this appraisal, which must conform to the requirements of § 4279.244 of this chapter. The Agency will not pay the appraisal fee or any other costs associated with this transfer.

(h) *Documents.* Prior to Agency approval, the Lender must provide the Agency a written legal opinion that the transaction can be properly and legally transferred and assurance that the conveyance instruments will be appropriately filed, registered, and recorded.

(1) The Lender must not issue any new Promissory Notes. The assumption must be completed in accordance with applicable law and must contain the Agency case number of the transferor and transferee. The Lender will provide the Agency with a copy of the Transfer and Assumption agreement. The Lender must ensure that all Transfers and Assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, must be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) Upon execution of the Transfer and Assumption, the Lender must provide the Agency with a written legal opinion that the Transfer and Assumption is completed, valid, enforceable, and certification that the Transfer and Assumption is consistent with the conditions outlined in the Agency's conditions of approval for the transfer and complies with all Agency regulations.

(i) *Loss resulting from transfer.* (1) Any resulting loss must be processed in accordance with § 4287.358.

(2) If a Holder owns any of the guaranteed portion, such portion must be repurchased by the Lender or the Agency in accordance with § 4279.225 of this chapter.

(j) *Related party.* If the transferor and transferee are Affiliates or related parties, any Transfer and Assumption must be to an eligible Borrower to continue the Project for eligible purposes, must transfer all of the loan Collateral,

and must be for the full amount of the guaranteed loan indebtedness.

(k) *Cash down payment.* The Lender may allow the transferee to make cash down payments directly to the transferor provided:

(1) The Transfer and Assumption is made for the total indebtedness to an eligible Borrower to continue the Project for eligible purposes;

(2) The Lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The Lender may require that an amount be retained for a defined period of time as a reserve against future Defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(3) The Lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness; and

(4) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(l) *Transfer/Annual Renewal Fees.* (1) The Agency will charge a nonrefundable transfer fee at the time of transfer, which may be passed on to the Borrower by the Lender. The transfer fee rate will be equal to the rate of the guarantee fee authorized in § 4279.231(a) of this chapter for the fiscal year in which the transfer occurs. The amount of the transfer fee is determined by multiplying the principal balance at the time of the transfer by the transfer fee rate by the percentage of guarantee on the original loan.

(2) The Lender must pay any Annual Renewal Fee in accordance with § 4279.231(b) of this chapter.

(m) *Change in control of Borrower.* Transfer and Assumption shall be deemed to occur in the event of a change in the control of the Borrower.

(n) *Personal and corporate guarantees.* Guarantees from owners are required in accordance with § 4279.245 of this chapter.

§ 4287.335 Substitution of Lender.

The Lender is prohibited from selling or transferring the entire loan without the prior written approval of the Agency. Because the Loan Note Guarantee is associated with a specific Promissory Note and cannot be transferred to a new Promissory Note, the Lender must transfer the original Promissory Note and loan security documents to the new Lender, who must agree to its current loan terms, including the Interest rate, secondary market Holder (if any), Collateral, Loan Agreement terms, and guarantors. The new Lender must also obtain the original Loan Note Guarantee, original personal and corporate guarantee(s), and the loan payment history from the transferor Lender. If the new Lender wishes to modify the loan terms after acquisition, the new Lender must submit a request to the Agency.

(a) The Agency may approve the substitution of a new Lender if:

(1) The proposed substitute Lender:

(i) Is an eligible Lender in accordance with § 4279.208 of this chapter;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees to acquire title to the unguaranteed portion of the loan held by the original Lender and assumes all original loan requirements, including liabilities and servicing responsibilities; and

(2) The substitution of the Lender is requested in writing by the Borrower, the proposed substitute Lender, and the original Lender if still in existence.

(b) The Agency will not pay any loss or share in any costs (*e.g.*, appraisal fees and environmental assessments) with a new Lender unless a relationship is established through a substitution of Lender in accordance with paragraph (a) of this section. This includes situations where a Lender is acquired by another Lender and situations where the Lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another Lender.

(c) In cases when there is a substitution of Lender or when a Lender has been merged with or acquired by another Lender, the Agency and the new

Lender must execute a new Lender's Agreement, unless a valid Lender's Agreement already exists with the new Lender.

§ 4287.336 Lender failure.

(a) The acquiring Lender must comply with 7 CFR parts 4279, subpart C and 4287, subpart D and must take such action that a reasonable Lender would take if it did not have a Loan Note Guarantee to protect the Lender and Agency's mutual interest. The Lender cannot arbitrarily change the Lender's Agreement and related documents on the guaranteed loan, and the Agency will make the successor to the failed institution aware of the statutory and regulatory requirements.

(b) In the event of a Default and the guaranteed loan is liquidated by the FDIC rather than being sold to another Lender, the Agency will pay losses and share in costs as if the FDIC were an approved new Lender.

§§ 4287.337–4287.344 [Reserved]

§ 4287.345 Default by Borrower.

The Lender's primary responsibilities in Default are to act reasonably and expeditiously, to work with the Borrower to bring the account current or cure the Default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in a manner that will minimize any potential loss. The Lender may initiate liquidation in accordance with § 4287.357.

(a) The Lender must notify the Agency in writing when a Borrower is more than 30 days past due on a payment and the Delinquency cannot be cured within 30 days or when a Borrower is otherwise in Default of covenants in the Loan Agreement by submitting Form RD 1980–44, ''Guaranteed Loan Borrower Default Status,'' or processing the Default Status report in LINC. The Lender must provide this notification to the Agency within 15 calendar days of when a Borrower is 30 days past due on a payment or is otherwise in Default of the Loan Agreement. The Lender must update the loan's status each month using either Form RD 1980–44 or the LINC Default Status report until such time as the loan is no longer in Default. If a monetary Default exceeds 60 days, the Lender must meet with the Agency and, if practical, the Borrower to discuss the situation.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the Lender are the paramount objective.

(1) Curative actions (subject to the rights of any Holder) include, but are not limited to:

(i) Deferment of principal or Interest payments;

(ii) An additional unguaranteed temporary loan by the Lender to bring the account current;

(iii) Reamortization of or rescheduling the payments on the loan (subject to the rights of any Holder) excluding capitalization of accrued Interest;

(iv) Transfer and Assumption of the loan in accordance with § 4287.334;

(v) Reorganization;

(vi) Liquidation; and

(vii) Changes in Interest rates with the Agency's, the Lender's, and Holder's approval. Any Interest rate changes must be adjusted proportionately between the guaranteed and unguaranteed portion of the loan.

(2) The term of any deferment, rescheduling, reamortization, or moratorium will be limited to the lesser of the remaining life of the Collateral or remaining limits as set forth in § 4279.234 of this chapter (excluding paragraph (d)). Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for success and the remaining life of the Collateral supports the action.

(3) In the event of a loss or a repurchase, the Lender cannot claim Default or penalty Interest, late payment fees, or Interest on Interest.

(c) Debt write-downs by the lender are prohibited when the Lender will continue with the Project loan, except as directed or ordered by a final court order.

(d) In the event of a loss, the guarantee will not cover Interest to the Lender accruing after the Interest Termination Date.

(e) For repurchases of guaranteed loans, refer to § 4279.225 of this chapter.

§§ 4287.346–4287.355 [Reserved]

§ 4287.356 Protective Advances.

Protective Advances are advances made by the Lender for the purpose of preserving and protecting the Collateral where the Borrower has failed to, will not, or cannot meet its obligations. Lenders must exercise sound judgment in determining that the Protective Advance preserves Collateral and recovery is actually enhanced by making the advance. Lenders cannot make Protective Advances in lieu of additional loans. A Protective Advance claim will be paid only at the time of the final payment as indicated in the Guaranteed Loan Report of Loss.

(a) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued Interest times the percentage of guarantee regardless of any Protective Advances made.

(b) In the event of a final loss, Protective Advances will accrue Interest at the Promissory Note rate and will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee. The guarantee will not cover Interest on the Protective Advance accruing after the Interest Termination Date.

(c) Protective Advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instruments. Agency written authorization is required when the cumulative total of Protective Advances exceeds $200,000 or 10 percent of the outstanding balance of principal, whichever is less.

§ 4287.357 Liquidation.

In the event of one or more incidents of Default or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender, with Agency consent, must provide for liquidation.

(a) *Decision to liquidate.* A decision to liquidate or proceed otherwise must be made when the Lender determines that the Default cannot be cured through actions such as those contained in § 4287.345, or it has been determined that it is in the best interest of the Agency and the Lender to liquidate. The decision to liquidate or proceed otherwise with the Borrower must be made as soon as possible when one or more of the following exist:

(1) A loan is 90 days behind on any scheduled payment and the Lender and the Borrower have not been able to cure the Delinquency through actions such as those contained in § 4287.345.

(2) It is determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The Borrower or Lender is uncooperative in resolving the problem or the Agency or Lender has reason to believe the Borrower is not acting in good faith, and immediate liquidation would minimize loss to the Agency.

(b) *Repurchase of loan.* When the decision to liquidate is made, if any portion of the loan has been sold or assigned under § 4279.223 of this chapter and not already repurchased, provisions will be made for repurchase in accordance with § 4279.225 of this chapter.

(c) *Lender's liquidation plan.* The Lender is responsible for initiating actions immediately and as necessary to ensure a prompt, orderly liquidation that will provide maximum recovery. Within 30 days after a decision to liquidate, the Lender must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include at least the following:

(1) Such proof as the Agency requires to establish the Lender's ownership of the guaranteed loan Promissory Note and related security instruments and a copy of the payment ledger, if available, that reflects the current loan balance, accrued Interest to date, and the method of computing the Interest;

(2) A full and complete list of all Collateral, including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action for acquiring and disposing of all Collateral and collecting from guarantors;

(4) Necessary steps for preservation of the Collateral;

(5) Copies of the Borrower's most recently available financial statements;

(6) Copies of each guarantor's most recently available financial statements;

(7) An itemized list of estimated Liquidation Expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the Agency on the progress of liquidation;

(9) Estimated Protective Advance amounts with justification;

(10) Proposed protective bid amounts on Collateral to be sold at auction and a breakdown to show how the amounts were determined. A protective bid may be made by the Lender, with prior Agency written approval, at a foreclosure sale to protect the Lender's and the Agency's interest. The protective bid will be based on the liquidation value and estimated net recovery considering prior liens and outstanding taxes, expenses of foreclosure, and estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, Interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens;

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(12) Legal opinions, if needed by the Lender's legal counsel; and

(13) An estimate of Fair Market Value and potential liquidation value of the Collateral. If the value of the Collateral is $250,000 or more, the Lender must obtain an independent appraisal report meeting the requirements of § 4279.244 of this chapter on the Collateral securing the loan, which reflects the Fair Market Value and potential liquidation value. The liquidation appraisal must evaluate the impact on Market Value of any release of hazardous substances, petroleum products, or other environmental hazards. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the Lender. In order to ensure prompt action, the liquidation plan can be submitted with an estimate of Collateral value, and the liquidation plan may be approved by the Agency subject to the results of the final liquidation appraisal.

(d) *Approval of liquidation plan.* The Lender cannot implement its liquidation plan before obtaining written approval from the Agency. The Lender and Agency must attempt to resolve any Agency concerns.

(1) If the liquidation plan is approved by the Agency, the Lender must proceed expeditiously with liquidation and must take all legal action necessary to liquidate the loan in accordance with the approved liquidation plan. The Lender must update or modify the liquidation plan when conditions warrant, including a change in value based on a liquidation appraisal.

(2) Should the Agency and the Lender not agree on the liquidation plan, negotiations will take place between the Agency and the Lender to resolve the disagreement. The Lender must take such actions that a reasonable Lender would take without a guarantee and keep the Agency informed in writing. When the liquidation plan is approved by the Agency, the Lender will proceed expeditiously with liquidation.

(e) *Acceleration.* The Lender will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other legal actions required. The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the Borrower. The Lender must obtain from the Agency concurrence prior to the acceleration of the loan if the sole basis for acceleration is a nonmonetary Default. In the case of monetary Default, prior approval by the Agency of the Lender's acceleration is not required, although Agency concurrence must still be given not later than at the time the liquidation plan is approved. The Lender will provide a copy of the acceleration notice or other acceleration document to the Agency.

(f) *Filing an estimated loss claim.* When the Lender owns any of the guaranteed portion of the loan, the Lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation is expected to exceed 90 days. When calculating the estimated

loss payment, the value of the Collateral must be based on its estimated net liquidation value. For the purpose of reporting and loss claim computation, the guarantee will not cover Interest to the Lender accruing after the Interest Termination Date. The Agency will promptly process the loss claim in accordance with applicable Agency regulations as set forth in §4287.358.

(g) *Accounting and reports.* The Lender must account for funds during the period of liquidation and must, in accordance with the Agency-approved liquidation plan, provide the Agency with reports on the progress of liquidation including disposition of Collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(h) *Transmitting payments and proceeds to the Agency.* When the Agency is the Holder of a portion of the guaranteed loan, the Lender must transmit to the Agency within 14 calendar days its Pro Rata share of any payments received from the Borrower, liquidation, or other proceeds using Form RD 1980–43, ''Lender's Guaranteed Loan Payment to Rural Development.''

(i) *Abandonment of collateral.* When the Lender adequately documents that the cost of liquidation would exceed the potential recovery value of certain Collateral and receives Agency concurrence, the Lender may abandon that Collateral. When the Lender makes a recommendation for abandonment of Collateral, it will be considered a servicing action under 7 CFR 1970.8(e), and will not require separate NEPA review.

(j) *Disposition of personal or corporate guarantees.* The Lender must take action to maximize recovery from all personal and corporate guarantees, including seeking Deficiency Judgments when there is a reasonable chance of future collection.

(k) *Compromise settlement.* Compromise settlements must be approved by the Lender and the Agency. Complete current financial information on all parties obligated for the loan must be provided. At a minimum, the compromise settlement must be equivalent to the value and timeliness of that which would be received from attempting to collect on the guarantee. The guarantor cannot be released from liability until the full amount of the compromise settlement has been received. In weighing whether the compromise settlement should be accepted, among other things, the Agency will weigh whether the compromise is more financially advantageous than collecting on the guarantee.

(l) *Litigation.* In all litigation proceedings involving the Borrower, the Lender is responsible for protecting the rights of the Lender with respect to the loan and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the Lender is not adequately protecting the rights of the Lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the Lender, on behalf of the Lender, or the Agency with respect to the loan. If the Agency exercises this right, the Lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the Lender.

[80 FR 36447, June 24, 2015, as amended at 81 FR 11053, Mar. 2, 2016]

§4287.358 Determination of loss and payment.

Unless the Agency anticipates a Future Recovery, the Agency will make a final settlement with the Lender after the Collateral is liquidated and settlement and compromise of all parties has been completed. The Agency has the right to recover losses paid under the guarantee from any party that may be liable.

(a) *Report of loss form.* Form RD 449–30, ''Guaranteed Loan Report of Loss,'' will be used for reporting and calculating all estimated and final loss determinations.

(b) *Estimated loss.* In accordance with the requirements of §4287.357(f), the Lender must prepare an estimated loss claim and submit it to the Agency.

(1) Interest accrual eligible for payment under the guarantee on the Defaulted loan will be discontinued when the estimated loss is paid.

(2) A Protective Advance claim will be paid only at the time of the final

payment as indicated in the Guaranteed Loan Report of Loss.

(3) The estimated loss payment is a payment to the Lender and is not to be applied as a payment on the loan for purposes of reducing the unpaid balance owed by the Borrower or for status reporting (semi-annual status/Default status reports).

(c) *Final loss.* Except for certain unsecured personal or corporate guarantees as provided for in this section, the Lender must prepare a final Guaranteed Loan Report of Loss and submit it to the Agency within 30 days after liquidation of all Collateral is completed. Interest will not be paid beyond the Interest Termination Date. Before approval by the Agency of any final loss report, the Lender must account for all funds during the period of liquidation, disposition of the Collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and Guaranteed Loan Report of Loss, the Agency may audit all applicable documentation to determine the final loss. The Lender must make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the Guaranteed Loan Report of Loss must support the amounts reported as losses on the Guaranteed Loan Report of Loss.

(1) The Lender must make a determination regarding the collectability of unsecured personal and corporate guarantees. If reasonably possible, the Lender must promptly collect or otherwise dispose of such guarantees in accordance with § 4287.357(j) prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the Lender must file the Guaranteed Loan Report of Loss when all other Collateral has been liquidated. Unsecured personal or corporate guarantees outstanding at the time of the submission of the final loss claim will be treated as a Future Recovery with the net proceeds to be shared on a Pro Rata basis by the Lender and the Agency. The Agency may consider a compromise settlement of Federal Debt after it has processed a final Guaranteed Loan Report of Loss and issued a 60 day due process letter. Any funds collected on Federal Debt will not be shared with the Lender.

(2) The Lender must document that all of the Collateral has been accounted for and properly liquidated and liquidation proceeds have been accounted for and applied correctly to the loan.

(3) The Lender must provide receipts and a breakdown of any Protective Advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper.

(4) The Lender must provide receipts and a breakdown of Liquidation Expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper. Liquidation Expenses are recoverable only from liquidation proceeds. The Agency may approve attorney/legal fees as Liquidation Expenses provided that the fees are reasonable, require the assistance of attorneys, and cover legal issues pertaining to the liquidation that could not be properly handled by the Lender and its employees.

(5) The Lender must support accrued Interest by documenting how the amount was accrued. If the Interest rate was a variable rate, the Lender must include documentation of changes in both the selected base rate and the loan rate.

(6) The Agency will pay loss payments within 60 days after it has reviewed the complete final loss report and accounting of the Collateral.

(7) If a Lender receives a final loss payment and the Agency determines there is Future Recovery, the Lender must submit to the Agency an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

(d) *Loss limit.* The amount payable by the Agency to the Lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Liquidation Expenses.* The Agency will deduct Liquidation Expenses from

the liquidation proceeds of the Collateral. The Lender cannot claim any Liquidation Expenses in excess of liquidation proceeds. Any changes to the Liquidation Expenses that exceed 10 percent of the amount proposed in the liquidation plan must be approved by the Agency. Reasonable attorney/legal expenses will be shared by the Lender and Agency equally, including those instances where the Lender has incurred such expenses from a trustee conducting the liquidation of assets. The Lender cannot claim the guarantee fee or the Annual Renewal Fee as authorized Liquidation Expenses, and no In-House Expenses of the Lender will be allowed. In-House Expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(f) *Rent.* The Lender must apply any net rental or other income that it receives from the Collateral to the guaranteed loan debt.

(g) *Payment.* Once the Agency approves the Guaranteed Loan Report of Loss and supporting documents submitted by the Lender:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the Lender.

(2) If the loss is less than the estimated loss payment, the Lender must reimburse the Agency for the overpayment plus Interest at the Promissory Note rate from the date of payment.

§§ 4287.359–4287.368 [Reserved]

§ 4287.369 Future recovery.

Unless notified otherwise by the Agency, after the final loss claim has been paid, the Lender must use reasonable efforts to attempt collection from any party still liable for Future Recovery. Any net proceeds from Future Recovery must be split Pro Rata between the Lender and the Agency based on the original amount of the loan guarantee. Any collection of Federal Debt made by the Federal Government from any liable party to the guaranteed loan will not be split with the Lender.

§ 4287.370 Bankruptcy.

(a) *Lender's responsibilities.* It is the Lender's responsibility to protect the guaranteed loan and all of the Collateral securing it in bankruptcy and any related appellate proceedings. These responsibilities include, but are not limited to the following:

(1) Monitoring confirmed bankruptcy plans to determine Borrower compliance, and, if the Borrower fails to comply, pursue appropriate relief;

(2) Filing all the necessary papers and pleadings concerning the case, including where appropriate a proof of claim;

(3) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(4) Requesting modifications of any proposed bankruptcy plan whenever it appears that the Lender could obtain additional recoveries via plan modification;

(5) Keeping the Agency adequately and regularly informed in writing of all aspects of the proceedings;

(6) Submitting a Default status report within 15 days after the date when the Borrower Defaults and every 30 days thereafter until the Default is resolved or a final loss claim is paid by the Agency. The Default status report will be used to inform the Agency of the bankruptcy filing, the plan confirmation date, when the plan is complete, and when the Borrower is not in compliance with the plan; and

(7) With written Agency consent, the Lender and Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings.

(b) *Reports of loss during bankruptcy.* In bankruptcy proceedings, payment of loss claims will be made as provided in this section.

(1) *Estimated loss payments.* (i) If a Borrower has filed for bankruptcy and all or a portion of the debt has been discharged, the Lender must request an estimated loss payment of the guaranteed portion of the accrued Interest and principal discharged by the court. Only one estimated loss payment is allowed during the bankruptcy and any related appellate proceedings. All subsequent claims of the Lender during bankruptcy and any related appellate proceedings will be considered revisions to the initial estimated loss. A revised estimated loss payment may be

processed by the Agency, at its option, in accordance with any court-approved changes in the bankruptcy plan. Once the bankruptcy plan has been completed, the Lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and Interest and to reimburse the Lender for any court-ordered Interest rate reduction under the terms of the bankruptcy plan.

(ii) The Lender must use the Guaranteed Loan Report of Loss to request an estimated loss payment and to revise any estimated loss payments during the course of the bankruptcy plan. The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim.

(iii) Upon completion of a bankruptcy plan, the Lender must:

(A) Complete a Form RD 1980–44 and forward this form to the Agency; and

(B) Provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained.

(*1*) If the actual loss sustained as a result of the bankruptcy is less than the estimated loss, the Lender must reimburse the Agency for the overpayment plus Interest at the Promissory Note rate from the date of payment of the estimated loss.

(*2*) If the actual loss is greater than the estimated loss payment, the Lender must submit a revised estimated loss claim in order to obtain payment of the additional amount owed by the Agency to the Lender.

(2) *Bankruptcy loss payments.* (i) The Lender must request a bankruptcy loss payment of the guaranteed portion of the accrued Interest and principal discharged by the court for all bankruptcies when all or a portion of the debt has been discharged. Unless a final court decree approves a subsequent change to the bankruptcy plan that is adverse to the Lender, only one bankruptcy loss payment is allowed during the bankruptcy. Once a final court decree has discharged all or part of the guaranteed loan and any appeal period has run, the Lender must submit the documentation necessary for the Agency to review and adjust the bankruptcy loss claim to reflect any actual discharge of principal and Interest.

(ii) The Lender must use the Guaranteed Loan Report of Loss to request a bankruptcy loss payment and to revise any bankruptcy loss payments during the course of the bankruptcy. The Lender must include with the bankruptcy loss claim documentation to support the claim, as well as any revisions to this claim.

(iii) Upon completion of a bankruptcy plan, restructuring, or liquidation, the Lender must either complete a Form RD 1980–44 and forward this form to the Agency or enter the data directly into LINC.

(iv) If an estimated loss claim is paid during a bankruptcy and the Borrower repays in full the remaining balance without an additional loss sustained by the Lender, a final Guaranteed Loan Report of Loss is not necessary.

(3) *Interest rate losses as a result of bankruptcy reorganization.* Interest rate losses as a result of bankruptcy reorganization will be paid as follows:

(i) Interest losses sustained during the period of the bankruptcy plan will be processed in accordance with paragraph (b)(1) of this section;

(ii) Interest losses sustained after the bankruptcy plan is confirmed will be processed annually when the Lender sustains a loss as a result of a permanent Interest rate reduction that extends beyond the period of the bankruptcy plan; and

(iii) If a bankruptcy loss claim is paid during the operation of the bankruptcy plan and the Borrower repays in full the remaining balance without an additional loss sustained by the Lender, a final Guaranteed Loan Report of Loss is not necessary.

(4) *Final bankruptcy loss payments.* The Agency will process final bankruptcy loss payments when the loan is fully liquidated.

(5) *Application of loss claim payments.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a court attempts to direct

the payments to be applied in a different manner, the Lender must immediately notify the Agency in writing.

(6) *Protective Advances.* If approved Protective Advances, as authorized by §4287.356, were incurred in connection with the initiation of liquidation action and were required to provide repairs, insurance, etc., to protect the Collateral as result of delays in the case of failure of the Borrower to maintain the security prior to the Borrower having filed bankruptcy, the Protective Advances together with accrued Interest are payable under the guarantee in the final loss claim.

(c) *Expenses during bankruptcy proceedings.* (1) Under no circumstances will the guarantee cover Liquidation Expenses in excess of liquidation proceeds.

(2) Expenses, such as reasonable attorney/legal fees and the cost of appraisals incurred by the Lender as a direct result of the Borrower's bankruptcy filing, will be shared equally by the Lender and the Agency.

(3) Reasonable and customary Liquidation Expenses must be deducted from Collateral sale proceeds. Liquidation Expenses are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the Lender and the Agency. Lender's In-House Expenses, which are those expenses that would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.

(4) When a bankruptcy proceeding results in a liquidation of the Borrower by a bankruptcy trustee appointed under 11 U.S.C. 701, 702, 703 or 1104, expenses will be handled as directed by the court, and the Lender cannot claim Liquidation Expenses for the sale of the assets.

(5) If the property is abandoned by the bankruptcy trustee, the Lender will conduct the liquidation in accordance with §4287.357.

(6) Proceeds received from partial sale of Collateral during bankruptcy may be used by the Lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim.

§§ 4287.371–4287.379 [Reserved]

§ 4287.380 Termination of guarantee.

The Loan Note Guarantee will terminate under any of the following conditions:

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the Lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the Lender owns the entire guaranteed interest in the loan and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.381–4287.399 [Reserved]

§ 4287.400 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 4288—PAYMENT PROGRAMS

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

SOURCE: 76 FR 7926, Feb. 11, 2011, unless otherwise noted.

Subpart A—Repowering Assistance Payments to Eligible Biorefineries

§ 4288.1 Purpose and scope.

(a) *Purpose.* The purpose of this program is to provide financial incentives to biorefineries in existence on June 18, 2008, the date of the enactment of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110–246), to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

(b) *Scope.* The Agency may make payments under this program to any biorefinery that meets the requirements of the program up to the limits established for the program. Based on our research and survey of medium-sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biorefineries to apply.

(1) The Agency will determine the amount of payments to be made to a biorefinery taking into consideration the percentage reduction in fossil fuel used by the biorefinery (including the quantity of fossil fuels a renewable biomass system is replacing), and the cost and cost-effectiveness of the renewable biomass system.

(2) The Agency will determine who receives payment under this program based on the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; the cost and cost-effectiveness of the renewable biomass system; and other scoring criteria identified in § 4288.21. The above criteria will be used to determine priority for awards of 50 percent of total eligible project costs, up to the maximum award applicable for the fiscal year.

§ 4288.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

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

Application period. The time period announced by the Agency during which the Agency will accept applications.

Base energy use. The amount of documented fossil fuel energy use over an extended operating period.

(1) The extended operating period must be at least 24 months of recorded usage, and requires metered utility records for electric energy, natural gas consumption, fuel oil, coal shipments

and propane use, as applicable for providing heat or power for the operation of the biorefinery.

(2) Utility billing, oil and coal shipments must be actual bills, with meter readings, applicable rates and tariffs, costs and usage. Billing must be complete, without gaps and arranged in chronological order. Drop shipments of coal or oil can be substituted for metered readings, provided the biorefinery documents the usage and its relationship to providing heat or power to the biorefinery.

(3) A biorefinery in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

Biobased products. Products determined by the Secretary to be commercial or industrial products (other than food or feed) that are:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) Intermediate ingredients or feedstocks.

Biofuel. Fuel derived from renewable biomass.

Biorefinery. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products, and may produce electricity.

Eligible biorefinery. A biorefinery that has been in existence on or before June 18, 2008.

Energy Information Agency (EIA). The statistical agency of the Department of Energy and source of official energy statistics from the U.S. Government.

Feasibility study. An Agency-acceptable analysis of the economic, environmental, technical, financial, and management capabilities of a proposed project or business in terms of its expected success. A list of items that must be included in a feasibility study is presented in § 4288.20(c)(9) of this subpart.

Financial interest. Any ownership, creditor, or management interest in the biorefinery.

Fiscal year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Fossil fuel. Coal, oil, propane, and natural gas.

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; and

(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 as per paragraphs (e)(2), (e)(3), and (e)(4), and large tree retention as per paragraph (f), of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); 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:

(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.

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 according to the most recent decennial Census of the United States, not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I), as well as any area that has been determined to be

''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) 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 2 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.

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

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

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(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.

(6) 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 (6)(ii) of this definition.

(i) 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 one-quarter 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 both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (6)(i)(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 Web site, 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.

[76 FR 7926, Feb. 11, 2011, as amended at 80 FR 9913, Feb. 24, 2015; 87 FR 38645, June 29, 2022]

§ 4288.3 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.4 Compliance with other laws and regulations.

Participating biorefineries must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, 7 CFR Part 1901, subpart E, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Applicants must submit and will be subject to preaward and post award compliance reviews with the terms and conditions set forth in Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement.''

§ 4288.5 Oversight, monitoring, and reporting requirements.

(a) *Verification*. The Agency reserves the right to verify all payment requests and subsequent payments made under this program, including field visits, as frequently as necessary to ensure the integrity of the program. Documentation provided will be used to verify, reconcile, and enforce the payment terms of Form RD 4288–5, ''Repowering Assistance Program—Agreement,'' along with any potential refunds that the recipient will be required to make should they fail to adequately document their request.

(b) *Records*. (1) For purposes of verifying the eligible project costs supporting payments under this subpart, each biorefinery must maintain in one place such books, documents, papers, receipts, payroll records and bills of sale adequate to identify the purposes for which, and the manner in which funds were expended for eligible project costs. The biorefinery must maintain copies of all documents submitted to the Agency in connection with payments made hereunder. These records must be available at all reasonable times for examination by the Agency and must be held and be available for Agency examination for a period of not less than 3 years from the final payment date.

(2) For the purpose of verifying compliance with the fossil fuel reduction and energy production requirements of this subpart, each biorefinery must make available and provide for the metering of all power and heat producing boilers, containment vessels, generators and any other equipment related to the production of heat or power required to displace fossil fuel loads with renewable biomass. These records must be held in one place and be available at all reasonable times for examination by the Agency. Such records include all books, papers, contracts, scale tickets, settlement sheets, invoices, and any other documents related to the program that are within the control of the biorefinery. These records must be held and made available for Agency examination for a period of not less than 3 years from the date the repowering project becomes operational.

(c) *Reporting*. Upon completion of the repowering project, the biorefinery must submit a report using Form RD 4288–6, ''Repowering Assistance Programs—Reporting Form,'' to the Agency annually for the first 3 years after completion of the project. The reports are to be submitted as of October 1 of each year. The report must include the items specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Documentation regarding the usage and production of energy at the biorefinery during the previous year, including both the previous and current fossil fuel load and the renewable biomass energy production.

(i) Metered data documenting the production of heat, steam, gas and power must be obtained utilizing an Agency approved measurement device.

(ii) Metered data must be verifiable and subject to independent calibration testing.

(2) Current utility billing data, indentifying metered loads, from the base energy use period.

§ 4288.6 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this program may be obtained from the USDA Rural Development State Office, Renewable Energy Coordinator and the USDA Rural Development Web site at *http://www.rurdev.usda.gov/regs/*.

§ 4288.7 Exception authority.

The Administrator of the Agency (''Administrator'') may, with the concurrence of the Secretary of Agriculture, 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 Federal government's interest.

§§ 4288.8–4288.9 [Reserved]

§ 4288.10 Applicant eligibility.

(a) *Eligible projects.* To be eligible for this program, the applicant must be an eligible biorefinery utilizing only renewable biomass for replacement fuel, and must meet the requirements specified in paragraphs (a)(1) through (a)(5) of this section.

(1) *Timely complete application submission.* To be eligible for this program, the applicant must submit a complete application within the application period. Projects will be selected based on ranking which is derived from the application of the selection criteria stated in § 4288.21.

(2) *Multiple biorefineries.* Corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

(3) *Cost-effectiveness.* The application must be awarded at least minimum points for cost-effectiveness under § 4288.21(b)(1).

(4) *Percentage of reduction of fossil fuel use.* The application must be awarded at least minimum points for percentage of reduction of fossil fuel use under § 4288.21(b)(2).

(5) *Full project financing.* The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project taking into account the amount of the payment request in the application.

(b) *Ineligible projects.* A project is not eligible under this subpart if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

§ 4288.11 Eligible project costs.

Eligible project costs will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees.

§ 4288.12 Ineligible project costs.

Any project costs incurred by the applicant prior to application for payment assistance under this program will be ineligible for payment assistance.

§ 4288.13 Payment information.

(a) *Maximum payment.* For purposes of this program, the maximum payment an applicant may receive will be 50 percent of total eligible project costs up to the applicable fiscal year's maximum award as announced in an annual FEDERAL REGISTER notice. There is no minimum payment to an applicant.

(b) *Reimbursement payments.* The Agency shall only make payments based on the biorefinery's expenditures on eligible project costs. Payments shall be determined by multiplying the amount of eligible expenditures stated on the payment request by a percentage obtained by dividing the aggregate payment award by total eligible project costs.

(c) *Timing of payments.* The Applicant may request payments not more frequently than once a month by submitting an original, completed, validly signed Standard Form (SF) 271, ''Outlay Report and Request for Reimbursement for Construction Programs'' including the supporting documentation identified in § 4288.23, to reimburse the applicant for the Agency's pro rata share of funds expended on eligible project costs. The Agency shall make such payments until 90 percent of the

total payment award has been expended. The final 10 percent of the payment award will be paid upon completion of the repowering project and satisfactory evidence has been received by the Agency demonstrating that the biorefinery is operating as described in the Agency approved application.

§§ 4288.14–4288.19 [Reserved]

§ 4288.20 Submittal of applications.

(a) *Address to make application.* Application must be submitted to USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

(b) *Content and form of submission.* Applicants must submit a signed original and one copy of an application containing the information specified in this section. The applicant must also furnish the Agency the required documentation identified in Form RD 4288–4, ''Repowering Assistance Program Application,'' to verify compliance with program provisions before acceptance into the program. Note that applicants are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number (unless the applicant is an individual). The DUNS number is a nine-digit identification number, which uniquely identifies business entities. A DUNS number can be obtained at no cost via a toll-free request line at 1–866–705–5711, or online at *http://fedgov.dnb.com/webform.* Applicants must submit to the Agency the documents specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Form RD 4288–4.* Applicants must submit this form and all necessary attachments providing project information on the biorefinery; the facility at which the biorefinery operates, including location and products produced; and the types and quantities of renewable biomass feedstock being proposed to produce heat or power. This form requires the applicant to provide relevant data to allow for technical analysis of their existing facility to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. The applicant must also submit evidence that the biorefinery was in existence on or before June 18, 2008. The applicant is required to certify the information provided.

(2) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

(3) Form RD 400–1.

(4) Form RD 400–4.

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

(6) Certifications. The applicant must furnish the Agency all required certifications before acceptance into the program, and furnish access to records required by the Agency to verify compliance with program provisions. The applicant must submit forms or other written documentation certifying to the following:

(i) AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions'' or other written documentation.

(ii) AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions'' or other written documentation.

(iii) SF–LLL, ''Disclosure of Lobbying Activities.''

(c) *Application package contents.* Applicants are required to provide relevant data to allow for technical analysis of their existing facilities to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicants in existence on or before June 18, 2008 with more than 24 months of actual operating data must provide data for the most recent 24-month period. Applicants in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All applicants must submit the information specified in paragraphs (c)(1) through (c)(9) of this section as part of their application package.

(1) *Contact data.* Contact information for the primary technical contact for the biorefinery.

(2) *Biorefinery data*. Basic information on facility operations over time (hours/day, days/year).

(3) *Electric use data*. Information on existing electric service to the facility, data on consumption, peak and average demand, and monthly/seasonal use patterns.

(4) *Fuel use data*. Information on natural gas and current fuel use for boilers and heaters, including fuel type, costs, and use patterns.

(5) *Thermal loads*. Information on existing thermal loads, including type (steam, hot water, direct heat), conditions (temperature, pressure) and use patterns.

(6) *Existing equipment*. Information on existing heating and cooling equipment, including type, capacities, efficiencies and emissions.

(7) *Site-specific data*. Information on other site-specific issues, such as expansion plans or neighborhood considerations that might impact the proposed new system design or operation; or environmental impacts.

(8) *Biofuel and biobased product production*. Information on biofuel and biobased product production, including quantity and units of production.

(9) *Feasibility study*. The applicant must submit a feasibility study by an independent qualified consultant, which has no financial interest in the biorefinery, and demonstrates that the renewable biomass system of the biorefinery is feasible, taking into account the economic, technical and environmental aspects of the system. The feasibility study must include the components specified in paragraphs (c)(9)(i) through (c)(9)(x) of this section.

(i) An executive summary, including resume of the consultant, and an introduction/project overview (brief general overview of project location, size, *etc.*).

(ii) An economic feasibility determination, including:

(A) Information regarding the project site;

(B) Information on the availability of trained or trainable labor; and

(C) Information on the availability of infrastructure and rail and road service to the site.

(iii) A technical feasibility determination, including a report that:

(A) Describes the repowering project, including:

(*1*) Information on heating and cooling equipment, including type, capacities, efficiencies and emissions;

(*2*) Anticipated impacts of the repowering project on the information requested above relating to electric use data, fuel use data, thermal loads and biofuel and biobased product production; and

(*3*) A project development schedule as more fully described in § 4288.21(b)(4)(iv);

(B) Is based upon verifiable data and contains sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of energy production that are projected in the statements. The report must provide the information in a format that is responsive to the scoring criteria specified in § 4288.21(b)(1) through (5) and applicants should identify in their report the information that corresponds to each of the scoring criteria; and

(C) Identifies and estimates project operation and development costs and specifies the level of accuracy of these estimates and the assumptions on which these estimates have been based.

(iv) A financial feasibility determination that discusses the following:

(A) Repowering project construction funding, including repayment terms and security arrangements. Attach any documents relating to the project financing;

(B) The reliability of the financial projections and assumptions on which the project is based including all sources of project capital, both private and public, such as Federal funds;

(C) Projected balance sheets and costs associated with project operations;

(D) Cash flow projections for 3 years;

(E) The adequacy of raw materials and supplies;

(F) A sensitivity analysis, including feedstock and energy costs, product/co-product prices;

(G) Risks related to the project; and

(H) The continuity, maintenance and availability of records.

(v) A management feasibility determination.

(vi) Recommendations for implementation.

(vii) The environmental concerns and issues of the system.

(viii) The availability of feedstock, including discussions of:

(A) Feedstock source management;

(B) Estimates of feedstock volumes and costs;

(C) Collection, pre-treatment, transportation, and storage; and

(D) Impacts on existing manufacturing plants or other facilities that use similar feedstock.

(ix) The feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock from those entities.

(x) If woody biomass from National forest system lands or public lands is proposed as the feedstock, documentation must be provided that it cannot be used as a higher value wood-based product.

[76 FR 7926, Feb. 11, 2011, as amended at 81 FR 11053, Mar. 2, 2016]

§ 4288.21 Application review and scoring.

The Agency will evaluate projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project will be taken into consideration in the context of each project's ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

(a) *Review.* The Agency will evaluate each application and make a determination as to whether the applicant is eligible, whether the proposed project is eligible, and whether the proposed payment request complies with all applicable statutes and regulations. This evaluation will be conducted by experts in the Agency and other Federal agencies, including the U.S. Department of Energy based on the information provided by the applicant.

(b) *Scoring.* The Agency will score each application in order to prioritize each proposed project. The maximum number of points awardable to any applicant will be 100. The evaluation criteria that the Agency will use to score these projects are specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Cost-effectiveness.* Cost-effectiveness will be scored based on the anticipated simple payback period, or ''simple payback.'' Anticipated simple payback will be demonstrated by calculating documented base energy use costs for the 24-month period prior to submission of the application or at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

(i) The simple payback period is calculated as follows:

- Simple payback = C/S

Where:

C = eligible capital expenses of the repowering project

S = savings in annual operating costs.

Example: Eligible capital expenses of the repowering project, including handling equipment, biomass boiler, piping improvements and plant modifications, are equal to $5,300,500. The annual difference in fossil fuel cost versus the cost for renewable biomass is $990,500. Assume these costs and uses are based on a yearly operating cycle, which may include handling, storage and treatment costs. In this example, C = $5,300,500; S = $990,500; simple payback = 5.35 years (C/S = simple payback).

(ii) A maximum of 20 points will be awarded as follows:

(A) If the anticipated simple payback is less than or equal to 4 years, award 20 points.

(B) If the anticipated simple payback is greater than 4 years but less than or equal to 6 years, award 10 points.

(C) If the anticipated simple payback will be greater than 6 years but less than or equal to 10 years, award 5 points.

(D) If the anticipated simple payback will be greater than 10 years, award 0 points.

(2) *Percentage of reduction of fossil fuel use.* The anticipated percent reduction in the use of fossil fuels will be measured using the same evidence provided by the applicant for measuring cost-effectiveness. However, this set of criteria will measure actual fossil fuel use

for the 24-month period prior to submission of the application or for at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All fossil fuel use, for thermal loads as well as for electric use, will be evaluated by using information provided by the Energy Information Agency (EIA). The Agency will determine the percentage reduction of fossil fuel use based on and in cooperation with the applicant's submission of electric power provider contracts, power agreements, and utility billings in relation to available information from the EIA. A maximum of 35 points will be awarded as follows:

(i) Applicant demonstrates an anticipated annual reduction in fossil fuel use of 100 percent, award 35 points.

(ii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 80 percent but less than 100 percent, award 25 points.

(iii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 60 percent but less than 80 percent, award 15 points.

(iv) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 40 percent but less than 60 percent, award 5 points.

(v) Applicant demonstrates an anticipated annual reduction in fossil fuel use of less than 40 percent, award 0 points.

(vi) If any of the fossil fuel being replaced is natural gas, deduct 5 points.

(3) *Renewable biomass factors.* If an applicant demonstrates at the time of application that it has on site available access to renewable biomass or enforceable third party commitments to supply renewable biomass for the repowering project for at least 3 years, 5 points will be awarded. If an applicant cannot demonstrate this, no points will be awarded.

(4) *Technical review factors.* Technical reviews will be conducted by a team of experts, including rural energy coordinators and State engineers. 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 application. Each section of the technical review will be scored within a range of possible points available within that section. A maximum of 25 points will be awarded as follows:

(i) *Qualifications of the applicant's project team.* The applicant must describe the qualifications of those individuals who will be essential to successful performance of the proposed project. This will include information regarding professional credentials, relevant experience, and education, and must be supported with documentation of service capabilities, professional credentials, licenses, certifications, and resumes, as applicable. Award 0–5 points.

(ii) *Agreements and permits.* The applicant must describe the agreements and permits necessary for project implementation. An Agency-acceptable schedule for securing the required documents and permits must be provided. Award 0–4 points.

(iii) *Design and engineering.* The applicant must describe the design, engineering, and testing needed for the proposed project. The Design and Engineering documents shall demonstrate that they meet the intended purpose, ensure public safety, and comply with all applicable laws, regulations, agreements, permits, codes, and standards. Award 0–4 points.

(iv) *Project development schedule.* The applicant must provide a detailed plan for project development including a proposed schedule of activities, a description of each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. This description must address the applicant's project development cash flow requirements. Award 0–3 points.

(v) *Equipment procurement.* The applicant must describe the equipment needed, and the availability of the equipment needed, to complete installation and activation of the new system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule. Award 0–3 points.

(vi) *Equipment installation*. The applicant must provide a satisfactory description of the plan for site development and system installation that reflects the soundness of the project plan. Award 0–3 points.

(vii) *Operations and maintenance*. The applicant must describe the operations and maintenance requirements of the system necessary for the system to operate as designed and provide the savings and efficiencies as described. The description and requirements noted must be supportable by the technical review. Award 0–3 points.

(5) *Liquid transportation fuels*. If the biorefinery primarily produces liquid transportation fuels, award 10 points.

(6) *Rural area*. If the biorefinery is located in a Rural Area, award 5 points.

§ 4288.22 Ranking of applications.

All scored applications will be ranked by the Agency as soon after the application deadline as possible. The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for payments.

(a) *Selection of applications for payments*. Using the application scoring criteria point values specified in § 4288.21 of this subpart, the Agency will select applications for payments.

(b) *Availability of funds*. As applications are funded, if insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay 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 its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Agency must determine the project is feasible at the lower amount.

§ 4288.23 Notifications.

(a) *Successful applicants*. Successful applicants will receive an award letter notifying them of the award, including the terms and conditions, and Form RD 4288–5. Each funded project is unique, and, therefore, conditions of Form RD 4288–5 may vary among projects. Successful applicants must execute and return the Form RD 4288–5, accompanied by any additional items identified in the award letter.

(b) *Unsuccessful applicants*. Unsuccessful applicants will receive a letter notifying them of their application score and ranking and the score necessary to qualify for payments.

§ 4288.24 Program payment provisions.

The procedure the Agency will use to make payments to eligible biorefineries is specified in paragraphs (a) through (e) of this section.

(a) *Payment applications*. The Agency shall make payments based on the biorefinery's expenditures on eligible project costs. To request payments under this program during a fiscal year, an eligible biorefinery must:

(1) Submit an original, validly signed and completed SF 271 to the Agency not more frequently than once a month with the following supporting documentation:

(i) Evidence of expenditure of funds on eligible project costs which shall include paid third party invoices, receipts, bills of sale, and/or payroll records. Such records must be adequate to identify that funds to be reimbursed were spent on eligible project costs; and

(ii) Evidence that construction of the repowering project is in compliance with the project development schedule.

(2) Certify that the request is accurate.

(3) Furnish the Agency such certifications as required in Form RD 4288–4, Part C, and access to records that verify compliance with program provisions.

(b) *Clarifying information*. After payment applications are submitted, eligible biorefineries may be required to submit additional supporting clarification if their original submittal is not sufficient to verify eligibility for payment.

(c) *Notification*. The Agency will notify the biorefinery, in writing, whenever the Agency determines that a payment request is ineligible and why the request was determined ineligible.

(d) *Refunds and interest payments*. An eligible biorefinery that has received a

payment under this program may be required to refund such payment as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) An eligible biorefinery receiving payment under this program will become ineligible for payments if the Agency determines the biorefinery has:

(i) Made any material fraudulent representation;

(ii) Misrepresented any material fact affecting a program determination; or

(iii) Upon completion of the repowering project, failed to reduce its fossil fuel consumption, produce energy from renewal biomass or otherwise operate as described in its Agency approved application.

(2) All payments made to a biorefinery determined by the Agency to be ineligible must be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs, as determined appropriate under 31 CFR 901.9.

(3) When a refund is due, it must be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the biorefinery, and sharing information with the Department of Justice.

(4) Late payment interest will be assessed on each refund in accordance with provisions and rates as determined by the Agency.

(i) Interest charged by the Agency under this program will be at the rate established annually by the Secretary of the U.S. Treasury pursuant to 31 U.S.C. 3717. Interest will accrue from the date payments were received by the biorefinery to the date of repayment, and the rate will adjust in accordance with applicable regulations.

(ii) The Agency may waive the accrual of interest and/or damages if the Agency determines that the cause of the erroneous determination was not due to any fraudulent or negligent action of the biorefinery.

(5) A biorefinery or person receiving payment under this program will be liable for any refund or related charges associated with their project due under this program.

(e) *Remedies.* The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 4288.25 Succession and control of facilities and production.

Any party obtaining a biorefinery that is participating in this program must request permission to participate in this program as a successor. The Agency may grant such request if it is determined that, the party is eligible, and permitting such succession would serve the purposes of the program. If appropriate, the Agency will require the consent of the previous party to such succession. Also, the Agency may terminate payments and demand full refund of payments made if a party loses control of a biorefinery whose production of heat or power from renewable biomass is the basis of a program payment, or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 4288.26 Fiscal Year 2009 and Fiscal Year 2010 applications.

Any entity that submitted an application for payment to the Agency under this program prior to March 14, 2011 will have their payments made and serviced in accordance with the provisions specified in this subpart.

§§ 4288.27–4288.100 [Reserved]

Subpart B—Advanced Biofuel Payment Program General Provisions

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 7967, Feb. 11, 2011, unless otherwise noted.

§ 4288.101 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to support and ensure an expanding production of advanced biofuels by providing payments to eligible advanced biofuel producers.

(b) *Scope.* This subpart sets forth, subject to the availability of funds as provided herein, or as may be limited

by law, the terms and conditions an advanced biofuel producer must meet to obtain payments under this Program from the United States Department of Agriculture for eligible advanced biofuel production. Additional terms and conditions may be set forth in the Program contract and payment agreement prescribed by the Agency.

§ 4288.102 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Advanced biofuel. A fuel that is derived from renewable biomass, other than corn kernel starch, to include:

(1) Biofuel derived from cellulose, hemicellulose, or lignin;

(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(4) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;

(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; or

(7) Other fuel derived from cellulosic biomass.

Advanced biofuel producer. An individual, corporation, company, foundation, governmental entity, school or other educational facility, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces advanced biofuel. An entity that blends or otherwise combines advanced biofuels into a blended biofuel is not considered an advanced biofuel producer under this subpart. An entity that produces biofuel exclusively under a toll/bailment arrangement/third part production contract is not considered an advanced biofuel producer under this subpart.

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

Alcohol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, rendered unfit for beverage use, produced at a biofuel facility and in a manner approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives for the production of alcohol for fuel; or

(2) As denatured alcohol used by blenders and refiners and rendered unfit for beverage use.

Alcohol producer. An advanced biofuel producer authorized by ATF to produce alcohol.

ATF. The Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

Bailment. The temporary placement of control over, or possession of property by an individual or entity, the bailor, into the hands of another, the bailee, for a designated purpose upon which the parties have agreed. For purposes of this Program any advanced biofuel produced by a toll producer of any form, or under any form of third-party production agreement, is regarded/considered as produced under bailment and is ineligible for payment; to either bailor or bailee.

Biodiesel. A mono alkyl ester, manufactured in the United States and its territories, that meets the requirements of the appropriate ASTM International standard.

Biofuel. Fuel derived from renewable biomass.

Biorefinery. The term ''biorefinery'' means a facility (including equipment and processes) that—

(1) Converts renewable biomass or an intermediate ingredient or feedstock of renewable biomass into any 1 or more, or a combination, of—

(i) Biofuels;

(ii) Renewable chemicals; or

(iii) Biobased products; and

(2) May produce electricity.

Blender. A blender is a processor of fuels who combines two or more fuels, one of which must be an advanced biofuel, for distribution and sale. Producers who blend one or more of their own fuels are not blenders under this definition.

Certificate of analysis. A document approved by the Agency that certifies the quality and purity of the advanced biofuel being produced. The document must be from a qualified, independent third party.

Commodity. Renewable biomass, other than corn kernel starch, used primarily for the purposes of this Program, by advanced biofuel producers as feedstock from which to produce/derive advanced biofuel. Eligible renewable biomass is organized into the following commodity categories:

(1) Title I grains and oilseeds including: Wheat, corn, grain sorghum, barley, oats, and rice; sugars, and starches (other than corn kernel starch); Soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard, crambe, sesame, and peanuts; as identified under Title I, Public Law 115–334, and as determined by the Secretary;

(2) Other oilseeds and nuts including cottonseed, palm, camelina, coconut, and olive; and algae;

(3) A cellulosic commodity grown for energy purposes, such as, hybrid poplar and other energy trees, switch grass and other energy grasses; cellulose, hemicellulose, or lignin;

(4) Waste material, including crop residue/Stover, other vegetative waste material/orchard waste, animal waste/manure, food waste/food processing waste, and yard waste/biodegradable solid waste/organic matter;

(5) Fats, oils, and greases, derived from an agricultural product, including: Recycled fats, oils, and greases, such as used cooking oil and reclaimed-industrial grade-distillers' corn/sorghum oil; tallow, white grease, yellow grease, and other livestock renderings; and

(6) Any animal byproduct (in addition to oils, fats, and greases) that may be used to produce bioenergy, as determined by the Secretary.

Contract. Form RD 4288–2, ''Advanced Biofuel Payment Program Contract,'' signed by the eligible advanced biofuel producer and the Agency, that defines the terms and conditions for participating in and receiving payment under this Program.

Derived. A process that creates a physical, and/or chemical, and/or biological change in renewable biomass/feedstock.

Eligible advanced biofuel producer. A producer of advanced biofuels that meets all requirements of § 4288.110 of this subpart.

Eligible renewable biomass. Renewable biomass, as defined in this section, excluding corn kernel starch. See also commodity.

Eligible renewable energy content. That portion of an advanced biofuel's energy content derived from eligible renewable biomass feedstock. The energy content from any portion of the biofuel, whether from, for example, blending with another fuel or a denaturant, that is derived from a non-eligible renewable biomass feedstock (e.g., corn kernel starch) is not eligible for payment under this Program.

Enrollment application. Form RD 4288–1, ''Advanced Biofuel Payment Program Annual Application,'' which is submitted by advanced biofuel producers for participation in this Program.

Ethanol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, and which has been rendered unfit for beverage use and produced at an advanced biofuel facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and energy refiners, which has been rendered unfit for beverage use.

Ethanol producer. An advanced biofuel producer authorized by ATF to produce ethanol.

Final Product. A product of a biorefinery that is ready for sale/distribution without further processing. For purposes of this Program, an advanced biofuel is a Final Product eligible for payment if it is ready for distribution and sale as a fuel.

Fiscal Year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Flared gas. The burning of unwanted gas through a pipe (also called a flare). Flaring is a means of disposal used when the operator cannot transport the gas to market or convert to electricity and cannot use the gas for any other purpose.

Incremental production. The quantity of eligible advanced biofuel produced at an advanced biofuel biorefinery in the fiscal year for which payment is sought that exceeds the quantity of advanced biofuel produced at the biorefinery over the prior fiscal year.

Large producer. (1) An advanced biofuel producer which in the prior fiscal year, produced more than:

(i) 150,000,000 gallons of liquid advanced biofuel per year; or

(ii) 15,900,000 Million British Thermal Units (MMBTU) of biogas and/or solid advanced biofuel per year.

(2) The amount of gallons and MMBTUs listed in paragraphs (1)(i) and (ii) of this definition include the advanced biofuel production at all facilities, in the United States, in which the producer and/or its parent company(ies) have a 50-percent or greater ownership.

Parent company. A company/corporation that has a controlling interest in another company/corporation, giving it control of its operations. The company is deemed a subsidiary of the parent company.

Payment application. Form RD 4288–3, ''Advanced Biofuel Payment Program—Payment Request,'' which is submitted by an eligible advance producer to the Agency in order to receive payment under this Program.

Quarter. The Federal fiscal time period for any fiscal year as follows:

(1) 1st Quarter: October 1 through December 31;

(2) 2nd Quarter: January 1 through March 31;

(3) 3rd Quarter: April 1 through June 30; and

(4) 4th Quarter: July 1 through September 30.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land and 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 (e)(2), (e)(3), and (e)(4) and large-tree retention of paragraph (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); 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:

(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.

Sale. A transaction between two or more parties, typically a buyer and a seller, in which goods or services are exchanged for money or other assets.

Sign-up period. The time period during which the Agency will accept enrollment applications.

State. Any of the 50 States of the United 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.

Third party production. Third party production involves outsourcing production processes to a third-party company whereby the third-party company, hired to produce, is supplying the manufacturing process as well as sourcing the raw materials/commodity feedstock. The contract producer is responsible for manufacturing the product to specification and disposition/delivery requirements. For purposes of this Program, any advanced biofuel produced under a contractual third-party production agreement is ineligible for payment. A producer that is strictly a third-party contractor produces no eligible advanced biofuel.

Toll producer. See also bailment. Toll production/manufacturing is an arrangement, where a company with specialised equipment processes raw materials or unfinished goods for a different company. A toll producer of advanced biofuels produces advanced biofuels for another company. For purposes of this Program, any advanced biofuel produced by a toll producer of any form, or under any form of third-party production agreement, is regarded/considered as produced under bailment and is ineligible for payment.

USDA. The United States Department of Agriculture.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71301, Dec. 27, 2019]

§ 4288.103 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.104 Compliance with other laws and regulations.

(a) Advanced biofuel producers must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, The Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and 7 CFR part 1901, subpart E. This includes collection and maintenance of race, sex, and national origin data of the recipient's employee.

(b) Producers must comply with equal opportunity and nondiscriminatory requirements in accordance with 7 CFR 15d. Rural Development will not discriminate against an applicant on the bases of race, color, religion, national origin, sex, sexual orientation, marital status, familial status, disability, 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.

§ 4288.105 Oversight and monitoring.

(a) *Verification*. The Agency reserves the right to verify all payment applications and subsequent payments made under this subpart, as frequently as necessary, to ensure the integrity of the Program. The Agency will conduct site visits as necessary.

(1) *Production and feedstock verification*. The Agency will review producer records to verify the type and amount of biofuel produced and the type and amount of commodity/eligible renewable biomass used.

(2) *Blending verification*. The Agency will review the producer's certificates of analysis and feedstock records to verify the portion of the advanced biofuel eligible for payment.

(3) *Certificate of Analysis*. The Agency will review the producer records for quarterly payments to ensure that each Certificate of Analysis has been issued by an Agency-approved qualified entity, which may include the blender only if the blender is not associated with the biorefinery.

(b) *Records*. For the purpose of verifying compliance with the requirements of this subpart, each eligible advanced biofuel producer shall make available at one place at a reasonable time for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, and other documents related to the Program that is within the control of such advanced biofuel producer for not less than 3 years from each Program payment date.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.106 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this Program may be obtained from the USDA Rural Development State Office, Rural Energy Coordinator and the USDA Rural Development website at *https://www.rd.usda.gov/*.

[84 FR 71302, Dec. 27, 2019]

§ 4288.107 Exception authority.

The Administrator of the Agency (''Administrator'') may, with the concurrence of the Secretary of Agriculture, 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 Federal government's interest.

§§ 4288.108–4288.109 [Reserved]

ELIGIBILITY PROVISIONS

§ 4288.110 Applicant eligibility.

Sections 4288.110 through 4288.119 present the requirements associated with advanced biofuel producer eligibility, biofuel eligibility, eligibility notifications, and payment record requirements. To be eligible for this Program, the applicant must meet the requirements specified in paragraph (a) of this section and must provide additional information as may be requested by the Agency under paragraph (b) of this section. Public bodies and educational institutions are not eligible for this Program.

(a) *Eligible producer*. The applicant must be an advanced biofuel producer, as defined in this subpart.

(b) *Eligibility determination*. The Agency will determine an applicant's eligibility for participation in this Program. If an applicant's original submittal is not sufficient to verify an applicant's eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the applicant's eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the applicant's eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the Agency will not consider the applicant any further for participation in the upcoming fiscal year. Such applicants may elect to enroll during the next sign-up period.

(c) *Ineligibility determination*. An otherwise eligible producer will be determined to be ineligible if the producer:

(1) Refuses to allow the Agency to verify any information provided by the producer under this subpart, including information for determining applicant eligibility, advanced biofuel eligibility, and application payments;

(2) Fails to meet any of the conditions set out in this subpart, in the contract, or in other Program documents; or

(3) Fails to comply with all applicable Federal, State, or local laws.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.111 Biofuel eligibility.

To be eligible for this Program, a biofuel must meet the requirements specified in paragraph (a) of this section, and must not be listed in paragraph (b) of this section, and the biofuel's producer must provide additional information as may be requested by the Agency under paragraph (c) of this section.

(a) *Eligible advanced biofuel*. For an advanced biofuel to be eligible, each of the following conditions must be met, as applicable:

(1) The advanced biofuel must meet the definition of advanced biofuel and be produced in a State;

(2) The advanced biofuel must be a solid, liquid, or gaseous advanced biofuel;

(3) The advanced biofuel must be a Final Product; and

(4) The advanced biofuel must be sold as an advanced biofuel through an arm's length transaction to a third party.

(b) *Ineligible fuels*. Notwithstanding the provisions of paragraph (a) of this section, for the purposes of this Program, the following fuels, and as may be supplemented by the Agency through the publication of documents in the FEDERAL REGISTER, are not eligible for payment:

(1) Flared gases;

(2) Fuels derived from paper milling and other processes commonly ascribed

to wood products manufacturing and generically referred to as ''liquor'' (*e.g.*, black liquor, red liquor, brown liquor, white liquor, green liquor, etc.), which typically are blended with diesel and burned as boiler fuel;

(3) Biofuels produced from solid eligible renewable biomass primarily by mechanical means, whether by hand or by machine, such as collecting, baling, bundling, chopping, screening, and chipping of the renewable biomass. Examples of ineligible biofuels that are not eligible advanced biofuels for the purposes of this subpart include, but are not limited to, baled energy grasses, chipped or chunked woody biomass, and chopped or split firewood; and

(4) Any advanced biofuel produced under bailment or third-party production contract and/or any variation thereof.

(c) *Eligibility determination*. The Agency will determine a biofuel's eligibility for payment under this Program. If an applicant's original submittal is not sufficient to verify a biofuel's eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the biofuel's eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the biofuel's eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the biofuel will not be eligible for payment under this Program in the upcoming fiscal year. Applicants may elect to include such biofuels in the application form submitted during the next sign-up period.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.112 Eligibility notifications.

(a) *Applicant eligibility*. If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application and will assign the applicant a contract number.

(b) *Ineligibility notifications*. If an applicant or a biofuel is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application, as to the reason(s) the applicant or biofuel was determined to be ineligible. Such applicant will have appeal rights as specified in this subpart.

(c) *Subsequent ineligibility determinations*. If at any time a producer or an advanced biofuel is determined to be ineligible, the Agency will notify the producer in writing of its determination.

§ 4288.113 Payment record requirements.

To be eligible for Program payments, an advanced biofuel producer must maintain records for all relevant fiscal years and fiscal year quarters for each advanced biofuel facility indicating:

(a) The type of eligible renewable biomass used in the production of advanced biofuel;

(b) The quantity of advanced biofuel produced from eligible renewable biomass at each advanced biofuel facility;

(c) The quantity of eligible renewable biomass used at each advanced biofuel facility to produce the advanced biofuel; and

(d) All other records required to establish Program eligibility and compliance.

§§ 4288.114–4288.119 [Reserved]

ENROLLMENT PROVISIONS

§ 4288.120 Enrollment.

In order to participate in the Program, a producer of advanced biofuels must be approved by the Agency and enter into a contract with the Agency. The process for enrolling in the Program is presented in this section. Advanced biofuel producers who expect to produce eligible advanced biofuels at any time during a fiscal year must enroll in the Program as described in this section.

(a) *Enrollment*. To enroll in the Program, an advanced biofuel producer must submit to the Agency a completed enrollment application during

the applicable sign-up period, as specified in paragraph (b) of this section. Applicants must be registered in the System for Award Management (SAM) prior to submitting an application; which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *www.sam.gov/SAM*. Registration of a new entity in SAM requires an original, signed, and notarized letter stating that the applicant is the authorized Entity Administrator, before the registration will be activated.

(1) Eligible advanced biofuel producers must submit enrollment applications during each sign-up period in order to continue participating in this Program. If a participating producer fails to submit the enrollment application during a fiscal year's applicable sign-up period, the producer's contract will be terminated and the producer will be ineligible to receive payments for that fiscal year. Such a producer must reapply, and sign a new contract, to participate in the Program for future fiscal years.

(2) Eligible advanced biofuel producers may submit an enrollment application during a fiscal year's sign-up period even if the advanced biofuel facility is not currently producing, but is scheduled to start producing advanced biofuel in that fiscal year.

(3) The producer must furnish the Agency all required certifications before acceptance into the Program, and furnish access to the advanced biofuel producer's records required by the Agency to verify compliance with Program provisions. The required certifications depend on the type of biofuel produced. Certifications specified in paragraphs (a)(3)(i) through (a)(3)(iv) of this section are to be completed and provided by an accredited independent third party.

(i) *Alcohol.* For alcohol producers with authority from ATF to produce alcohol, copies of either

(A) The Alcohol Fuel Producers Permit (TTB F 5110.74) or

(B) The registration of Distilled Spirits Plant (TTB F 5110.41) and Operating Permit (TTB F 5110.25).

(ii) *Hydrous ethanol.* For hydrous ethanol that is upgraded by another distiller to anhydrous ethyl alcohol, the increased ethanol production is eligible for payment one time only. If the advanced biofuel producer entering into this agreement is:

(A) The hydrous ethanol producer, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the distiller stating that the:

(*1*) Applicable hydrous ethanol produced is distilled and denatured for fuel use according to ATF requirements, and

(*2*) Distiller will not include the applicable ethanol in any payment requests that the distiller may make under this Program.

(B) The distiller that upgrades hydrous ethanol to anhydrous ethyl alcohol, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the hydrous ethanol producer stating that the hydrous ethanol producer will not include the applicable ethanol in any payment requests that may be made under this Program.

(iii) *Biodiesel, biomass-based diesel, and liquid hydrocarbons derived from biomass.* For these fuels, the advanced biofuel producer shall certify that the producer, the advanced biofuel facility, and the biofuel meet the definitions of these terms as defined in § 4288.102, the applicable registration requirements under the Energy Independence and Security Act and the Clean Air Act and under the applicable regulations of the U.S. Environmental Protection Agency and Internal Revenue Service, and the quality requirements per applicable ASTM International standards (e.g., ASTM D6751) and commercially acceptable quality standards of the local market. If a Renewable Identification Number has been established, the advanced biofuel producer shall also provide documentation of the most recent Renewable Identification Number for a typical gallon of each type of advanced biofuel produced.

(iv) *Gaseous advanced biofuel.* For gaseous advanced biofuel producers, certification that the biofuel meets commercially acceptable pipeline quality standards of the local market; that the flow meters used to determine the quantity of advanced biofuel produced are industry standard and properly

calibrated by a third-party professional; and that the readings have been taken by a qualified individual.

(v) *Woody biomass feedstock.* If the feedstock is from National Forest system land or public lands, documentation must be provided that it cannot be used as a higher value wood-based product.

(4) Applicants must submit the forms specified in this paragraph (a)(4) with the enrollment application when applying for participation under this subpart and as needed when re-enrolling in the program.

(i) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

(ii) SF–LLL, ''Disclosure of Lobbying Activities.''

(iii) Form RD 400–4, ''Assurance Agreement.''

(b) *Sign-up period.* The sign-up period is October 1 to October 31 of the fiscal year for which payment is sought, unless otherwise announced by the Agency in a FEDERAL REGISTER notice.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.121 Contract.

Advanced biofuel producers determined to be eligible to receive payments must then enter into a contract with the Agency in order to participate in this Program.

(a) *Contract.* The Agency will forward the contract to the advanced biofuel producer. The advanced biofuel producer must agree to the terms and conditions of the contract, sign, date, and return it to the Agency within the time provided by the Agency.

(b) *Length of contract.* Once signed, a contract will remain in effect until terminated as specified in paragraph (d) of this section.

(c) *Contract review.* All contracts will be reviewed at least annually to ensure compliance with the contract and ensure the integrity of the program.

(d) *Contract termination.* Contracts under this Program will be terminated in writing by the Agency. Contracts may be terminated under any one of the following conditions:

(1) At the mutual agreement of the parties;

(2) In accordance with applicable Program notices and regulations;

(3) The advanced biofuel producer withdraws from the Program and so notifies the Agency, in writing;

(4) The advanced biofuel producer fails to submit the enrollment application during a sign-up period;

(5) The Program is discontinued or not funded;

(6) All of a participating advanced biofuel producer's advanced biofuel facilities no longer exist or no longer produce any eligible advanced biofuel; or

(7) The Agency determines that the advanced biofuel producer is ineligible for participation.

§§ 4288.122–4288.129 [Reserved]

PAYMENT PROVISIONS

§ 4288.130 Payment applications.

Sections 4288.130 through 4288.189 identify the process and procedures the Agency will use to make payments to eligible advanced biofuel producers. In order to receive payments under this Program, eligible advanced biofuel producers with valid contracts must submit a payment application, as required under paragraph (a) of this section. The Agency will review the payment application and, if necessary, may request additional information, as specified under paragraph (b) of this section.

(a) *Applying for payment.* To apply for payments under this subpart for a fiscal year, an eligible advanced biofuel producer must:

(1) After a quarter has been completed, submit a payment application covering the quarter;

(2) Certify that the request is accurate;

(3) Furnish the Agency such certification, and access to such records, as the Agency considers necessary to verify compliance with Program provisions; and

(4) Provide documentation as requested by the Agency of the net production of advanced biofuel at all advanced biofuel facilities during the relevant quarter.

(b) *Review of payment applications.* The Agency will review each payment application it receives to determine if it is eligible for payment.

(1) *Review factors.* Factors that the Agency will consider in reviewing payments applications include, but are not necessarily limited to:

(i) *Contract validity.* Whether the entity submitting the payment application has a valid contract with the Agency under this Program;

(ii) *Biofuel eligibility.* Whether the biofuel for which payment is sought is an eligible advanced biofuel; and

(iii) *Calculations.* Whether the calculations for determining the requested payment are complete and accurate.

(2) *Additional documentation.* If the Agency determines additional information is required for the Agency to complete its review of a payment application, eligible advanced biofuel producers shall submit such additional supporting documentation as requested by the Agency. If the producer does not provide the requested information within the required time period, the Agency will not make payment.

(c) *Payment application eligibility.* The Agency will notify the advanced biofuel producer, in writing, as soon as practicable after the payment application, whenever the Agency determines that a payment application, or any portion thereof, is ineligible for payment and the basis for the Agency's determination of ineligibility.

(d) *Submittal information.* Unless otherwise specified in a notice published in the FEDERAL REGISTER, eligible advanced biofuel producers must submit payment applications for this Program no later than 4:30 p.m. local time on the last day of the calendar month following the quarter for which payment is being requested. No payment applications received after the specified date and time will be considered, regardless of the postmark on the application.

(1) Any payment application form that is received by the Agency after October 31 of the calendar year for the preceding fiscal year is ineligible for payment.

(2) If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.131 Payment provisions.

Payments to advanced biofuel producers for eligible advanced biofuel production will be determined in accordance with the provisions of this section.

(a) *Actual production.* Participating producers will be paid on a quarterly basis for the actual quantity of eligible advanced biofuel produced during the quarter. Payment for actual production will be determined according to paragraph (d) of this section.

(b) *Amount of payment funds available.* Based on the amount of funds made available to this Program each fiscal year, the Agency will allocate available program funds according to paragraphs (c), (d), and (e) of this section.

(c) *Quarterly allocations.* For each fiscal year, the Agency will allocate in each quarter one-fourth of the funds identified in paragraph (b) of this section allocated for the entire fiscal year.

(d) *Determination of payment rate.* Each quarter, the Agency will establish an actual production payment rate using the procedures specified in paragraphs (d)(1) through (4) of this section. This rate will be applied to the actual quantity of eligible advanced biofuel produced to determine payments to eligible advanced biofuel producers.

(1) Based on the information provided in each payment application, the Agency will determine the eligible advanced biofuel production. If the Agency determines that the amount of advanced biofuel production reported in a payment application is not supported by the documentation submitted with the payment application, the Agency may revise the reported production to an amount that is commensurate with the submitted documentation.

(2) For each producer, the Agency will convert the production determined to be eligible under paragraph (c) of this section into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (EIA) (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another

appropriate entity. If no such conversion factor exists, the Agency, in consultation with other Federal agencies, will establish and use a conversion formula as appropriate, until the Energy Information Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(3) For each quarter, the Agency will determine the actual production payment rate ($/BTU) based on paragraphs (b), (c), and (d) of this section. The rate will be calculated such that all quarterly funds for actual production will be distributed, subject to the payment provisions specified in paragraph (e) of this section.

(4) Using the actual production payment rate determined and the actual production for each type of advanced biofuel produced at a biorefinery, the Agency will calculate each quarter payment for each eligible advanced biofuel producer for that quarter.

(e) *Other payment provisions.* The following provisions apply:

(1) Notwithstanding any other provisions in this section, the Agency will provide payments to one or more eligible advanced biofuel producers from a single eligible Commodity, including intermediate ingredients of that single Commodity or use of that single Commodity and its intermediate ingredients in combination with another Commodity, of not more than one-third of available program funds in each quarter.

(i) Payments to producers for advanced biofuel derived from a commodity listed in Title I grains and oilseeds (as defined paragraph (1) of the defintion of commodity in § 4288.102), are subject to the one-third limitation as tracked individually for each commodity. For example, with respect to the Title I grains and oilseeds commodity—grain sorghum, all payments for the quarter to producers of advanced biofuel derived from grain sorghum are tabulated and subject to the one-third payment limitation. This is similarly true for each commodity listed under Title I grains and oilseeds—barley, oats, rice, soybeans, etc.

(ii) Payments to producers for advanced biofuel derived from a commodity listed in paragraphs (2) through (6) of the defintion of commodity in § 4288.102, inclusively, are subject to the one-third limitation as tracked cumulatively with each commodity group. For example, with respect to the commodity in paragraph (2) of the definition of commodity (other oilseeds and nuts including cottonseed, palm, camelina, coconut, and olive and algae), all payments for the quarter to producers of fuel derived from ''other oilseeds, nuts and algae'' are tabulated cumulatively (all are tracked as ''other oilseeds, nuts, and algae'' whether olive, or coconut, or camelina, etc.) and subject cumulatively to the one-third payment limitation. This is similarly true for the commodity in paragraphs (3) through (6) of the definition of commodity.

(2) Notwithstanding any other provision of this section, the Agency will provide payments to large producers of not more than five (5) percent of available program funds in any fiscal year. At any time during the year, if the limit on payments to large producers would be reached, the Agency will prorate payments to large producers based on the BTU content of their eligible advanced biofuel production so as not to exceed the limit.

(3) Notwithstanding any other provision of this section, the Agency will provide payments to any eligible advanced biofuel producer, that is not a large producer, of not more than eight (8) percent of available funds in any fiscal year. At any time during the year, if the eight percent to the advanced biofuel producer would be reached, the Agency will pro-rate payments based on the BTU content of the eligible advanced biofuel production so as not to exceed the limit.

(4) Advanced biofuel producers will be paid based on the amount of eligible renewable energy content of the advanced biofuels only if the producer provides sufficient documentation, including a Certificate of Analysis, for the Agency to determine the eligible renewable energy content for which

payment is being requested, and quantity produced through such documentation as, but not limited to, records of sale and calibrated flow meter records.

(5) Payment will be made to only one eligible advanced biofuel producer per biorefinery. If a producer owns more than one facility, the Agency's tracking system will add all actual BTUs and calculate one payment amount. For facilities owned by more than one producer, only one payment will be issued per facility.

(6) Subject to other provisions of this section, advanced biofuel producers shall be paid any sum due.

(7) A producer will be paid only for the advanced biofuels identified in the enrollment application submitted during the sign-up period and which are produced during the fiscal year. If the producer starts producing a new advanced biofuel or changes the type of advanced biofuel during the fiscal year, the producer will not receive any payments for those new advanced biofuels. However, during each sign-up period, a producer may identify new advanced biofuels and production levels compared to the previous year.

(8) When determining the quantity of eligible advanced biofuel, if an applicant is blending its advanced biofuel using ineligible feedstocks (*e.g.*, fossil gasoline or methanol, corn kernel starch), only the quantity of advanced biofuel being produced from Renewable Biomass, other than corn kernel starch, will be used in determining the payment rates and for which payments will be made.

[84 FR 71302, Dec. 27, 2019]

§ 4288.132 Payment adjustments.

The Agency will adjust the payments otherwise payable to the advanced biofuel producer if there is a difference between the amount actually produced and the amount determined by the Agency to be eligible for payment.

§ 4288.133 Payment liability.

Any payment, or portion thereof, made under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the advanced biofuel, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

§ 4288.134 Refunds and interest payments.

An eligible advanced biofuel producer who receives payments under this subpart may be required to refund such payments as specified in this section. If the Agency suspects fraudulent representation through its site visits and records inspections under § 4288.105(b), it will be referred to the Office of Inspector General for appropriate action.

(a) An eligible advanced biofuel producer receiving payments under this subpart shall become ineligible if the Agency determines the advanced biofuel producer has:

(1) Made any fraudulent representation; or

(2) Misrepresented any material fact affecting a Program determination.

(b) If an Agency determination that a producer is not eligible for participation under this subpart is appealed and overturned, the Agency will make appropriate and applicable payments to the producer from Program funds, to the extent such funds are available, that remain from the fiscal year in which the original adverse Agency decision was made.

(c) All payments made to an entity determined by the Agency to be ineligible shall be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs as determined appropriate under 31 CFR 901.9.

(d) When a refund is due, it shall be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the producer, and referral to the Department of Justice.

(e) Late payment interest shall be assessed on each refund in accordance with the provisions and rates as established by the United States Treasury.

(1) Interest charged by the Agency under this subpart shall be established by the United States Treasury. Such interest shall accrue from the date

such payments were made by the Agency to the date of repayment by the producer.

(2) The Agency may waive the accrual of interest or damages if the Agency determines that the cause of the erroneous payment was not due to any action of the advanced biofuel producer.

(f) Any advanced biofuel producer or person engaged in an act prohibited by this section and any advanced biofuel producer or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this subpart and for related charges.

§ 4288.135 Unauthorized payments and offsets.

When unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency reserves the right to collect from the recipient the sum that is determined to be unauthorized. If the recipient fails to pay the Agency the unauthorized assistance plus other sums due under this section, the Agency reserves the right to offset that amount against Program payments.

(a) *Unauthorized assistance.* The Agency will seek to collect from recipients all unauthorized assistance made under this Program using the procedures specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *Notification to the producer.* Upon determination that unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency will send a demand letter to the producer. Unless the Agency modifies the original demand, it will remain in full force and effect. The demand letter will:

(i) Specify the amount of unauthorized assistance, including any accrued interest to be repaid, and the standards for imposing accrued interest;

(ii) State the amount of penalties and administrative costs to be paid, the standards for imposing them and the date on which they will begin to accrue;

(iii) Provide detailed reason(s) why the assistance was determined to be unauthorized;

(iv) State the amount is immediately due and payable to the Agency;

(v) Describe the rights the producer has for seeking review or appeal of the Agency's determination pursuant to 7 CFR part 11;

(vi) Describe the Agency's available remedies regarding enforced collection, including referral of debt delinquent after due process for Federal salary, benefit and tax offset under the Department of Treasury Offset Program; and

(vii) Provide an opportunity for the producer to meet with the Agency and to provide to the Agency facts, figures, written records, or other information that might refute the Agency's determination.

(A) If the producer meets with the Agency, the producer will be given an opportunity to provide information to refute the Agency's findings.

(B) When requested by the producer, the Agency may grant additional time for the producer to assemble documentation. Such extension of time for payment will be valid only if the Agency documents the extension in writing and specifies the period in days during which period the payment obligation created by the demand letter (but not the ongoing accrual of interest) will be suspended. Interest and other charges will continue to accrue pursuant to the initial demand letter during any extension period unless the terms of the demand letter are modified in writing by the Agency.

(2) *Payment in full.* If the producer agrees with the Agency's determination or will pay the amount in question, the Agency may allow a reasonable period of time (usually not to exceed 90 days) for the producer to arrange for repayment. The amount due will be the unauthorized payments made plus interest accrued beginning on the date of the demand letter at the interest rate stipulated until the date paid unless otherwise agreed, in writing, by the Agency.

(3) *Promissory note.* If the producer agrees with the Agency's determination or is willing to pay the amount in question, but cannot repay the unauthorized assistance within a reasonable period of time, the Agency will convert the unauthorized assistance amount to

a loan provided all of the conditions specified in paragraphs (a)(3)(i) through (a)(3)(iii) of this section are met. Loans established under this paragraph will be at the Treasury interest rate in effect on the date the financial assistance was provided and that is consistent with the term length of the promissory note. In all cases, the receivable will be amortized per a repayment schedule satisfactory to the Agency that has the producer pay the unauthorized assistance as quickly as possible, but in no event will the amortization period exceed fifteen (15) years. The producer will be required to execute a debt instrument to evidence this receivable, and the best security position practicable in a manner that will adequately protect the Agency's interest during the repayment period will be taken as security.

(i) The producer did not provide false information;

(ii) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(iii) Failure to collect the unauthorized assistance immediately will not adversely affect the Agency's interests.

(4) *Appeals.* Appeals resulting from the demand letter prescribed in paragraph (a)(1) of this section will be handled according to the provisions of § 4288.103. All appeal provisions will be concluded before proceeding with further actions.

(b) *Offsets.* Failure to make payment as determined under paragraph (a) of this section will be treated by the Agency as a debt that can be collected by an Administrative offset, unless written agreements to repay such debt as an alternative to administrative offset is agreed to between the Agency and the producer.

(1) Any debtor who wishes to reach a written agreement to repay the debt as an alternative to administrative offset must submit a written proposal for repayment of the debt, which must be received by the Agency within 20 calendar days of the date the notice was delivered to the debtor. In response, the Agency will notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the Agency will balance the Government's interest in collecting the debt against fairness to the debtor.

(2) When the Agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the initial agreement is acceptable. If a Government payment will be made before the end of the fiscal year and the review is not yet completed, payment will be deferred pending resolution of the review.

§ 4288.136 Remedies.

In addition to the steps available under the provisions of §§ 4288.134 and 4288.135, if the Agency has determined that a producer has misrepresented the information or defrauded the Government, the Agency will take one of the following steps in accordance with 2 CFR part 417:

(a) Suspend payments on the Contract until the violation has been reconciled;

(b) Terminate the Contract; or

(c) Debarment to participate in any Federal Government program.

[76 FR 7967, Feb. 11, 2011, as amended at 85 FR 31939, May 28, 2020]

§ 4288.137 Succession and loss of control of advanced biofuel facilities and production.

(a) *Contract succession.* An entity who becomes the eligible advanced biofuel producer for an advanced biofuel facility that is under contract under this subpart must request permission from the Agency to succeed to the Program contract and the Agency may grant such request if it is determined that the entity is an eligible producer and permitting such succession would serve the purposes of the Program. If appropriate, the Agency may require the consent of the previous eligible advanced biofuel producer to such succession.

(b) *Loss of control.* Payments will be made only for eligible advanced biofuels produced at an advanced biofuel facility owned or controlled by an eligible advanced biofuel producer with a valid contract. If payments are made to an advanced biofuel producer for production at an advanced biofuel facility no longer owned or controlled

by said producer or to an otherwise ineligible advanced biofuel producer, the Agency will demand full refund of all such payments.

§§ 4288.138–4288.200 [Reserved]

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (''RBIC'') PROGRAM

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AUTHORITY: 7 U.S.C. 1989 and 2009cc *et seq.*

SOURCE: 69 FR 32204, June 8, 2004, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 4290 appear at 85 FR 16522, Mar. 24, 2020.

Subpart A—Introduction to Part 4290

§ 4290.10 Description of the Rural Business Investment Company Program.

The Rural Business Investment Company (''RBIC'') Program is a Developmental Capital program for the purpose of promoting economic development and the creation of wealth and

job opportunities in Rural Areas and among individuals living in such Areas. To this end, the Agency will select and license RBIC Applicants that will agree to address the unmet Equity Capital needs of Smaller Enterprises primarily located in Rural Areas.

§ 4290.15 Leveraged and Non-leveraged Rural Business Investment Companies.

The regulations in this part apply to rural business investment companies (RBICs) that seek leverage and to RBICs that do not seek leverage. The provisions of subparts A through N of this part apply to Leveraged RBICs and, except as indicated or as otherwise modified by subpart O of this part, to Non-leveraged RBICs. The provisions in subpart O of this part apply to Non-leveraged RBICs and, in addition, modify certain provisions in subparts A through N of this part as they apply to Non-leveraged RBICs.

[76 FR 80221, Dec. 23, 2011]

§ 4290.20 Legal basis and applicability of this part 4290.

The regulations in this part implement Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*) (''Act''). All RBICs must comply with all applicable regulations, accounting guidelines and valuation guidelines for RBICs.

§ 4290.30 Amendments to Act and regulations.

A RBIC is subject to all existing and future provisions of the Act and part 4290 of title 7 of the Code of Federal Regulations.

§ 4290.40 How to read this part 4290.

(a) *Center Headings.* Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms.* Terms defined in § 4290.50 have initial capitalization in this part 4290.

(c) ''*You.*'' The pronoun ''you'' as used in this part 4290 means a RBIC unless otherwise noted.

(d) *Forms.* All references in this part to forms, and instructions for their preparation, are to the current issue of such forms.

§ 4290.45 Responsibility for implementing this part 4290.

The Agency has delegated to the U.S. Small Business Administration (SBA), pursuant to an agreement under the Economy Act (31 U.S.C. 1535), the authority to implement the RBIC program, including implementing and enforcing the regulations in this part 4290. Therefore, unless specifically stated otherwise, SBA will exercise on behalf of the Agency all responsibilities and authorities assigned to the Agency in this part 4290.

Subpart B—Definition of Terms Used in Part 4290

§ 4290.50 Definition of terms.

Act means Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*).

Administrator means the Administrator of SBA.

Affiliate or *Affiliates* has the meaning set forth in title 13 CFR 121.103.

Agency means the Rural Business-Cooperative Service (RBS) an agency of the U.S. Department of Agriculture.

Applicant means any entity submitting an application to be licensed as a RBIC.

Articles mean articles of incorporation or charter and bylaws for a Corporate RBIC, the certificate and limited partnership agreement for a Partnership RBIC, and the operating agreement or other organizational documents for an LLC RBIC.

Assistance or *Assisted* means Financing of or management services rendered to a Portfolio Concern by or through a RBIC pursuant to the Act and this part.

Associate of a RBIC means any of the following:

(1)(i) An officer, director, employee or agent of a Corporate RBIC;

(ii) A Control Person, employee or agent of a Partnership RBIC;

(iii) A managing member of an LLC RBIC;

(iv) An Investment Adviser/Manager of any RBIC, including any Person who contracts with a Control Person of a

RBIC to be the Investment Adviser/Manager of such RBIC; or

(v) Any Person regularly serving a RBIC on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate RBIC or 10 percent of the membership interests of an LLC RBIC, or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership RBIC. However, neither a limited partner in a Partnership RBIC nor a non-managing member in an LLC RBIC is considered an Associate if such Person is an Entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the RBIC and no more than five percent of such Person's net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a RBIC.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the RBIC).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), ''collectively'' means together with any Person(s) described in paragraphs (1) though (7) of this definition.

(10) For the purposes of this definition, any Associate relationship described in paragraphs (1) through (7) of this definition that exists at any time within six months before or after the date that a RBIC provides Financing, will be considered to exist on the date of the Financing.

Capital Impairment has the meaning set forth in § 4290.1830(b).

Central Registration Agent or *CRA* means one or more agents appointed for the purpose of issuing Trust Certificates (TCs) and performing the functions enumerated in § 4290.1620 and performing similar functions for Debentures funded outside the pooling process.

Close Relative of an individual means:

(1) A current or former spouse;

(2) A father, mother, guardian, brother, sister, son, daughter; or

(3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

Commitment means a written agreement between a RBIC and an Enterprise that obligates the RBIC to provide Financing (except a guarantee) to that Enterprise in a fixed or determinable sum, by a fixed or determinable future date. In this context the term ''agreement'' means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the RBIC's obligation to fund the Commitment, but these conditions must be outside the RBIC's control.

Common Control means a condition such that two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more RBICs are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent Investment Advisor/Manager or managerial contractor, or by

two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to the Agency.

Community Development Finance means debt securities or equity-type investments in Rural Areas.

Conflict of interest means 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 a 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.

Control means the possession, direct or indirect, of the power to direct or cause, or the power to stop or hinder (also referred to as ''negative Control''), the direction of the management and policies of a RBIC or other concern, whether through the ownership of voting securities, by contract, or otherwise.

Control Person means any Person that controls a RBIC, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership RBIC;

(2) Any Person serving as a general partner (in the case of a partnership), an officer or director (in the case of a corporation), or a manager (in the case of a limited liability company) of any entity that controls a RBIC, either directly or through an intervening entity;

(3) Any Person that—

(i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership RBIC, a LLC RBIC, or any entity described in paragraphs (1) or (2) of this definition; and

(ii) Participates in the investment decisions of a general partner of such Partnership RBIC or of a managing member of such LLC RBIC;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 50 percent of a RBIC or any entity described in paragraphs (1) or (2) of this definition.

Corporate RBIC has the meaning set forth in the definition of RBIC in this section.

Debenture means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Agency. A Debenture may be prepaid at any time without penalty.

Debt Securities means instruments evidencing a loan with an option or any other right to acquire Equity Securities in an Enterprise or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options acquired.

Developmental Capital means Equity Capital invested in Rural Business Concerns, with an objective of fostering economic development in Rural Areas.

Distribution means any transfer of cash or non-cash assets to the Agency, the Agency's agent or Trustee, or to partners in a Partnership RBIC, or to shareholders in a Corporate RBIC, or to members in an LLC RBIC. Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the RBIC's partners, shareholders, or members.

Enterprise means a Person engaged in a business or commercial activity which charges for the goods and services it provides, whether such Person is operating for profit or is subject to any legal restrictions on the distribution of profits to its owners, members, or suppliers of its equity or quasi-equity capital. An Enterprise includes:

(1) A public, private, or cooperative for-profit or non-profit organization;

(2) A for-profit or nonprofit business controlled by an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group; or

(3) Any other Person.

Entity General Partner has the meaning set forth in § 4290.160.

Entity Managing Member has the meaning set forth in § 4290.160.

Equity Capital means Equity Securities or Subordinated Debt With Equity Features.

Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint interests.

Farm Credit System Institution means an institution defined in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)).

Financing or *Financed* means outstanding financial assistance provided to a Portfolio Concern by a RBIC, whether through:

(1) Loans, with or without a right to acquire Equity Securities;

(2) Debt Securities;

(3) Equity Securities;

(3) Subordinated Debt With Equity Features;

(4) Guarantees; or

(5) Purchases of securities of an Enterprise through or from an underwriter as permitted by § 4290.825.

Guaranty Agreement means the contract entered into by the Agency which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures and the Agency's rights in connection with such guarantee.

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468 or other USDA-approved form(s)) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Agency stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

Institutional Investor means Entity Institutional Investor or Individual Institutional Investor, each defined as follows:

(1) *Entity Institutional Investors.* Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least $1 million, or such higher amount as is specified in this paragraph (1). (*See also* § 4290.230(c)(4) for limitations on the amount of an Entity Institutional Investor's commitment that may be included in Private Capital.)

(i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association, including an investment pool created entirely by such bank or savings association, the deposits of which are insured under the Federal Deposit Insurance Act.

(ii) An insurance company.

(iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 *et seq.*).

(iv) A holding company of any entity described in paragraph (l)(i), (ii) or (iii) of this definition.

(v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a State, or any agency or instrumentality of such government unit.

(vi) An employee benefit or pension plan (as defined in the Employee Retirement Income Security Act of 1974, as amended (Public Law 93–406, 88 Stat. 829), excluding plans established under § 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. 401(k)), as amended).

(vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, 26 U.S.C. 1, as amended.

(viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than $10 million.

(ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.

(x) An entity whose primary purpose is to manage and invest non-Federal

funds on behalf of at least three Institutional Investors described in paragraphs (l)(i) through (ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.

(xi) Any other entity that the Agency determines to be an Institutional Investor.

(2) *Individual Institutional Investor.* (i) Any of the following individuals if he/she is also a permanent resident of the United States:

(A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended (15 U.S.C. 77a–77aa)) and whose commitment to the RBIC is backed by a letter of credit from a State or National bank acceptable to the Agency.

(B) An individual whose personal net worth is at least $2 million and at least ten times the amount of its commitment to the RBIC. The individual's personal net worth must not include the value of any equity in its most valuable residence.

(C) An individual whose personal net worth, not including the value of any equity in its most valuable residence, is at least $10 million.

(ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition provided such individual has irrevocably appointed an agent within the United States for the service of process.

Investment Adviser/Manager means any Person who furnishes advice or assistance with respect to operations of a RBIC under a written contract executed in accordance with the provisions of § 4290.510.

Lending Institution means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ) and which has assets in excess of $500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate's sales or business operations.

Leverage means financial assistance provided to a RBIC by the Agency either through the purchase or guaranty of a RBIC's Debentures and any other SBA financial assistance evidenced by a security of the RBIC.

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

Leveraged RBIC means a RBIC that received financial assistance under this part.

LLC RBIC has the meaning set forth in the definition of RBIC in this section.

Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

Loans and Investments means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468 or other USDA-approved form(s).

Management Expenses has the meaning set forth in § 4290.520.

NAICS Manual means the latest issue of the North American Industrial Classification System (NAICS) Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250–7954.

1940 Act Company means a RBIC which is registered under the Investment Company Act of 1940.

1980 Act Company means a RBIC which is registered under the Small Business Investment Incentive Act of 1980.

Non-leveraged RBIC means a RBIC that has not received financial assistance under this part.

Operational Assistance means management, marketing, and other technical assistance that assists a Smaller Enterprise with its business development.

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participation Agreement means an agreement between the Agency and an Applicant licensed as a RBIC pursuant to § 4290.390 of this part, that details

the RBIC's operating plan and investment criteria and requires the RBIC to operate pursuant to the Act and this part.

Partnership RBIC has the meaning set forth in the definition of RBIC in this section.

Person means a natural person or legal entity.

Pool means an aggregation of guaranteed Debentures approved by the Agency.

Portfolio means the securities representing a RBIC's total outstanding Financings of Enterprises. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

Portfolio Concern means any Enterprise Assisted by a RBIC.

Private Capital has the meaning set forth in § 4290.230.

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 (17 CFR 230.144) of the Securities Act of 1933, as amended, by the holder thereof, and are of a class which is traded on a regulated stock exchange, or is listed in NASDAQ, or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended (15 U.S.C. 77b *et seq.*), and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

Qualified Non-private Funds means:

(1) Funds directly or indirectly invested in any RBIC or Applicant on or after May 13, 2002 by any Federal agency other than USDA under a provision of law explicitly mandating the inclusion of those funds in the definition of ''Private Capital;'' and

(2) The aggregate amount of funds invested in any Applicant or RBIC by one or more States, or any political subdivisions, agencies or instrumentalities thereof, including any guarantee extended by such entities.

Regulatory Capital means Private Capital, excluding non-cash assets contributed to a RBIC or an Applicant unless such assets have been converted to cash or have been approved by the Agency for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowings against such assets shall not constitute a conversion to cash.

Relevant Capital Finance means Equity Capital in Rural Business Concerns or benefiting Rural Areas.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468 or other USDA-approved form(s)), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

Rural area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants according to the most recent decennial Census of the United States (decennial Census), not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I), as well as any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) 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 2 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.

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

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

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(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 USDA shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is ''rural in character'' will be made by the Under Agency of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) 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 one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Agency of Rural Development for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Rural Business-Cooperative Service Administrator of USDA on behalf of the Under Agency. The petition shall document how the area meets the requirements of paragraph (6)(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 Agency 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 Agency 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 Web site, and the Under Agency 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 Agency will provide to the petitioner an opportunity to appeal a determination to the Under Agency, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Rural Business Concern means an Enterprise that primarily operates in a Rural Area.

Rural Business Concern Investment means a Financing in a Rural Business Concern at the time of the initial Financing or if the initial Financing is to facilitate a relocation from a Non-rural Area to a Rural Area after that initial Financing.

Rural Business Investment Company or *RBIC* means a corporation organized as required by § 4290.100 (Corporate RBIC), a limited partnership organized as required by §§ 4290.100 and 4290.160 (Partnership RBIC), or a limited liability company organized as required by §§ 4290.100 and 4290.160 (LLC RBIC), that has been licensed as a RBIC pursuant to § 4290.390.

SBA means the U.S. Small Business Administration, an agency of the Federal Government headquartered at 409 Third Street, SW, Washington, DC 20416.

Secondary Relative of an individual means:

(1) A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;

(2) An uncle, aunt, nephew, niece, or first cousin; or

(3) A spouse of any person described in paragraph (1) or (2) of this definition.

Small Business Investment Company or *SBIC* means a Licensee, as that term is defined in 13 CFR 107.50.

Smaller Enterprise means any Rural Business Concern that, together with its Affiliates and by itself—

(1) Meets the size standard established by SBA in 13 CFR 121.201, corresponding to each type of economic activity or industry described in the NAICS Manual for the industry in which it is primarily engaged on the date on which the Financing is made (the term ''primarily engaged'' for purposes of this definition is defined in 13 CFR 121.107); or

(2) Has—

(i) A net financial worth of not more than $6,000,000 as of the date on which the Financing is made; and

(ii) An average net income for the two year period preceding the date on which the Financing is made of not more than $2,000,000, after Federal income taxes (excluding any carryover losses), except that, for purposes of this clause, if the Rural Business Concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the Rural Business Concern, its net income is determined by allowing a deduction in an amount equal to the total of—

(A) If it is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this paragraph (2)(ii)(A)) multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the Rural Business Concern were a corporation; and

(B) The net income (so determined) less any deduction for State (and local) income taxes calculated under paragraph (2)(ii)(A) of this definition multiplied by the marginal Federal income tax rate that would have applied if the Rural Business Concern were a corporation.

Smaller Enterprise Investment means a Financing in the form of Equity Capital in an Enterprise that qualified as a Smaller Enterprise at the time of the initial Financing.

State means each of the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

Subordinated Debt means a debt of a debtor, common to more than one creditor, that is the subject of an agreement between two groups of creditors (whose claims would otherwise be in parity) setting forth the circumstances under which the claims of one group (senior creditors) shall be satisfied out of the resources of the common debtor that would otherwise be available for the payment of the claims of the other group (junior creditors).

Subordinated Debt With Equity Features means a Subordinated Debt obligation that gives to the junior creditor such additional compensation as warrants, conversion rights, any other interest in the debtor's equity, profits, increased future revenue, or a royalty interest.

Trust means a legal entity created for the purpose of holding guaranteed Debentures and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined at the time Debentures are pooled.

Trust Certificates (TCs) means certificates issued by the Agency, the Agency's agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures.

Trustee means the trustee or trustees of a Trust.

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468 or other USDA-approved form(s).

Unrealized Appreciation means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's

valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a RBIC's Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

Urban Area means an area containing a city (or its equivalent), or any equivalent geographic area determined by the Census Bureau and adopted by the Agency for purposes of this definition (about which the Agency will publish a document in the FEDERAL REGISTER from time to time), which had a population of over 150,000 in the most recent decennial Census and the urbanized areas containing or adjacent to that city, both as determined by the Bureau of the Census for the most recent decennial Census.

Urban Area Investment means a Financing in an Enterprise that primarily operates in an Urban Area at the time of the initial Financing.

USDA means the U.S. Department of Agriculture, a department of the Federal government headquartered at 1400 Independence Avenue, SW., Washington, DC 20250.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80221, Dec. 23, 2011; 79 FR 76018, Dec. 19, 2014; 80 FR 9914, Feb. 24, 2015; 85 FR 16522, Mar. 24, 2020; 87 FR 38645, June 29, 2022]

Subpart C—Qualifications for the RBIC Program

ORGANIZING A RBIC

§ 4290.100 Business form.

(a) *Newly-formed for-profit.* An Applicant for a RBIC license must be a newly formed for-profit entity or, subject to § 4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State. An Applicant may be organized as a corporation (''Corporate RBIC''), a limited partnership (''Partnership RBIC''), or a limited liability company (''LLC RBIC'').

(b) *Purpose.* An Applicant must be organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act: making Developmental Capital investments and providing Operational Assistance to eligible Smaller Enterprises.

(c) *Articles.* The RBIC's Articles—

(1) Must specify in general terms:

(i) The purposes for which the RBIC is formed;

(ii) The name of the RBIC;

(iii) The Rural Area or Areas in which it will operate;

(iv) The place where the RBIC's headquarters will be located; and

(v) The amount and classes of the RBIC's ownership interests.

(2) May contain any other provisions consistent with the Act that the RBIC may determine is appropriate to adopt to regulate its business and the conduct of its affairs.

(3) Are subject to the Agency's approval.

(d) *Duration*—(1) *Partnership RBICs.* If you are a Partnership RBIC:

(i) You must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Agency, its agent, or Trustee have been paid, the Partnership RBIC may be terminated by a vote of your partners;

(ii) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of the Agency;

(iii) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner prior to the Agency's written approval of such transfer or succession; and

(iv) You must incorporate all the provisions in this paragraph (d) in your limited partnership agreement.

(2) *LLC RBICs.* If you are a LLC RBIC, you must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Agency, its agent, or Trustee have been paid, the LLC RBIC may be terminated by a vote of your members.

(3) *Corporate RBICs.* If you are a Corporate RBIC, you must have a duration

of not less than 30 years unless earlier dissolved by the shareholders, except that the Corporate RBIC must not dissolve until at least two years following the maturity of your last-maturing Leverage security.

§ 4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Agency, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, the Agency will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation (and any other managerial aspect identified by the USDA in a FEDERAL REGISTER notice) of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Agency.

[76 FR 80222, Dec. 23, 2011]

§ 4290.120 Plan to invest in Rural Areas.

An Applicant must agree that if licensed as a RBIC, it will make Developmental Capital investments in Enterprises that will create wealth and job opportunities in Rural Areas and among individuals living in those areas.

§ 4290.130 Identified Rural Areas.

A RBIC must identify the specific Rural Area or Areas in which it intends to make Developmental Capital investments and provide Operational Assistance under the RBIC program. The scope of the identified areas must be consistent with Applicant's business plan, especially as the plan relates to the Applicant's ability to operate actively, soundly, and profitably in such areas.

§ 4290.140 Approval of initial Management Expenses.

A RBIC must have its Management Expenses approved by the Agency at the time it is licensed. (*See* § 4290.520 for the definition of Management Expenses.)

§ 4290.150 Management and ownership diversity requirement.

(a) *Diversity requirement.* You must have diversity between management and ownership in order to be licensed as a RBIC and to maintain your license. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section.

(b) *Percentage ownership requirement.* No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) *Non-affiliation requirement.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by the Agency. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single ''acceptable'' Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are ''acceptable'' for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by State, Federal or other governmental authorities satisfactory to the Agency;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to the Agency.

(d) *Voting requirement.* The investors relied upon to satisfy the diversity requirement may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior approval by the Agency.

(e) *Requirement to maintain diversity.* You must maintain management-ownership diversity while you are a RBIC. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify the Agency within 10 days; and

(2) Re-establish diversity within six months after loss of diversity.

§ 4290.160 Special rules for Partnership RBICs and LLC RBICs.

(a) *Entity General Partner or Entity Managing Member.* (1) A general partner of a Partnership RBIC which is a corporation, limited liability company or partnership (an ''Entity General Partner''), or a managing member of an LLC RBIC which is a corporation, limited liability company, or partnership (an ''Entity Managing Member'') shall be organized under State law solely for the purpose of serving as the general partner or managing member of one or more RBICs, and shall be organized for profit.

(2) The Agency must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner or Entity Managing Member and of an entity that Controls the Entity General Partner or Entity Managing Member. This provision must be stated in an Entity General Partner's or Entity Managing Member's articles of incorporation or charter and bylaws if a corporation, operating agreement if a limited liability company, or partnership agreement if a partnership.

(3) An Entity General Partner or Entity Managing Member is subject to the same examination and reporting requirements as a RBIC under sections 384K and 384L of the Act. The restrictions and obligations imposed upon a RBIC by §§ 4290.1810, 4290.30, 4290.410 through 4290.450, 4290.470, 4290.500, 4290.510, 4290.585, 4290.600, 4290.680, 4290.690 through 4290.692, and 4290.1910 apply also to an Entity General Partner or Entity Managing Member of a RBIC.

(4) The general partner(s) of your Entity General Partner(s) or Entity Managing Member(s) will be considered your general partner.

(5) If your Entity General Partner or Entity Managing Member is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in § 4290.50.

(b) *Liability of general partner of Partnership RBIC.* Subject to section 384O(b) of the Act, your general partner(s) is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to the Agency unless the Agency, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage. The conditions specified in § 4290.1810 and § 4290.1910 apply to all general partners.

(c) *Special Leverage requirement for Partnership RBICs and LLC RBICs.* Before your first issuance of Leverage, you must furnish the Agency with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service or by an opinion of counsel.

§ 4290.165 Obligations of Control Persons.

All Control Persons are bound by the provisions of sections 384O and 384P of the Act and by the conflict-of-interest rules under § 4290.730. The term RBIC, as used in §§ 4290.30, 4290.460, and 4290.680, includes all of the RBIC's Control Persons.

CAPITALIZING A RBIC

§ 4290.200 Adequate capital for RBICs.

You must meet the requirements of §§ 4290.210 through 4290.230 in order to qualify as a RBIC.

[76 FR 80222, Dec. 23, 2011]

§ 4290.210 Minimum capital requirements for RBICs.

(a) *General Rule.* Unless otherwise specified in a FEDERAL REGISTER notice, you must have Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) and Leverageable Capital of at least $500,000, to become a RBIC.

(b) *Exception.* (1) The Agency in its sole discretion and based on a showing of special circumstances and good cause may license an Applicant with Regulatory Capital of at least $2,500,000, but only if the Applicant:

(i) Has satisfied all eligibility criteria for licensing as a RBIC as described in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Agency;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least $10,000,000.

(2) A RBIC licensed under this exception is not eligible to receive Leverage until it has complied with paragraph (a) of this section.

(c) *Time frame.* Each RBIC shall have a period of 2 years to meet the capital requirements set forth in this section.

(d) *Closing.* Each RBIC may conduct more than one closing to raise the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (see § 4290.310(b)). One or more closings may take place subsequent to licensing as an RBIC to raise the difference between the required Regulatory Capital as provided under paragraphs (a) and (b) of this section and the specific amount of Regulatory Capital that the Applicant had projected to raise in its application.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011; 85 FR 16522, Mar. 24, 2020]

§ 4290.230 Private Capital for RBICs.

(a) *General.* Private Capital means the contributed capital of a RBIC, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a RBIC.

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate RBIC, the members' contributed capital of a LLC RBIC, or the partners' contributed capital of a Partnership RBIC, in each case subject to the limitations in paragraph (c) of this section.

(c) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by an Applicant or a RBIC from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from the Federal government or any State (including by a political subdivision, agency or instrumentality of the Federal government or a State), except that the following categories of such funds are not excluded from Private Capital—

(i) Funds obtained directly or indirectly from the business revenues (excluding any governmental appropriation) of any federally-chartered or government-sponsored enterprise established prior to May 13, 2002;

(ii) Funds invested by an employee welfare benefit plan or pension plan; and

(iii) Qualified Non-private Funds in an amount not to exceed 33 percent of the total Private Capital of any Applicant or RBIC, *provided*, *however*, that in no event may any investor or investors of Qualified Non-private Funds have the power to Control, directly or indirectly, the management, board of directors, general partners, or members of the RBIC.

(4) Any portion of an unfunded commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor's net worth.

(5) An unfunded commitment from an investor if the Agency determines that the collectability of the commitment is questionable.

(d) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in § 4290.240 of this part.

(e) *Contributions with borrowed funds.* You may not accept any capital contribution made with funds borrowed by

a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) The Agency gives its prior written approval of the capital contribution.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

§ 4290.240 Limitations on non-cash capital contributions in Private Capital.

Non-cash capital contributions to a RBIC or Applicant are included in Private Capital only if they are approved by the Agency and they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States having a term of no more than one year.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Other non-cash assets approved by the Agency.

Subpart D—Application and Approval Process for RBIC Licensing

§ 4290.300 When and how to apply for a RBIC License.

(a) *Notice of Funds Availability (''NOFA'').* The Agency will publish a NOFA in the FEDERAL REGISTER advising potential applicants of the availability of funds for the RBIC program and inviting the submission of applications. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round. When submitting its application, an Applicant must comply with both this part 4290 and any requirements specified in the NOFA, including the opening and closing dates for submission of an application.

(b) *Application form.* An Applicant must apply for a RBIC license using an appropriate application packet provided by the Agency. Upon receipt of a completed application packet, the Agency may request clarifying or technical information on the materials submitted as part of the application.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011]

§ 4290.310 Contents of application.

Each Applicant must submit a complete application, including the following:

(a) *Management team experience.* The Applicant must provide information generally as to the background, capability, education, reputation and training of its management team, including general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant also must provide information specifically on these individuals' qualifications and reputation in the areas of Community Development Finance and/or Relevant Capital Finance, including the impact of these individuals' activities in these areas.

(b) *Amount of Regulatory Capital.* The Applicant must indicate the amount of Regulatory Capital it has raised or proposes to raise, which amount must satisfy the requirements of § 4290.210(a) of this part, unless the Applicant indicates that it has raised or proposes to raise at least $2,500,000 and is applying for an exception pursuant to § 4290.210(b) of this part and includes in its application—

(1) A showing of special circumstances and good cause for the exception:

(2) Will satisfy all eligibility criteria for licensing as a RBIC as set forth in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Agency;

(3) Has a viable business plan reasonably projecting profitable operations; and

(4) Has a reasonable timetable for achieving Regulatory Capital in an amount that satisfies the requirements of § 4290.210(a) of this part.

(c) *Comprehensive business plan.* The Applicant must submit a comprehensive business plan covering at least a five-year period, addressing the specific items described in § 4290.320, and which demonstrates that the Applicant has the capacity to operate successfully as a RBIC.

§ 4290.320 Contents of comprehensive business plan.

(a) *Plan for Developmental Capital investing.* The Applicant must describe its plans and strategies for how it proposes to make successful Developmental Capital investments in identified Rural Areas.

(b) *Working with Rural Area community-based organizations.* The Applicant must describe how it intends to work with community-based organizations and local entities (including local economic development companies, local lenders, and local investors) in order to facilitate its Developmental Capital investments.

(c) *Market analysis.* The Applicant must provide an analysis of the Rural Areas in which it intends to focus its Developmental Capital investments and Operational Assistance to Smaller Enterprises, demonstrating that the Applicant understands the market and the unmet Equity Capital needs in such areas and how its activities will meet these unmet needs and will have a positive economic impact on those areas. The Applicant also must analyze the extent of the demand in such areas for Developmental Capital investments and any factors or trends that may affect the Applicant's ability to make effective Developmental Capital investments.

(d) *Operational capacity and investment strategies.* The Applicant must submit information concerning its policies and procedures for underwriting and approving its Developmental Capital investments, monitoring its portfolio, and maintaining internal controls and operations.

(e) *Plan to raise Regulatory Capital.* The Applicant must include a detailed description of how it plans to raise its Regulatory Capital if it has not yet done so at the time of application. The Applicant must discuss its potential sources of Regulatory Capital, the estimated timing for raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant.

(f) *Plan for providing Operational Assistance.* The Applicant must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it makes or expects to make Developmental Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(g) *Projected amount of investment in Rural Areas.* The Applicant must describe how it proposes to meet the requirements set forth in § 4290.700. An Applicant must project the amount of its total Regulatory Capital and Leverage that it proposes to invest in Smaller Enterprises and in Rural Business Concerns that are not Smaller Enterprises. The Applicant also must describe the amount of its total Regulatory Capital and Leverage that it proposes to invest in Urban Area Investments.

(h) *Projected impact.* The Applicant must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the RBIC program. It must include:

(1) A description of the extent to which it will concentrate its Developmental Capital investments and Operational Assistance activities in identified Rural Areas;

(2) An estimate of the economic development benefits to be created within identified Rural Areas over the next five years or more as a result of its activities;

(3) A description of the criteria to be used to measure the benefits created as a result of its activities;

(4) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the RBIC program.

(i) *Affiliates and business relationships.* The Applicant must submit information describing the management and financial strength of any parent or holding entity, affiliated firm or entity, or any other firm or entity essential to the success of the Applicant's business plan.

§ 4290.330 Guarantee fee.

In cases of Leveraged Applications, the Applicant must pay to the Agency

an issuance fee for each grant or debenture guarantee. The Agency may charge such fees as the Agency considers appropriate, so long as those fees are proportionally equal for each rural business investment company, with respect to any guarantee or grant issued under this subchapter.

[85 FR 16523, Mar. 24, 2020]

Subpart E—Evaluation and Selection of RBICs

§ 4290.340 Evaluation and selection—general.

The Administrator of RBS and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant to participate in the RBIC program based on a review of the Applicant's application materials, interviews or site visits with the Applicant (if any), and background investigations conducted by the Agency and other Federal agencies. The Agency's evaluation and selection process is intended to—

(a) Ensure that Applicants are evaluated on a competitive basis and in a fair and consistent manner;

(b) Take into consideration the unique proposals presented by Applicants;

(c) Ensure that each Applicant licensed as a RBIC can fulfill successfully the goals of its comprehensive business plan; and

(d) Ensure that the Agency selects Applicants in such a way as to promote nationwide geographic distribution of Developmental Capital investments.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

§ 4290.350 Eligibility and completeness.

The Agency will not consider any application that is not complete or that is submitted by an Applicant that does not meet the eligibility criteria described in subpart C of this part. The Agency at its sole discretion, may request from an Applicant additional information concerning eligibility criteria or easily completed portions of the application in order to facilitate consideration of its application.

§ 4290.360 Initial review of Applicant's management team's qualifications.

The Agency will review the information submitted by the Applicant concerning the qualifications of the Applicant's management team to determine in its sole discretion whether the team meets the minimum requirements deemed by the Agency to be critical to successful capital investing. In making this determination, the Agency will consider, among other things, the general business reputation of the owners and managers of the Applicant. Only those Applicants considered to have a management team qualified for venture capital investing will be further considered for selection as a RBIC.

§ 4290.370 Evaluation criteria.

Of those Applicants whose management team is considered qualified for venture capital investing and who have submitted an eligible and complete application, the Administrator of RBS and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant for participation in the RBIC program by considering the following criteria:

(a) Whether the Applicant's management team has the knowledge, experience, and capability necessary to manage a sound, economically viable RBIC and to comply with the Act;

(b) The quality of the Applicant's comprehensive business plan in terms of meeting the objectives of the RBIC program;

(c) The likelihood that the Applicant will achieve the goals described in its comprehensive business plan;

(d) The strength and likelihood for success of the Applicant's operations and investment strategies, including whether the Applicant has projected adequate profitability and financial soundness;

(e) Whether the Applicant will be able to operate soundly and profitably over the long term;

(f) Whether the Applicant will be able to operate actively in its identified Rural Areas in accordance with its business plan;

(g) The need for Developmental Capital investments in the Rural Areas in which the Applicant intends to invest;

(h) The extent to which the Applicant will concentrate its activities on serving Smaller Enterprises located in the Rural Area in which it intends to invest, including the ratio of resources that it proposes to invest in such Enterprises as compared to other Enterprises;

(i) The Applicant's demonstrated understanding of the markets in the Rural Areas in which it intends to focus its activities;

(j) The likelihood that and the time frame within which the Applicant will be able to raise the Regulatory Capital it proposes to raise for its investments;

(k) The strength of the Applicant's proposal to provide Operational Assistance to Smaller Enterprises in which it plans to invest;

(l) The extent to which the activities proposed by the Applicant will promote economic development and the creation of wealth and job opportunities in the Rural Areas in which it intends to invest and among individuals living in such Areas; and

(m) The strength of the Applicant's application compared to applications submitted by other Applicants intending to invest in the same or proximate Rural Areas.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

§ 4290.380 Selection.

From among the Applicants that have submitted eligible and complete applications, the Administrator of RBS and the Administrator on behalf of SBA, in their sole discretion, will select some, all, or none of such Applicants to participate in the RBIC program. Selection will entitle the Applicant to proceed with obtaining a license as a RBIC but only if the Applicant also meets the conditions set forth in § 4290.390.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

§ 4290.390 Licensing as a RBIC.

(a) *Eligibility criteria for licensing as a RBIC*. Each selected Applicant must meet the following conditions before it is eligible to be licensed as a RBIC:

(1) Raise the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (see § 4290.210 for additional information).

(2) Raise $500,000 in Leverageable Capital as required by § 4290.210;

(3) Complete and submit to the Agency all legal and other documentation concerning the RBIC, including but not limited to its Articles and updated financial information concerning the RBIC in order to qualify for a Leverage commitment; and

(4) Enter into a Participation Agreement with the Agency.

(b) *Licensing as a RBIC*. If the selected Applicant has satisfactorily met all the conditions specified in paragraph (a) of this section, as determined within the sole discretion of the Agency, then the Administrator of RBS and the Administrator on behalf of SBA will license the Applicant as a RBIC.

(c) *Failure to meet eligibility criteria for licensing*. Each selected Applicant that does not meet the eligibility criteria for licensing described in paragraph (a) of this section, within a time period specified by the Agency, will not be licensed as a RBIC. Failure to meet any of those conditions, including but not limited to failure to raise the projected Regulatory Capital within the required time period, will cause the Applicant's selection to lapse. The Agency will not restore the selection of such an Applicant after the expiration of that time period. After the expiration of that time period, an Applicant that is not licensed as a RBIC must cease to represent itself as a participant or potential participant in the RBIC program.

(d) *Effect of a RBIC license*. The Participation Agreement executed by the Agency with each Applicant licensed as a RBIC will include the following:

(1) Approval to operate as a RBIC under the Act;

(2) A commitment of Leverage; and

(3) An Operational Assistance grant award.

[69 FR 32204, June 8, 2004, as amended at 77 FR 4885, Feb. 1, 2012; 85 FR 16523, Mar. 24, 2020]

Subpart F—Changes in Ownership, Structure, or Control

CHANGES IN CONTROL OR OWNERSHIP OF RBIC

§ 4290.400 Changes in ownership of 10 percent or more of RBIC but no change of Control.

You must obtain the Agency's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock, partnership capital or membership interests.

§ 4290.410 Changes in Control of RBIC (through change in ownership or otherwise).

You must obtain the Agency's prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by the Agency.

§ 4290.420 Prohibition on exercise of ownership or Control rights in RBIC before approval.

Without the Agency's prior written approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any meeting of shareholders, partners or members);

(c) Permit the proposed new owner(s) to participate in any manner in the conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, manager, employee or agent); or

(d) Allow ownership or Control to pass to another Person.

§ 4290.430 Notification of transactions that may change ownership or Control.

You must promptly notify the Agency as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your Regulatory Capital. If the effect of a particular transaction or event is unclear, you must report all pertinent facts to the Agency.

§ 4290.440 Standards governing prior approval for a proposed transfer of Control.

The Agency's approval of a proposed transfer of Control is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by the Agency. As a condition of approving a proposed transfer of control, the Agency may:

(a) Require an increase in your Regulatory Capital;

(b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by the Agency; or

(c) Require compliance with any other conditions set by the Agency, including compliance with the requirements for minimum capital and management-ownership diversity in effect at such time for new RBICs.

§ 4290.450 Notification of pledge of RBIC's shares.

(a) You must notify the Agency in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged constitute at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 4290.400 or § 4290.410, as appropriate.

RESTRICTIONS ON COMMON CONTROL OR OWNERSHIP OF TWO OR MORE RBICS

§ 4290.460 Restrictions on Common Control or ownership of two (or more) RBICs.

Without the Agency's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another RBIC; or

(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another RBIC.

CHANGE IN STRUCTURE OF RBIC

§ 4290.470 Prior approval of merger, consolidation, or reorganization of RBIC.

You may not merge, consolidate, change form of organization (corporation, limited liability company, or limited partnership) or reorganize without the Agency's prior written approval. Any such merger, consolidation, or change of form is subject to § 4290.440.

§ 4290.480 Prior approval of changes to RBIC's business plan.

Without the Agency's prior written approval, no change in your business plan, upon which you were selected and licensed as a RBIC, may take effect.

Subpart G—Managing the Operations of a RBIC

GENERAL REQUIREMENTS

§ 4290.500 Lawful operations under the Act.

You must engage only in the activities permitted by the Act and in no other activities.

§ 4290.502 Representations to the public.

You may not represent or imply to anyone that the Agency, the U.S. Government, or any of its agencies or officers has approved any ownership interests you have issued, obligations you have incurred, or Financings you have made. You must include a statement to this effect in any solicitation provided to investors. Example: You may not represent or imply that ''USDA stands behind the RBIC'' or that ''Your capital is safe because the Agency's experts review proposed investments to make sure they are safe for the RBIC.''

§ 4290.503 RBIC's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at *http://www.sba.gov/sites/default/files/files/inv_valuation.pdf*.

(b) *The Agency's approval of valuation policy.* You must have a written valuation policy approved by the Agency for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain the Agency's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors, managing member(s), or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to the Agency. If the Agency reasonably believes that your valuations, individually or in the aggregate, are materially misstated, it reserves the right to require you to engage, at your expense, an independent third party acceptable to the Agency to substantiate the valuations.

(d) *Frequency of valuations.* (1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and again at the end of your fiscal year.

(2) On a case-by-case basis, the Agency may require you to perform valuations more frequently.

(3) You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468 or other USDA-approved form(s)) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011]

§ 4290.504 Equipment of USDA or SBA officials.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports and transmit such reports to the Agency. In addition, you must have the capability to send and receive electronic mail.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011]

§ 4290.506 Safeguarding the RBIC's assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

§ 4290.507 Violations based on false filings and nonperformance of agreements with the Agency or SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Failure to perform any of the requirements of any Debenture or of any written agreement with the Agency or SBA.

(b) *False statement.* In any document submitted to the Agency or SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact.

(4) A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 4290.508 Compliance with non-discrimination laws and regulations applicable to federally-assisted programs.

In conducting your operations and providing Assistance to your Portfolio Concerns, you must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 *et seq.*), the Age Discrimination Act of 1975 (Pub. L. 94–135, Title III), and Title V of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the following regulations promulgated by USDA to implement and enforce such laws: 7 CFR part 15.

§ 4290.509 Employment of USDA or SBA officials.

(a) Without the Agency's prior written approval, for a period of two years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, whichever is later, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(1) Served as an officer, attorney, agent, or employee of SBA or USDA within one year before such date; and

(2) In that capacity, occupied a position or engaged in activities which, in SBA's or the Agency's determination, involved discretion with respect to the issuing of Leverage or the granting of such assistance.

(b) For purposes of this section, ''assistance'' means financial, contractual, grant, managerial, or other aid, including licensing, certifications, and other eligibility determinations made by

USDA or SBA, and any express decision to compromise or defer possible litigation or other adverse action.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011]

MANAGEMENT AND COMPENSATION

§ 4290.510 Approval of RBIC's Investment Adviser/Manager.

(a) *General.* You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing member(s), or general partner(s). If you have Leverage or plan to seek Leverage, you must obtain the Agency's prior written approval of the management contract. Approval of an Investment Adviser/Manager for one RBIC does not indicate approval of that manager for any other RBIC.

(b) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to your Portfolio Concerns; and

(2) Indicate the basis for computing Management Expenses.

(c) *Material change to approved management contract.* Any proposed material change must be approved by both you and the Agency in advance. If you are uncertain whether the change is material, submit the proposed revision to the Agency.

§ 4290.520 Management Expenses of a RBIC.

The Agency must approve your initial Management Expenses and any increases in your Management Expenses.

(a) *Definition of Management Expenses.* Management Expenses include:

(1) Salaries;

(2) Office expenses;

(3) Travel;

(4) Business development, including finders' fees;

(5) Office and equipment rental;

(6) Bookkeeping; and

(7) Expenses related to developing, investigating and monitoring investments.

(b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a capital company.

CASH MANAGEMENT BY A RBIC

§ 4290.530 Restrictions on investments of idle funds by RBICs.

(a) *Permitted investments of idle funds.* Funds not invested in Portfolio Concerns must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount*—(1) *General rule.* You are permitted to deposit in a federally insured institution funds in excess of the institution's insured amount, but only if the institution is ''well capitalized'' in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation (12 CFR 325.103).

(2) *Exception.* You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 4290.730, provided the terms of such deposit or repurchase

agreement are no less favorable than those available to the general public.

SECURED BORROWING BY RBICS

§ 4290.550 Prior approval of secured third-party debt of RBICs.

(a) *Definition.* For the purposes of this section, ''secured third-party debt'' means any debt that is secured by any of your assets and not guaranteed by the Agency, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Agency's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468 or other USDA-approved form(s)) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this section, the Agency may impose such restrictions or limitations as it deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Agency will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless the Agency notifies you otherwise within 30 days after it receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1; and

(3) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80223, Dec. 23, 2011]

VOLUNTARY DECREASE IN REGULATORY CAPITAL

§ 4290.585 Voluntary decrease in RBIC's Regulatory Capital.

You must obtain the Agency's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 4290.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 384E(d) of the Act.

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

RECORDKEEPING REQUIREMENTS FOR RBICS

§ 4290.600 General requirement for RBIC to maintain and preserve records.

(a) Maintaining your accounting records. You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless the Agency approves otherwise. You may obtain this chart of accounts from SBA or at *http://www.sba.gov/sites/default/files/files/inv_charts_of_accounts.pdf.*

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, members, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a

custodian under a written agreement between you and a Portfolio Concern or lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker's per-account insurance coverage.

(c) *Preservation of records.* You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c) and must remain readily accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership RBIC or LLC RBIC, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses;

(ii) Your Articles, bylaws, minute books, and RBIC application; and

(iii) All documents evidencing ownership of the RBIC including ownership ledgers and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(l) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments;

(ii) All loan, participation, and escrow agreements;

(iii) All certifications listed in § 4290.610 of this part;

(iv) Any capital stock certificates and warrants of the Portfolio Concern that you did not surrender or exercise; and

(v) All other documents and supporting material relating to the Portfolio Concern, including correspondence.

(4) You may substitute a microfilm or computer-scanned or generated copy for the original of any record covered by this paragraph (c).

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in 2 CFR part 200, as adopted by USDA in 2 CFR part 400.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80223, Dec. 23, 2011; 79 FR 76018, Dec. 19, 2014]

§ 4290.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to the Agency upon request.

(a) For each Financing made to a Rural Business Concern or Smaller Enterprise, a certification by the Portfolio Concern stating the basis for its qualification as a Rural Business Concern or Smaller Enterprise.

(b) A certification by the Portfolio Concern that it will not discriminate in violation of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title V of the Equal Credit Opportunity Act.

(c) A certification by the Portfolio Concern of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80223, Dec. 23, 2011; 85 FR 16523, Mar. 24, 2020]

§ 4290.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 4290.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the Enterprise to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses, projections, and such economic development information about the Enterprise, as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the Enterprise and the amount of the proposed Financing.

(b) *Updated financial and economic development information.* (1) The terms of

each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial and economic development information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern;

(iii) Verify the use of Financing proceeds;

(iv) Evaluate the economic development impact of the Financing; and

(v) In the case of any Portfolio Concern that is not a Rural Business Concern, the number and percentage of its employees residing in Rural Areas.

(2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the Enterprise involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (*see* § 4290.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by the Agency's examiners for the purpose of verifying the certifications made by a Portfolio Concern under § 4290.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or the Agency's examiners access to its books and records for such purpose.

REPORTING REQUIREMENTS FOR RBICS

§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Agency.

(a) *Annual filing.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468 or other USDA-approved form(s). You must file SBA Form 468 (or other USDA-approved form(s)) on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of annual filing form.* An independent public accountant acceptable to the Agency must audit the annual form submitted under paragraph (a) of this section.

(2) *Insurance requirement for public accountant.* Unless the Agency approves otherwise, your independent public accountant must carry at least $1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least $1,000,000.

(b) *Interim filings.* When requested by the Agency, you must file interim reports on SBA Form 468 or other USDA-approved form(s). The Agency may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in § 4290.1220.

(c) *Standards for preparation.* You must prepare SBA Form 468 or other USDA-approved form(s) in accordance with SBA's Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at *http://www.sba.gov/content/accounting-standards-sbics.*

(d) *Where to file.* Unless otherwise identified in a notice published in the FEDERAL REGISTER, submit all filings of forms under this section to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing.* Your annual filing of SBA Form 468 or other USDA-approved form(s) must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number

and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your SBA Form 468 or other USDA-approved form(s) must include an assessment of each such Financing with respect to:

(1) The economic development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement; and

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the RBIC program.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80223, Dec. 23, 2011]

§ 4290.640 Requirement to file portfolio financing reports with the Agency.

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 or other USDA-approved form(s) within 30 days of the closing date.

[76 FR 80223, Dec. 23, 2011]

§ 4290.650 Requirement to report portfolio valuations to the Agency

You must determine the value of your Loans and Investments in accordance with §4290.503. You must report such valuations to the Agency within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

§ 4290.660 Other items required to be filed by RBIC with the Agency.

(a) *Reports to owners.* You must give the Agency a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give the Agency a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give the Agency a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser/Manager or other Associate of yours for alleged breach of official duty.

(2) The Agency may require you to submit copies of the pleadings and other documents it may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise the Agency of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, general partner, or managing member of the RBIC, or any other person who was required by the Agency to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to the Agency within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in 2 CFR part 200, subpart D, as codified in 2 CFR 400.1 and any grant award document executed between you and the Agency.

(f) *Other reports.* You must file any other reports the Agency may require in writing.

[69 FR 32204, June 8, 2004, as amended at 79 FR 76019, Dec. 19, 2014]

§ 4290.680 Reporting changes in RBIC not subject to prior approval.

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require the Agency's prior approval. You must report such changes to the Agency within 30 days after the change, for post approval.

(b) *Approval by the Agency.* You may consider any change submitted under this § 4290.680 to be approved unless the Agency notifies you to the contrary within 90 days after receiving it. Approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions the Agency may prescribe.

EXAMINATIONS OF RBICS BY THE AGENCY FOR REGULATORY COMPLIANCE

§ 4290.690 Examinations.

All RBICs must submit to annual examinations by or at the direction of the Agency for the purpose of evaluating regulatory compliance.

§ 4290.691 Responsibilities of RBIC during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 4290.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to the examiners upon request.

§ 4290.692 Examination fees.

(a) *General.* The Agency will assess fees for examinations in accordance with this § 4290.692. Unless the Agency determines otherwise on a case by case basis, it will not assess fees for special examinations to obtain specific information.

(b) *Base fee.* A base fee of $9,200 + 0.015 percent of your assets will be assessed, subject to adjustment in accordance with paragraph (c) of this section.

(c) *Adjustments to base fee.* The base fee will be decreased based on the following criteria:

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination or the Agency did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee; and

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by the examiner for on-site review), you will receive a 10% discount on your base fee.

(d) *Examination delay fee.* If, in the sole discretion of the Agency, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, the Agency may assess an additional examination fee of up to $500 per day.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

Subpart I—Financing of Enterprises by RBICs

DETERMINING ELIGIBILITY OF AN ENTERPRISE FOR RBIC FINANCING

§ 4290.700 Requirements concerning types of enterprises to receive financing.

(a) *Financing requirements.* Beginning after the third fiscal year after the issuance of your RBIC license and at the close of each of your fiscal years thereafter, you must be in compliance with the Financing percentages specified in this paragraph (a).

(1) *Rural Business Concerns.* At least 75 percent of your Financings (in total dollars) to your Portfolio Concerns must have been to Rural Business Concerns.

(2) *Smaller Enterprises.* More than 50 percent of your Financings (in total dollars) to your Portfolio Concerns must have been to Smaller Enterprises that, at the time of the initial Financing to such Enterprise, meet either the net worth/net income test or the size standard set forth in the ''Smaller Enterprise'' definition in § 4290.50.

(3) *Urban Areas.* No more than 10 percent of your Financings (in total dollars) to your Portfolio Concerns must have been made to Portfolio Concerns located in an Urban Area.

(b) *Non-compliance.* If you are not in compliance with any of the Financing percentages specified in paragraph (a) of this section at the end of the third fiscal year after the issuance of your RBIC license or any fiscal year thereafter, you must come into compliance by the end of the following fiscal year. For as long as you remain out of compliance, you are not eligible for additional Leverage (see § 4290.1120).

[85 FR 16523, Mar. 24, 2020]

§ 4290.720 Enterprises that may be ineligible for Financing.

(a) *Re-lenders or re-investors.* You are not permitted to finance any Enterprise that is a re-lender or re-investor. The primary business activity of re-lenders or re-investors involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Passive Enterprises.* You are not permitted to finance a passive Enterprise.

(1) *Definition.* An Enterprise is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the Enterprise does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* With the prior written approval of the Agency, you may finance a passive Enterprise if it passes substantially all of the proceeds through to one or more subsidiary companies, each of which is an eligible Enterprise that is not passive. For the purpose of this paragraph (b)(2), ''subsidiary company'' means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive Enterprise.

(3) *Exception for certain Partnership RBICs or LLC RBICs.* With the prior written approval of the Agency, if you are a Partnership RBIC or LLC RBIC, you may form one or more wholly owned corporations in accordance with this paragraph (b)(3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Enterprise. You may form such corporation(s) only if a direct Financing to such Enterprise would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of § 4290.730(a).

(c) *Real Estate Enterprises.* (1) You are not permitted to finance:

(i) Any Enterprise classified under sector 233 (Building, Developing, and General Contracting) of the NAICS Manual, or

(ii) Any Enterprise listed under sector 531 (Real Estate) unless at least 80 percent of its revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance an Enterprise, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Enterprise:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business or commercial purpose; or

(ii) Is constructing or renovating a building and will use at least 67 percent of the usable square footage for an eligible business or commercial purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business or commercial purpose.

(d) *Project Financing.* You are not permitted to finance an Enterprise if:

(1) The assets of the Enterprise are to be reduced or consumed, generally without replacement, as the life of the Enterprise progresses, and the nature of the Enterprise requires that a

stream of cash payments be made to the Enterprise's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

(2) The primary purpose of the Financing is to fund production of a single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Enterprise. Examples include motion pictures.

(e) *Farm land purchases.* You are not permitted to finance the acquisition of farmland. Farmland means land which is or is intended to be used for agricultural or forestry purposes such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) *Public interest.* You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to or activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) *Foreign investment*—(1) *General rule.* You are not permitted to finance an Enterprise if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 49 percent of the employees or tangible assets of the Enterprise are located outside the United States (unless you can show, to the Agency's satisfaction, that the Financing was used for a specific domestic purpose).

(2) *Exception.* This paragraph (g) does not prohibit either:

(i) A Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States; or

(ii) A Financing in a subsidiary based in the United States of foreign-owned entities with at least 51 percent U.S. ownership.

(h) *Financing RBICs, SBICs, or New Markets Capital Companies (NMVC Companies).* (1) You are not permitted to provide funds, directly or indirectly, that will be used:

(i) To purchase stock in or otherwise provide capital to a RBIC, SBIC or NMVC Company; or

(ii) To repay an indebtedness incurred for the purpose of investing in a RBIC, SBIC, or NMVC Company.

(2) ''NMVC Company'' is defined in 13 CFR 108.50.

(i) *Entities ineligible for Farm Credit System Assistance.* If one or more Farm Credit System Institutions or their Affiliates owns more than 50 percent of the ownership interests of a Rural Business Investment Company, either alone or in conjunction with other Farm Credit System Institutions (or affiliates), the Rural Business Investment Company may not provide Financing to any entity that is not otherwise eligible to receive Financing from a Farm Credit System Institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*).

(j) *Gaming establishments.* You are not permitted to Finance an Enterprise that derives, or is expected to derive, more than one-third of its gross annual revenue from legal gaming activities.

(k) *Change in control of an Enterprise.* You are not permitted to Finance a change of more than 50 percent control of an Enterprise unless otherwise approved by the Agency.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011; 85 FR 16523, Mar. 24, 2020]

§ 4290.730 Financings which constitute conflicts of interest.

(a) *General rule.* You must not self-deal to the prejudice of an Enterprise, the RBIC, its shareholders, partners or, members, or the Agency. Unless you obtain a prior written exemption from the Agency for special instances in which a Financing may further the purposes of the Act despite presenting a conflict of interest, you must not directly or indirectly:

(1) Provide Financing to any of your Associates, except for an Enterprise that satisfies all of the following conditions:

(i) Your Associate relationship with the Enterprise is described by paragraph (8) or (9) of the definition of *Associate* in § 4290.50,

(ii) No Person triggering the Associate relationship identified in paragraph (a)(1)(i) of the definition of Associate in § 4290.50 is a Close Relative or Secondary Relative of any Person described in paragraphs (1), (2), (4), or (5) of the definition of *Associate* in § 4290.50, and

(iii) No single Associate of yours has either a voting interest or an economic interest in the Enterprise exceeding 20 percent, and no two or more of your Associates have either a voting interest or an economic interest exceeding 33 percent. Economic interests shall be computed on a fully diluted basis, and both voting and economic interests shall exclude any interest owned through the RBIC.

(2) Provide Financing to an Associate of another RBIC if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that RBIC or any other RBIC (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) An Enterprise Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such Enterprise; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to an Enterprise to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(b) *Rules applicable to Associates.* Without the Agency's prior written approval, your Associates must not, directly or indirectly:

(1) Borrow money from any Person described in paragraph (a)(3) of this section.

(2) Receive from an Enterprise any compensation or anything of value in connection with Assistance you provide (except as permitted under § 4290.825(c)), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) *Applicability of other laws.* You are also bound by Federal or State laws applicable to you that govern conflicts of interest and fiduciary obligations.

(d) *Financings with Associates*—(1) *Financings with Associates requiring prior approval.* Without the Agency's prior written approval, you may not Finance any Enterprise in which your Associate has either a voting equity interest or total equity interests (including potential interests) of at least five percent, or effective control, except as otherwise permitted under paragraph (a)(1) of this section.

(2) *Other Financings with Associates.* If you and an Associate provide Financing to the same Enterprise, either at the same time or at different times, you must be able to demonstrate to the Agency's satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party's financing transactions.

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Enterprise and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Enterprise on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are RBICs.

(e) *Use of Associates to manage Portfolio Concerns.* To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Portfolio Concern. You must identify any such Associate in your records available for the Agency's review under § 4290.600. Without the Agency's prior written approval, such Associate must not:

(1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential

to exceed, the percentages of the Portfolio Concern's equity set forth in paragraph (a)(1) of this section.

(2) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this §4290.730, you need not obtain the Agency's approval of the transaction. However, you must promptly notify the Agency of the transaction.

(g) *Restriction on options obtained by RBIC's management and employees.* Your employees, officers, directors, managing members or general partners, or the general partners or managing members of the Investment Adviser/Manager that is providing services to you or to your general partner or managing member, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Agency gives prior written approval; or

(3) The options received are compensation for service as a member of the board of directors of the Portfolio Concern, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

§4290.740 Portfolio diversification ("overline" limitation).

(a) Without the Agency's prior written approval, you may provide Financing or a Commitment to an Enterprise only if the resulting amount of your aggregate outstanding Financings and Commitments to that Enterprise and its Affiliates does not exceed 10 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital; plus

(3) The total amount of Leverage provided to the Rural Business Investment Company by the Agency since it was licensed under §4290.390.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its original cost plus any amount of the Financing that was previously written off.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§4290.760 How a change in size or activity of a Portfolio Concern affects the RBIC and the Portfolio Concern.

(a) *Effect on RBIC of a change in size of a Portfolio Concern.* If a Portfolio Concern was a Smaller Enterprise at the time of the initial Financing but no longer qualifies as such under the size standard applicable to such entity, you may keep your investment in the Portfolio Concern and:

(1) Subject to the overline limitations of §4290.740, you may provide additional Financing to the Portfolio Concern up to the time it makes a public offering of its securities.

(2) Even after the Portfolio Concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering, or fund Commitments you made before the public offering.

(b) *Effect of a change in business activity occurring within one year of RBIC's initial Financing*—(1) *Retention of Financing.* Unless you receive the Agency's written approval, you may not keep your Financing in a Portfolio Concern which becomes ineligible for financing by a RBIC by reason of a change in its business or commercial activity or for any other reason within one year of your initial Financing in the Portfolio Concern.

(2) *Request for approval to retain Financing.* If you request that the Agency approve the retention of your investment, your request must include sufficient evidence to demonstrate that the change in business or commercial activity was caused by an unforeseen change in circumstances and was not

contemplated at the time the Financing was made.

(3) *Additional Financing.* If the Agency approves your request to retain a Financing under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 4290.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment; and

(2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 4290.740.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

STRUCTURING RBIC FINANCING OF ELIGIBLE ENTERPRISES—TYPES OF FINANCINGS

§ 4290.800 Financings in the form of Equity Securities.

You may purchase the Equity Securities of an Enterprise. You may not, inadvertently or otherwise:

(a) Become a general partner in any unincorporated business; or

(b) Become jointly or severally liable for any obligations of an unincorporated business.

§ 4290.810 Financings in the form of Loans.

You are permitted to make Loans to an Enterprise only if:

(a) The maturity or term of the Loan is five years or less; and

(b) You determine that making the Loan is necessary to preserve an existing Financing (other than a Loan) in that same Enterprise.

§ 4290.815 Financings in the form of Debt Securities.

(a) *General rule.* You may purchase Debt Securities from an Enterprise.

(b) *Restriction of options obtained by RBIC's management and employees.* Your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Agency gives its prior written approval; or

(3) The options received are compensation for services as a member of the board of directors of the Enterprise, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar Enterprises.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.820 Financings in the form of guarantees.

(a) *General rule.* At the request of an Enterprise or where necessary to protect your existing Financing in a Portfolio Concern, you may guarantee the monetary obligation of an Enterprise to any non-Associate creditor.

(b) *Exception.* You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business; or

(2) The amount of the guaranty plus any direct Financings to the Enterprise exceed the overline limitations of § 4290.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) *Pledge of RBIC's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§ 4290.825 Purchasing securities from an underwriter or other third party.

(a) *Securities purchased through or from an underwriter.* You may purchase

the securities of an Enterprise through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the issuer, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* You must keep records available for the Agency's inspection which show the relevant details of the transaction, including but not limited to, date, price, commissions, and the underwriter's certifications required under paragraphs (a)(3) and (c) of this section.

(c) *Underwriter's requirements.* The underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase.

(d) *Securities purchased from another RBIC.* You may purchase from, or exchange with, another RBIC, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio securities (or any interest therein) on a recourse basis, you must include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of an Enterprise from a non-issuer not previously described in this § 4290.825 if such acquisition is a reasonably necessary part of the overall sound Financing of the Enterprise.

§ 4290.830 Minimum term of Financing.

(a) *General rule.* The minimum term of each of your Financings is one year.

(b) *Restrictions on mandatory redemption of Equity Securities.* If you have acquired Equity Securities, options, or warrants on terms that include redemption by the Portfolio Concern, you must not require redemption by the Portfolio Concern within the first year of your acquisition except as permitted in § 4290.850.

(c) *Special rules for Loans and Debt Securities*—(1) *Term.* The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) *Prepayment.* You must permit voluntary prepayment of Loans and Debt Securities by the Portfolio Concern. You must obtain the Agency's prior written approval of any restrictions on the ability of the Portfolio Concern to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If the Agency determines that a prepayment is unreasonable, you must refund the entire penalty to the Portfolio Concern. A prepayment penalty equal to five percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered the maximum reasonable amount.

§ 4290.835 Exceptions to minimum term of Financing.

You may make a Financing with a term of less than one year but only if such Financing is in contemplation of another Financing, with a term of one year or more, to the same Enterprise.

§ 4290.840 Maximum term of Financing.

The maximum term of any Debt Security must be no longer than 20 years.

§ 4290.845 Maximum rate of amortization on Loans and Debt Securities.

The principal of any Loan, or the loan portion of any Debt Security, with a term of one year or less, cannot be amortized faster than straight line. If the term is greater than one year, the principal cannot be amortized faster than straight line for the first year.

§ 4290.850 Restrictions on redemption of Equity Securities.

(a) *Restriction on redemption.* A Portfolio Concern cannot be required to redeem Equity Securities earlier than one year from the date of the first closing unless:

(1) The Portfolio Concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

(2) You make a follow-on Financing, in which case the new securities may be redeemed in less than one year, but no earlier than the redemption date associated with your earliest Financing of the Portfolio Concern.

(b) *Redemption price.* The redemption price must be either:

(1) A fixed amount that is no higher than the price you paid for the securities; or

(2) An amount that cannot be fixed or determined before the time of the redemption. In this case, the redemption price must be based on:

(i) A reasonable formula that reflects the performance of the Portfolio Concern (such as one based on earnings or book value); or

(ii) The fair market value of the Portfolio Concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

(c) *Method.* Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.

§ 4290.860 Financing fees and expense reimbursements a RBIC may receive from an Enterprise.

(a) *General rule.* You may collect Financing fees and receive expense reimbursements from an Enterprise only as permitted under this § 4290.860.

(b) *Application fee.* You may collect a nonrefundable application fee from an Enterprise to review its Financing application. The application fee may be collected at the same time as the closing fee under paragraph (d) or (e) of this section, or earlier. The fee must be:

(1) No more than one percent of the amount of Financing requested (or, if two or more RBICs participate in the Financing, their combined application fees are no more than one percent of the total Financing requested); and

(2) Agreed to in writing by the Financing applicant.

(c) *The Agency's review of application fees.* For any fiscal year, if the number of application fees you collect is more than twice the number of Financings closed, the Agency in its sole discretion may determine that you are engaged in activities not contemplated by the Act, in violation of § 4290.500.

(d) *Closing fee—Loans.* You may charge a closing fee on a Loan if:

(1) The fee is no more than two percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than two percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(e) *Closing fee—Debt or Equity Financings.* You may charge a Closing Fee on a Debt Security or Equity Security Financing if:

(1) The fee is no more than four percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than four percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(f) *Limitation on dual fees.* If another RBIC or an Associate of yours collects a transaction fee under § 4290.900(e) in connection with your Financing of an Enterprise, the sum of the transaction fee and your application and closing fees cannot exceed the maximum application and closing fees permitted under this § 4290.860.

(g) *Expense reimbursements.* You may charge an Enterprise for the reasonable out-of-pocket expenses, other than Management Expenses, that you incur to process its Financing application. If the Agency determines that any of your reimbursed expenses are unreasonable or are Management Expenses, the Agency will require you to refund them to the Enterprise.

(h) *Breakup fee.* If an Enterprise accepts your Commitment and then fails

to close the Financing because it has accepted funds from another source, you may charge a ''breakup fee'' equal to the closing fee that you would have been permitted to charge under paragraph (d) or (e) of this section.

§ 4290.880 Assets acquired in liquidation of Portfolio securities.

(a) *General rule.* You may acquire assets in full or partial liquidation of a Portfolio Concern's obligation to you under the conditions permitted by this § 4290.880. The assets may be acquired from the Portfolio Concern, a guarantor of its obligation, or another party.

(b) *Timely disposition of assets.* You must dispose of assets acquired in liquidation of a Portfolio security within a reasonable period of time.

(c) *Permitted expenditures to preserve assets.* (1) You may incur reasonably necessary expenditures to maintain and preserve assets acquired.

(2) You may incur reasonably necessary expenditures for improvements to render such assets saleable.

(3) You may make payments of mortgage principal and interest (including amounts in arrears when you acquired the asset), pay taxes when due, and pay for necessary insurance coverage.

(d) *The Agency approval of expenditures.* This paragraph (d) applies if you have outstanding Leverage or are applying for Leverage. Any application for the Agency's approval under this paragraph must specify all expenses estimated to be necessary pending disposal of the assets. Without the Agency's prior written approval:

(1) Your total expenditures under paragraphs (c)(1) and (c)(2) of this section plus your total Financing(s) to the Portfolio Concern must not exceed your overline limit under § 4290.740; and

(2) Your total expenditures under paragraph (b) of this section plus your total Financing(s) to the Portfolio Concern must not exceed 35 percent of your Regulatory Capital.

Limitations on Disposition of Assets

§ 4290.885 Disposition of assets to RBIC's Associates or to competitors of Portfolio Concerns.

Except with the Agency's prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate or to competitors of Portfolio Concerns if you have outstanding Leverage. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

§ 4290.900 Management fees for services provided to an Enterprise by RBIC or its Associate.

(a) *General.* This § 4290.900 applies to management services that you or your Associate provide to a Portfolio Concern during the term of a Financing or prior to Financing. It does not apply to management services that you or your Associate provide to an Enterprise that you do not finance.

(b) *The Agency's approval.* You must obtain the Agency's prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management fees.* You or your Associate may provide management services to a Portfolio Concern financed by you if:

(1) You or your Associate have entered into a written contract with the Portfolio Concern;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to the Agency, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Portfolio Concern; and

(5) All of the management services fees paid to your Associate by a Portfolio Concern for management services provided by the Associate are allocated back to you for your benefit.

(d) *Fees for service as a board member.* You or your Associate may receive fees in the form of cash, warrants, or other payments, for services provided as members of the board of directors of a Portfolio Concern Financed by you. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees

must be reasonable when compared with amounts paid to outside directors of similar companies. At least 50 percent of any board member services fees paid to your Associate by a Portfolio Concern for board member services provided by the Associate must be allocated back to you for your benefit.

(e) *Approval required.* You must obtain the Agency's prior written approval of any management contract that does not satisfy paragraphs (c) or (d) of this section.

(f) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed preparing an Enterprise for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes, stock, and/or options. All of the transaction services fees paid to your Associate by a Portfolio Concern for transaction services provided by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Portfolio Concern on that portion of a Financing that you do not provide.

(g) *Recordkeeping Requirements.* You must keep a record of hours spent and amounts charged to the Portfolio Concern, including expenses charged.

Subpart J—Financial Assistance for RBICs (Leverage)

GENERAL INFORMATION ABOUT OBTAINING LEVERAGE

§ 4290.1100 Type of Leverage and application procedures.

(a) *Type of Leverage available.* You may apply for Leverage from the Agency in the form of a guarantee of your Debentures.

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for the Agency's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. *See* §§ 4290.1200 through 4290.1240.

(c) *Where to send your application.* Send all Leverage draw-down applications to Funding Control Officer, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Suite 6300, Mail Code 7050, Washington, DC 20416.

§ 4290.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

§ 4290.1130 Leverage fees payable by RBIC.

(a) *Leverage fee.* You must pay the Agency a non-refundable leverage fee for each issuance of a Debenture. The fee is 3 percent of the face amount of the Debenture issued, and will be deducted from the proceeds remitted to you.

(b) *Additional charge.* You must pay the Agency an additional annual charge of 1 percent of the outstanding amount of your Debenture.

(c) *Other Leverage fees.* The Agency may establish a fee structure for services performed by the Central Registration Agent (CRA). The Agency will not collect any fee for its guarantee of TCs.

§ 4290.1140 RBIC's acceptance of remedies under § 4290.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 4290.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

MAXIMUM AMOUNT OF LEVERAGE FOR WHICH A RBIC IS ELIGIBLE

§ 4290.1150 Maximum amount of Leverage for a RBIC.

The face amount of a RBIC's outstanding Debentures may not exceed the lesser of 200 percent of its Leverageable Capital or $105,000,000.

CONDITIONAL COMMITMENTS TO RESERVE LEVERAGE FOR A RBIC

§ 4290.1200 Leverage commitment to a RBIC—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 4290.1200 through 4290.1240, you may

apply for the Agency's conditional commitment to reserve a specific amount of Leverage and type of Debenture (standard or discounted) for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* The Agency will notify you when requests for Leverage commitments are being accepted, and upon receipt of your request, will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000. The Agency in its discretion may determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(d) *Term of Leverage commitment.* Your Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by the Agency. The Agency's Leverage commitment will be included in the Participation Agreement at the time of your licensing as a RBIC, under § 4290.390.

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form) or other USDA-approved form(s), you must:

(1) Give the Agency a financial statement on Form 468 (Short Form) or other USDA-approved form(s), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s).

(b) You will not be eligible for a draw if you are not in compliance with this § 4290.1220.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

(a) *RBIC's authorization of the Agency to guarantee securities.* By submitting a request for a draw against the Leverage commitment, you authorize the Agency, or the Agency's designated agent or trustee, to guarantee your Debenture and to sell it with the Agency's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. The Agency, in its discretion, may determine a minimum dollar amount for draws against Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on RBIC's eligibility for draws*—(1) *General rule.* You are eligible to make a draw against your Leverage commitment only if you are in compliance with all applicable provisions of the Act and this part (*i.e.*, no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) The Agency determines that your outstanding violations are of non-substantive provisions of the Act or this part or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with the Agency in writing on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s) (see also § 4290.1220 for filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 or other USDA-approved form(s) in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form) or other USDA-approved form(s).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and this part (*i.e.*, no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the RBIC;

(ii) An officer of a corporate general partner or managing member of the RBIC;

(iii) An individual who is authorized to act as or for a general partner of the RBIC; or

(iv) An individual who is authorized to act as or for a managing member of the RBIC.

(4) A statement that the proceeds are needed to fund one or more particular Enterprises or to provide liquidity for your operations. If required by the Agency, the statement must include the name and address of each Enterprise, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 or other USDA-approved form(s) confirming the closing of the transaction.

(2) If the Agency required you to provide information concerning a specific planned Financing under paragraph (d)(4) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must provide a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. The Agency may also determine that you are not in compliance with the terms of your Leverage under § 4290.1810.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.1240 Funding of RBIC's draw request through sale to third-party.

(a) *RBIC's authorization of the Agency to arrange sale of Debentures to third-party.* By submitting a request for a draw of Debenture Leverage, you authorize the Agency, or any agent or trustee the Agency designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture to a third-party at a price approved by the Agency; and

(2) The purchase of your Debenture from the third-party and the pooling of your Debenture with other Debentures with the same maturity date.

(b) *Sale of Debentures to a third-party.* If the Agency arranges for the sale of your Debenture to a third-party, the sale price may be an amount discounted from the face amount of the Debenture.

DISTRIBUTIONS BY RBICS WITH OUTSTANDING LEVERAGE

§ 4290.1500 Restrictions on distributions to RBIC investors while RBIC has outstanding Leverage.

(a) *Restriction on distribution.* If you have outstanding Leverage, whenever you make a distribution to your investors you must make, at the same time, a prepayment to or for the benefit of the third-party holder of the Debenture sold pursuant to § 4290.1240 of this part, accrued unpaid interest and the principal, in whole or in part, of one or more of your Debentures outstanding as of the date of the distribution (subject to the terms of such Debentures).

(b) *Amount of prepayment.* You must calculate the amount due the third-party holder by multiplying the total amount you intend to distribute by a fraction whose numerator is the outstanding principal of your Debenture(s) immediately preceding your distribution, and whose denominator is the sum of your Leverageable Capital as of that time plus the outstanding principal amount of your Debentures. For purposes of the preceding sentence ''principal'' means both the net proceeds and interest accrued to date of a discounted Debenture. The amount of any payment received under this section will be credited first against unpaid interest accrued to the date of distribution and then to the principal in whole or in part of the first Debenture you select to prepay and then to the interest and principal in whole or in part

of such other Debenture(s) as you select to prepay. You may elect to prepay in whole any discounted Debenture under this section only within five years of its maturity date. Payments under this section must be made on the next occurring March 1 or September 1.

(c) *Effect of prepayment.* Subject to the terms of the Debenture(s), you may voluntarily prepay additional principal, but neither mandatory nor voluntary prepayment will increase your future Leverage eligibility.

FUNDING LEVERAGE BY USE OF GUARANTEED TRUST CERTIFICATES (''TCS'')

§ 4290.1600 Agency's authority to issue and guarantee Trust Certificates.

(a) *Authorization.* Section 384F of the Act authorizes the Agency to issue TCs and to guarantee the timely payment of the principal and interest thereon. Any such guarantee of such TC is limited to the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(b) *Authority to arrange public or private fundings of Leverage.* The Agency in its discretion may arrange for public or private financing under its guarantee authority. Such financing may be accomplished by the sale of individual Debentures, aggregations of Debentures, or Pools or Trusts of Debentures.

(c) *Pass-through provisions.* TCs shall provide for a pass-through to their holders of all amounts of principal and interest paid on the Debentures in the Pool or Trust against which they are issued.

(d) *Formation of a Pool or Trust holding Leverage Securities.* The Agency shall approve the formation of each Pool or Trust. The Agency may, in its discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust it deems appropriate. Notwithstanding § 4290.1130(c), any agent of the Agency may collect a fee for the functions described in 7 U.S.C. 2009cc–5(e)(2) that does not exceed $500.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.1610 Effect of prepayment or early redemption of Leverage on a Trust Certificate.

(a) The rights, if any, of a RBIC to prepay any Debenture is established by the terms of such security, and no such right is created or denied by the regulations in this part.

(b) The Agency's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture.

(c) Any prepayment of a Debenture pursuant to the terms of the Guaranty Agreement relating to such security shall reduce the Agency's guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal that such prepaid Debenture represents in the Trust or Pool backing such TC.

(d) The Agency shall be discharged from its guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(e) Interest on prepaid Debentures shall accrue only through the date of prepayment.

(f) In the event that all Debentures constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; provided, however, that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the Central Registration Agent (CRA) shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor RBIC pursuant to the terms of the Debenture.

§ 4290.1620 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.

(a) *Agents.* The Agency may appoint or cause to be appointed agent(s) to

perform functions necessary to market and service Debentures or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture, the Agency may cause each RBIC to appoint a Selling Agent to perform functions that include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (''Poolers'').

(ii) Receiving guaranteed Debentures as well as negotiating the terms and conditions of sales or periodic offerings of Debentures and/or TCs on behalf of RBICs.

(iii) Directing and coordinating periodic sales of Debentures and/or TCs.

(iv) Arranging for the production of Offering Circulars, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* The Agency shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as the Agency, from time to time, may prescribe.

(3) *Central Registration Agent.* Pursuant to a contract entered into with the Agency, the CRA, as the Agency's agent, will do the following with respect to the Pools or Trust Certificates for the Debentures:

(i) Form an approved Pool or Trust;

(ii) Issue the TCs in the prescribed form;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from RBICs;

(v) Make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures;

(vi) Hold, safeguard, and release all Debentures constituting Trusts or Pools upon instructions from the Agency;

(vii) Remain custodian of such other documentation as the Agency shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures, all Pools and Trusts, and all TCs; and

(ix) Perform such other functions as the Agency may deem necessary to implement the provisions of this section.

(b) *Functions.* Either the Agency or an agent appointed by the Agency may perform the function of locating purchasers, and negotiating and closing the sale of Debentures and TCs. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as the Agency's agent for this purpose.

§ 4290.1630 Regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.

(a) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by the Agency pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. It also shall be in good standing with the Agency as determined by the SBA official with delegated authority to made this determination (*see* paragraph (c) of this section) and shall provide a fidelity bond or insurance in such amount as the Agency may require.

(b) *Suspension and/or termination of Broker or Dealer.* The Agency shall exclude from the sale and all other dealings in Debentures or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, the Agency will suspend such broker or dealer for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness, such broker or dealer may be suspended while the charge is

pending. Upon conviction, participation may be terminated.

(3) If such broker or dealer has suffered an adverse final civil judgment holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.

(c) *Termination/suspension proceedings.* A broker's or dealer's participation in the market for Debentures or TCs will be conducted in accordance with 7 CFR part 11. The Agency may, for any of the reasons stated in paragraphs (b)(1) through (3) of this section, suspend the privilege of any broker or dealer to participate in this market. The Agency shall give written notice at least ten business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to 7 CFR part 11.

§ 4290.1640 Agency's access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures and TCs available to the Agency for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

MISCELLANEOUS

§ 4290.1700 Agency's transfer of interest in a RBIC's Leverage security.

Upon such conditions and for such consideration as it deems reasonable, the Agency may sell, assign, transfer, or otherwise dispose of any Debenture held by or on behalf of the Agency. Upon notice by the Agency, a RBIC will make all payments of principal and interest as shall be directed by the Agency. A RBIC will be liable for all damage or loss which the Agency may sustain by reason of the RBIC's failure to follow such payment instructions, up to the amount of the RBIC's liability under such security, plus court costs and reasonable attorney's fees incurred by the Agency.

§ 4290.1710 Agency's authority to collect or compromise claims.

The Agency may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to obligations it holds or has guaranteed, and all legal or equitable rights accruing to it.

§ 4290.1720 Characteristics of Agency's guarantee.

If the Agency agrees to guarantee a RBIC's Debentures, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or any other circumstances that might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, the Agency will make timely payments of principal and interest on the Debentures.

Subpart K—RBIC's Noncompliance With Terms of Leverage

§ 4290.1810 Events of default and the Agency's remedies for RBIC's noncompliance with terms of Debentures.

(a) *Applicability of this section.* Upon acceptance of a license to operate as an RBIC, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance of the license and as fully set forth in all documents relating to the license, including, without limitation, the Participation Agreement and Debentures.

(b) *Automatic events of default.* The occurrence of one or more of the events in this paragraph (b) causes the remedies in paragraph (c) of this section to take effect immediately.

(1) *Insolvency.* You become equitably or legally insolvent.

(2) *Voluntary assignment.* You make a voluntary assignment for the benefit of creditors without the Agency's prior written approval.

(3) *Bankruptcy.* You file a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights

proceeding, or such action is initiated against you and is not dismissed within 60 days.

(c) *Remedies for automatic events of default.* Upon the occurrence of one or more of the events in paragraph (b) of this section:

(1) Without notice, presentation or demand, the entire indebtedness evidenced by your Debentures, including accrued interest, and any other amounts owed with respect to your Debentures, is immediately due and payable; and

(2) You automatically consent to the appointment of the Agency or its designee, as your receiver under section 384M of the Act.

(d) *Events of default with notice.* For any occurrence (as determined by the Agency) of one or more of the events in this paragraph (d), the Agency may avail itself of one or more of the remedies in paragraph (e) of this section.

(1) *Fraud.* You commit a fraudulent act that causes detriment to the Agency's position as a creditor or guarantor.

(2) *Fraudulent transfers.* You make any transfer or incur any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(3) *Willful conflicts of interest.* You willfully violate § 4290.730.

(4) *Willful non-compliance.* You willfully violate one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act or any substantive provision of your Participation Agreement.

(5) *Repeated Events of Default.* At any time after being notified of the occurrence of an event of default under paragraph (f) of this section, you engage in similar behavior that results in another occurrence of the same event of default.

(6) *Transfer of Control.* You willfully violate § 4290.410, and as a result of such violation you undergo a transfer of Control.

(7) *Non-cooperation under § 4290.1810(h).* You fail to take appropriate steps, satisfactory to the Agency, to accomplish any action the Agency may have required under paragraph (h) of this section.

(8) *Non-notification of Events of Default.* You fail to notify the Agency as soon as you know or reasonably should have known that any event of default exists under this section.

(9) *Non-notification of defaults to others.* You fail to notify the Agency in writing within ten days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness of yours, issued to or held by anyone other than the Agency.

(e) *Remedies for events of default with notice.* Upon written notice to you of the occurrence (as determined by the Agency) of one or more of the events in paragraph (d) of this section:

(1) The Agency may declare the entire indebtedness evidenced by your Debentures, including accrued interest and/or any other amounts owed the Agency with respect to your Debentures, immediately due and payable: and

(2) The Agency may avail itself of any remedy available under the Act, specifically including institution of proceedings for its, or its designee's appointment as your receiver under section 384M(c) of the Act.

(f) *Events of default with opportunity to cure.* For any occurrence (as determined by the Agency) of one or more of the events in this paragraph (f), the Agency may avail itself of one or more of the remedies in paragraph (g) of this section.

(1) *Excessive Management Expenses.* Without the Agency's prior written consent, you incur Management Expenses in excess of those permitted under §§ 4290.510 and 4290.520.

(2) *Improper Distributions.* You make any Distribution to your shareholders or partners, except with the Agency's prior written consent, other than:

(i) Distributions permitted under § 4290.585; and

(ii) Payments from Retained Earnings Available for Distribution based on either the shareholders' or members' pro-rata interests or the provisions for profit distributions in your partnership agreement, as appropriate.

(3) *Failure to make payment.* Unless otherwise approved by the Agency, you fail to make timely payment of any amount due under any security or obligation of yours that is issued to, held or guaranteed by the Agency.

(4) *Failure to maintain Regulatory Capital.* You fail to maintain the minimum Regulatory Capital required under these regulations or, without the Agency's prior written consent, you reduce your Regulatory Capital except as permitted by § 4290.585.

(5) *Capital Impairment.* You have a condition of Capital Impairment as determined under § 4290.1830.

(6) *Cross-default.* An obligation of yours that is greater than $100,000 becomes due or payable (with or without notice) before its stated maturity date, for any reason including your failure to pay any amount when due. This provision does not apply if you pay the amount due within any applicable grace period or contest the payment of the obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* You violate or fail to perform one or more of the terms and conditions of any security or obligation of yours that is issued to, held or guaranteed by the Agency, or of any agreement (including your Participation Agreement) with or conditions imposed by the Agency in the administration of the Act and the regulations promulgated under the Act.

(8) *Noncompliance.* Except as otherwise provided in paragraph (d)(5) of this section, the Agency determines that you have violated one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act.

(9) *Failure to maintain diversity.* You fail to maintain diversity between management and ownership as required by § 4290.150.

(g) *Remedies for events of default with opportunity to cure.* (1) Upon written notice to you of the occurrence (as determined by the Agency) of one or more of the events of default in paragraph (f) of this section, and subject to the conditions in paragraph (g)(2) of this section:

(i) The Agency may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed the Agency with respect to your Debentures, immediately due and payable; and

(ii) The Agency may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of the Agency or a designee as your receiver under § 348M of the Act.

(2) The Agency may invoke the remedies in paragraph (g)(1) of this section only if:

(i) You have been given at least 15 days to cure the default(s); and

(ii) You fail to cure the default(s) to the Agency's satisfaction within the allotted time.

(h) *Repeated non-substantive violations.* If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated under the Act, the Agency, after written notification to you and until you cure such condition to the Agency's satisfaction, may deny you additional Leverage and/or require you to take such actions as the Agency may determine to be appropriate under the circumstances.

(i) *Consent to removal of officers, directors, or general partners and/or appointment of receiver.* The Articles of each RBIC must include the following provisions as a condition to the purchase or guarantee of Leverage. Upon the occurrence of any of the events specified in paragraphs (d)(1) through (d)(6) or (f)(l) through (f)(3) of this section as determined by the Agency, the Agency shall have the right, and you consent to the Agency's exercise of such right:

(1) With respect to a Corporate RBIC, upon written notice, to require you to replace, with individuals approved by the Agency, one or more of your officers and/or such number of directors of your board of directors as is sufficient to constitute a majority of such board; or

(2) With respect to a Partnership RBIC or an LLC RBIC, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove the general partner or manager of the RBIC, which general partner or manager shall then be replaced in accordance with the RBIC's Articles by a new general partner or manager approved by the Agency; and/or

(3) With respect to a Corporate RBIC, Partnership RBIC, or LLC RBIC, to obtain the appointment of the Agency or

its designee as your receiver under section 384M of the Act for the purpose of continuing your operations. The appointment of a receiver to liquidate an RBIC is not within such consent, but is governed instead by the relevant provisions of the Act.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

COMPUTATION OF RBIC'S CAPITAL IMPAIRMENT

§ 4290.1830 RBIC's Capital Impairment definition and general requirements.

(a) *Significance of Capital Impairment condition.* If you have a condition of Capital Impairment, you are not in compliance with the terms of your Leverage. As a result, the Agency has the right to impose the applicable remedies for noncompliance in § 4290.1810(g).

(b) *Definition of Capital Impairment condition.* You have a condition of Capital Impairment if your Capital Impairment Percentage, as computed pursuant to the procedures set forth in § 4290.1840, exceeds 70 percent.

(c) *Quarterly computation requirement and procedure.* You must determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. You must notify the Agency promptly if you are Capitally Impaired.

(d) *The Agency's right to determine RBIC's Capital Impairment condition.* The Agency may make its own determination of your Capital Impairment condition at any time.

§ 4290.1840 Computation of RBIC's Capital Impairment Percentage.

(a) *General.* This section contains the procedures you must use to determine your Capital Impairment Percentage. You must compare your Capital Impairment Percentage to the maximum permitted under § 4290.1830(b) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and you do not have to perform any more procedures in this § 4290.1840. Otherwise, you must continue with paragraph (c) of this section. You satisfy the test if each of the following amounts is zero or greater:

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468 or other USDA-approved form(s) and Includible Non-Cash Gains.

(2) Unrealized Gain (Loss) on Securities Held.

(c) *How to compute your Capital Impairment Percentage.* (1) If you have an Unrealized Gain on Securities Held, compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, continue with paragraph (c)(2) of this section.

(2) Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.

(3) If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.

(4) If the sum in paragraph (c)(2) of this section is less than zero, drop the negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) *How to compute your Adjusted Unrealized Gain.* (1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your ''Net Appreciation''.

(2) Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your ''Class I Appreciation''.

(3) Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and meet the following criteria, which must be substantiated to the Agency's satisfaction (this is your ''Class 2 Appreciation''):

(i) The Portfolio Concern that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;

(ii) Such financing represents a substantial investment in the form of an arm's-length transaction by a sophisticated new investor in the issuer's securities; and

(iii) Such financing occurred within 24 months of the date of the Capital Impairment computation, or the Portfolio Concern's pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of its average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the table in 13 CFR 107.1840(d)(4).

(5) Reduce the gain computed in paragraph (d)(4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80225, Dec. 23, 2011]

Subpart L—Ending Operations as a RBIC

§ 4290.1900 Termination of participation as a RBIC.

You may not terminate your participation as a RBIC without the Agency's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to the Agency for the orderly liquidation of the RBIC.

Subpart M—Miscellaneous

§ 4290.1910 Non-waiver of rights or terms of Leverage security.

The Agency's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. The Agency's failure to require you to perform any term or provision of your Leverage does not affect the Agency's right to enforce such term or provision. Similarly, the Agency's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in § 4290.1810 does not constitute a waiver of any succeeding breach of such term or provision or condition.

§ 4290.1920 RBIC's application for exemption from a regulation in this part 4290.

(a) *General.* You may file an application in writing with the Agency to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. The Agency may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act.

(b) *Contents of application.* Your application must be accompanied by supporting evidence that demonstrates to the Agency's satisfaction that:

(1) The proposed action is fair and equitable; and

(2) The exemption requested is reasonably calculated to advance the best interests of the RBIC program in a manner consistent with the policy objectives of the Act and the regulations in this part.

§ 4290.1930 Effect of changes in this part 4290 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

§ 4290.1940 Integration of this part with other regulations applicable to USDA's programs.

(a) *Intergovernmental review.* To the extent applicable to this part, the Agency will comply with 2 CFR part

415, subpart C, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' The Agency has not delegated this responsibility to SBA pursuant to § 4290.45.

(b) *National flood insurance.* To the extent applicable to this part, the Agency will comply with subpart B of 7 CFR part 1806. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(c) *Clean Air Act and Water Pollution Control Act requirements.* To the extent applicable to this part, the Agency will comply with the requirements of the Clean Air Act, section 306; the Clean Water Act, section 508; Executive Order 11738; and 40 CFR part 32. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(d) *Historic preservation requirements.* To the extent applicable to this part, the Agency will comply with subpart F of 7 CFR part 1901. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(e) *Lead-based paint requirements.* To the extent applicable to this part, the Agency will comply with subpart A of 7 CFR part 1924. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(f) *Conflict of interest.* To the extent applicable to this part, the Agency will comply with 2 CFR 400.2, subpart D of 7 CFR part 1900, and RD Instruction 2045–BB. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45.

(g) *Civil rights impact analysis.* To the extent applicable to this part, the Agency will comply with RD Instruction 2006–P, ''Civil Rights Impact Analysis.'' The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(h) *Environmental requirements.* To the extent applicable to this part, the Agency will comply with 7 CFR part 1970. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45.

(i) *Appeals to the National Appeals Division for review of adverse decisions.* Applicants and RBICs have the right to request review by the National Appeals Division within the USDA of adverse decisions, as defined in 7 CFR 11.1, pursuant to 7 CFR part 11.

[69 FR 32204, June 8, 2004, as amended at 79 FR 76019, Dec. 19, 2014; 81 FR 11053, Mar. 2, 2016]

Subpart N—Requirements for Operational Assistance Grants to RBICs

§ 4290.2000 Operational Assistance Grants to RBICs.

(a) *Regulations governing.* Regulations governing Operational Assistance grants to RBICs may be found in subparts D and E of this part 4290 and in this § 4290.2000.

(b) *Restrictions on use.* A RBIC must use Operational Assistance grant funds only to provide Operational Assistance to Smaller Enterprises to which it either has made, or expects to make, a Financing.

(c) *Amount of grant.* Each RBIC will receive an Operational Assistance grant award equal to the lesser of 10 percent of the Regulatory Capital raised by the RBIC at the time of licensing or $1,000,000.

(d) *Term.* Operational Assistance grants made under this part will be made for a multiyear period (not to exceed 10 years) under such terms as the Agency may require.

(e) *Reporting and recordkeeping requirements.* Policies governing reporting, record retention, and recordkeeping requirements applicable to RBICs may be found in subpart H of this part 4290.

Subpart O—Additional Requirements for Non-Leveraged Licensees and Exceptions to Regulations

SOURCE: 76 FR 80225, Dec. 23, 2011, unless otherwise noted.

§ 4290.3000 Non-leveraged RBICs—General.

This subpart identifies provisions specific to RBICs seeking a non-leveraged license, including exceptions and additions to provisions associated with subparts A through N of this part.

§§ 4290.3001–4290.3002 [Reserved]

§ 4290.3003 Responsibilities for implementing Non-leveraged RBICs.

Section 4290.45 does not apply to Non-leveraged RBICs. Instead, for the purposes of this part as it applies to Non-leveraged RBICs, all authorities and responsibilities assigned to the Agency under this part shall be carried out by the Agency. Thus, when applying subparts A through N of this part to Non-leveraged RBICs, all references to the Small Business Administration (SBA) or Administrator on behalf of USDA shall be read as the Agency. All forms shall be submitted to USDA or its designee.

[77 FR 4885, Feb. 1, 2012]

§ 4290.3004 [Reserved]

§ 4290.3005 Qualifications for the Non-leveraged RBIC Program.

(a) *Business form.* In addition to complying with the applicable provisions of § 4290.100 not otherwise modified by this section, paragraphs (a)(1) through (a)(4) of this section apply.

(1) For RBICs applying for non-leveraged status, the types of investors eligible to invest in a RBIC must have been approved by the Agency. Investors seeking approval must submit a request to the Agency with sufficient documentation to support their request. The USDA will announce such approved categories and types of investors in a public notice published in the FEDERAL REGISTER from time to time. Subsequent notices that modify the types of investors eligible to invest in a RBIC will not be applied retroactively.

(2) In lieu of complying with § 4290.100(d)(1)(i), you must have a minimum duration of 10 years. After 10 years, the Partnership RBIC may be terminated by a vote of your partners.

(3) In lieu of complying with § 4290.100(d)(2), if you are a LLC RBIC, you must have a minimum duration of 10 years. After 10 years, the LLC RBIC may be terminated by a vote of your members.

(4) In lieu of complying with § 4290.100(d)(3), if you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders.

(b) *Approval of initial Management Expenses.* Section 4290.140 does not apply to Non-leveraged RBICs. However, the Agency will provide a cap on these expenses in each FEDERAL REGISTER notice soliciting applications for Non-leveraged RBICs.

(c) *Management and ownership diversity requirements.* A Non-leveraged RBIC is subject to the provisions of § 4290.150 unless it is exempted from these provisions by the Agency. Exemptions will only be granted when the applicant establishes, to the satisfaction of the Agency, that granting the exemption will not unduly impair the integrity and soundness of the Non-leveraged RBIC.

(d) *Special rules for Partnership RBICs and LLC RBICs.* Paragraph (c) of § 4290.160 does not apply to Non-leveraged RBICs.

§§ 4290.3006–4290.3009 [Reserved]

§ 4290.3010 Application and Approval Process for RBIC licensing without Leverage.

(a) The provisions of § 4290.300 notwithstanding, the Agency will accept, at any time, applications for consideration as a Non-leveraged RBIC. The number of applications that the Agency will receive each year, and any fees and conditions, will be announced annually in a FEDERAL REGISTER notice.

(b) The provision for evaluating applicants on a competitive basis, as specified in § 4290.340(a), does not apply to this subpart.

(c) The provisions specified in § 4290.370(m) do not apply to this subpart.

[76 FR 80225, Dec. 23, 2011, as amended at 77 FR 4885, Feb. 1, 2012]

§§ 4290.3011–4290.3014 [Reserved]

§ 4290.3015 Evaluation and selection of Non-leveraged RBICs.

(a) *General.* Notwithstanding any other provision in this part, when selecting applications for non-leveraged status, the Agency may select one or more applications, or none, for further consideration based on the evaluation criteria of this part.

(b) *Eligibility and completeness.* In addition to the requirements specified in § 4290.350, an Applicant under this subpart must complete a written application that includes information not otherwise exempted by the Agency, in its sole discretion. The Agency may, on its own initiative, exempt material from a Non-leveraged RBIC application where the Agency determines it impedes an expedited process without a commensurate benefit to the program. To the extent that the Agency's exemption applies to the entire program, an announcement of the exemption will be published in the FEDERAL REGISTER. The Agency shall make a decision as to licensing an Applicant after the receipt of a complete application and will enter into a Participation Agreement with the RBIC if approved.

(c) *Effect of a RBIC license.* Paragraphs (d)(2) and (d)(3) of § 4290.390 do not apply to Non-leveraged RBICs.

§§ 4290.3016–4290.3019 [Reserved]

§ 4290.3020 Changes in Ownership, Structure, or Control.

Paragraph (b) in § 4290.440 does not apply to Non-leveraged RBICs.

§§ 4290.3021–4290.3024 [Reserved]

§ 4290.3025 Managing the Operations of a RBIC.

(a) *Nonperformance.* In addition to the provisions specified in § 4290.507, failure of an approved Non-leveraged RBIC to maintain sound investment practice, as determined by the Agency, may result in loss of approval for participating in this program.

(b) *Employment of USDA or SBA officials.* Paragraph (a)(2) of § 4290.509 does not apply to Non-leveraged RBICs.

(c) *Approval of RBIC's Investment Adviser/Manager.* In addition to complying with § 4290.510, a Non-leveraged RBIC must notify the Agency of the Management Expenses to be incurred under such contract, or of any subsequent material changes in such Management Expenses, within 30 days of execution.

(d) *Management Expenses of a RBIC.* When complying with § 4290.520, Non-leveraged RBICs do not need prior approval of initial Management Expenses and any increases in those expenses.

(e) *Restrictions on investments of idle funds by RBICs.* The provisions of § 4290.530 apply to Non-leveraged RBICs only when the Non-leveraged RBIC engages in activities not contemplated by the Act.

(f) *Prior approval of secured third-party debt of RBICs.* The provisions of § 4290.550 do not apply to Non-leveraged RBICs.

(g) *Voluntary decrease in Regulatory Capital.* When complying with § 4290.585, Non-leveraged RBICs do not need to obtain prior approval for decreases in Regulatory Capital of more than 2 percent (but not below the minimum required under this Act or these regulations). However, Non-leveraged RBICs must report the reduction to the Agency within 30 days.

§§ 4290.3026–4290.3029 [Reserved]

§ 4290.3030 Financing of Enterprises by RBICs.

(a) *Non-compliance with this section.* The last sentence of § 4290.700(e) does not apply to Non-leveraged RBICs.

(b) *Enterprises that may be ineligible for Financing.* The provisions associated with real estate enterprises found in § 4290.720(c) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Agency in accordance with § 4290.1920.

(c) *Farmland purchases.* The provisions associated with farmland purchases found in § 4290.720(e) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Agency in accordance with § 4290.1920.

(d) *Purchasing securities from an underwriter or other third party.* Non-leveraged RBICs are exempt from the recordkeeping requirements and fee limitations in § 4290.825(b) and (c), respectively, for securities purchased through or from an underwriter.

(e) *Assets acquired in liquidation of Portfolio securities.* The provisions of § 4290.880 do not apply to Non-leveraged RBICs.

§§ 4290.3031–4290.3034 [Reserved]

§ 4290.3035 Recordkeeping, Reporting, and Examination Requirements for RBICs.

Except for § 4290.600(d), Subpart H, Recordkeeping, Reporting, and Examination Requirements for RBICs, of this part applies to Non-leveraged RBICs.

§§ 4290.3036–4290.3039 [Reserved]

§ 4290.3040 Financial Assistance for RBICs.

Subpart J, Financial Assistance for RBICs (Leveraged), of this part does not apply to Non-leveraged RBICs.

§ 4290.3041 Events of default and the Agency's remedies for RBIC's noncompliance with terms of licensure.

In addition to complying with the provisions of § 4290.1810, a RBIC's failure to comply with the terms of this part may result in the Agency revoking the Non-leveraged RBIC's license issued under this part.

[76 FR 80225, Dec. 23, 2011, as amended at 77 FR 4885, Feb. 1, 2012]

§§ 4290.3042–4290.3044 [Reserved]

§ 4290.3045 Computation of RBIC's Capital Impairment.

The provisions specified in §§ 4290.1830 and 4290.1840 do not apply to Non-leveraged RBICs.

§§ 4290.3046–4290.3049 [Reserved]

§ 4290.3050 Operational Assistance Grants for RBICs.

Subpart N, Requirements for Operational Assistance Grant to RBICs, of this part does not apply to Non-leveraged RBICs. All other references to Operational Assistance in this part do not apply to Non-leveraged RBICs.

§§ 4290.3051–4290.3099 [Reserved]

PARTS 4291–4299 [RESERVED]