



DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

Docket No. RBS-20-BUSINESS-0044

RIN # 0570-AB02

Rural Microentrepreneur Assistance Program

AGENCY: Rural Business-Cooperative Service, USDA,

ACTION: Final rule; request for comments,

SUMMARY: The Rural Business-Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA or the Department), is issuing a final rule with comment for the Rural Microentrepreneur Assistance Program (RMAP or the Program). This final rule modifies the interim rule published in the Federal Register on May 28, 2010, as amended by the correcting amendments published in the Federal Register on July 19, 2010, and incorporates amendments to the Consolidated Farm and Rural Development Act (ConAct) made by the Agriculture Improvement Act of 2018 (2018 Farm Bill). The Agency is implementing other changes to make the Program run more efficiently, be more user-friendly and be more consistent with other RBCS programs.

DATES: *Effective date:* This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: Comments due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number RBS-20-BUSINESS-0044 and Regulatory Information Number (RIN) number 0570-AB02 through <https://www.regulations.gov>.

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general inquiries, contact David Chestnut, Program Management Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250-3201; telephone: (202) 692-5233; email: david.chestnut@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Rural Development is a mission area within USDA comprising the Rural Utilities Service, Rural Housing Service, and Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and technical assistance through more than 40 programs aimed at creating and improving housing, business, and infrastructure throughout rural America. The Rural Microentrepreneur Assistance Program, administered by the Rural Business-Cooperative Service, was authorized by Section 379E of the Consolidated Farm and Rural Development Act (ConAct). The ConAct established the RMAP to provide loans and grants to support microentrepreneurs in the development and ongoing success of rural microenterprises. The loans establish or augment a rural microentrepreneur revolving loan fund and the grants provide technical assistance and training to microenterprises.

II. Discussion of Public Comments from Interim Rule

On May 28, 2010, the Agency published an interim rule with comments in the Federal Register (75 FR 30114) implementing RMAP. The interim rule was amended by the correcting amendments published in the Federal Register on July 19, 2010 (75 FR 41695). Twenty-nine combined comments were received from one industry respondent, five sponsoring organizations and one individual. The Agency reviewed and considered all comments that were received. The following discusses each comment and the Agency's response:

Comment: The Loan Loss Reserve Fund (LLRF) usage and replenishment is too restrictive and a more workable approach is to utilize the Intermediary Relending Program (IRP) regulation 7 CFR 4274-D.

Agency response: The Agency agreed, and the regulation has been revised to be more in line with the Intermediary Relending Program (IRP).

Comment: Having a hard deadline of 90 days to close the loans was too difficult to meet in some cases.

Agency response: The Agency agreed, and the language was changed to permit the Agency, with justification and at its sole discretion, to extend the closing date deadline when circumstances warrant.

Comment: Concern was expressed for only being able to draw down funds to make loans every quarter as being unworkable. The 30-day micro borrower loan closing should be eliminated.

Agency response: The Agency agreed, and language was changed from 'must' to 'should' for the draw of funds which will allow the drawdown of funds as needed. The Agency disagrees with a change to the microborrower 30-day loan closing requirements as a Microenterprise Development Organization's (MDO) should only draw down funds for an identified project.

This prevents an MDO from paying interest on unused funds in their account that are not generating revenue for the program loan repayment

Comment: The Agency should make it clear that one of the Agency's remedies for loan default was to withhold all mandatory grant payments until the microlender comes back into compliance.

Agency response: The Agency agreed, and the information has been delineated in the loan servicing section

Comment: Making the Agency responsible to approve all key personnel changes is intrusive. The Legislative Affairs notification is set forth in another Rural Development regulation and is not needed here.

Agency response: The Agency agreed but will still require notification of significant personnel changes as such changes may impact the MDO's ability to manage a revolving loan fund. The Legislative Notification has been removed from Section 4280.313.

Comment: The technical assistance only grant portion of the regulation is not authorized by the Farm Bill, but rather technical assistance training grants are authorized by the Farm Bill. Additionally, the current regulation ignores the training aspect of the law.

Agency response: The technical assistance only grant provisions are in the authorizing statute and were not eliminated in the 2018 Farm Bill language. Agency agreed with the training provisions comment and the regulation has been changed in Section 4280.313 to reflect that these grants should be for training type technical assistance to active and potential microlenders as well as any microlenders who may wish to strengthen their technical skills through training.

Comment: Most commenters included comments on scoring: abandon the dual application system, scoring is subjective, scoring is overly complex, TA grant scoring does not reflect operating realities, scoring disfavors microlenders who specialize in servicing traditionally underserved populations, disfavors smaller MDOs who need to use the legally

allowed 10 percent for administrative expenses, scoring uses vague definitions of current and delinquent borrowers, disfavors non-rural MDOs, and disfavors MDOs who provide training versus those MDOs who only make loans.

Agency response: The Agency considered each of the comments and reviewed the scoring system for possible revisions. Changes are described in Section III below.

Comment: Several comments were made concerning application processing. One of the commenters stated that a Loan Fund Work Plan or Scope of Work should be required of all applicants, and that some forms listed for the applicant to complete were internal forms and should be deleted.

Agency response: The Agency agreed, and the regulation has been revised to require a work plan from all applicants (§ 4280.316(c)(1)) and internal forms have been removed from the applicant's requirements.

Comment: One group of commenters cited several existing laws which define significant outmigration as a locality which has a loss of 10 percent or more in population in the past 20 years.

Agency response: The Agency agreed, and the definition was changed to conform with the definition used by the Economic Research Service.

Comment: The definition of full-time equivalent does not agree with other Rural Development definitions.

Agency response: The Agency agreed, and the definition was revised to be similar to other Agency regulations.

Comment: The definition of delinquency should be redefined to the dollars and number of loans behind more than 30 days in any one-year period.

Agency response: The Agency agreed in principle and included in the definition that the year be the federal fiscal year. Delinquency parameters were added to § 4280.311(e)(4) to better define satisfactory performance.

Comment: Non-profit organizations cannot have citizenship and the wording should be changed to state organized under the laws of the state.

Agency response: The Agency agrees that non-profit entities have no ownership but retain its requirement that non-profit entities must be controlled by a majority of US citizens. The provisions for state organization of a non-profit remains in § 4280.310(a)(2) and a tribal provision is now included in that section as well.

Comment: The limited 20-year loan term should include a restructure provision that would permit extending beyond the initial 20-year limit. The deferral period should be 3 years and annual payments rather than monthly be utilized.

Agency response: The Agency retains its monthly loan payment requirement as a change to annual payments would reduce the amount of program funding available. The 20-year loan limitation and the 2-year deferral period are statutory requirements and cannot be changed.

Comment: USDA should use its current Intermediary Relending Program and Rural Business Enterprise Grant regulations which have been very successful to manage technical assistance grants and the Intermediary relending of monies through a revolving fund for many years now.

Agency's response: The RMAP program does utilize the technical assistance models utilized by other programs and requires MDO reporting to ensure that the program requirements are being met.

Comment: USDA is placing too much funding in the loan portion of the RMAP and insufficient funding for the grant portion of the program to ensure its success.

Agency's response: The Agency did not agree with this comment. The Agency takes into account, on a year to year basis, the needs of the stakeholders of the RMAP program based on funds available for that fiscal year.

Comment: USDA should relinquish its first lien position on all funds in the Rural Microentrepreneur Revolving Fund (RMRF) except those derived from the Rural

Microenterprise loan itself.

Agency response: The Agency did not agree with this comment. The Agency must adhere to prudent lending practices which would require a first lien position on all assets in the revolving loan fund. An MDO is prohibited from co-mingling other entity funds with funds on deposit in its RMAP revolving loan account (§ 4280.311(e)(1)).

Comment: It was Congress' intent to permit the 5 percent LLRF funding requirement to be met using loan funds.

Agency response: Agency disagreed. The LLRF is intended to protect the Microenterprise Development Organization's (MDO) fund by maintaining the value of the fund as required by the servicing regulation, 7 CFR. Part 1951 (Subpart R). If loan funds were used to capitalize the LLRF, and consequently were distributed to cover losses (either by loan payments to the Agency or to cover liquidation costs of the microloan), the longevity of the fund might be in question. This stress would be enhanced if multiple loans required liquidation before the interest earned could rebuild the LLRF.

Comment: The 2 percent interest rate was double the 1 percent minimum rate set by Congress.

Agency response: The Agency disagreed. The current cost to maintain the program requires an interest rate of 2 percent. Microlenders in the Program for more than 5 years have the opportunity to borrow Agency funds at 1 percent when making an application for additional loan funds. (Section 4280.311(e)(4)) It is the Agency's position that the interest rate (cost of funds to the MDO) should be incorporated into the structure of their microloans.

Comment: The loan making process is too restrictive for a microloan program.

Agency response: The loan application process is used to ensure that program funds are awarded to entities with experience in managing revolving loan funds and technical assistance programs.

Comment: The \$2.5 million MDO debt limitation was arbitrary, not in the law, and may

unduly restrict an MDO's ability to meet demand.

Agency response: The Agency disagrees that the limit restricts an MDO's ability to make microloans. The \$50,000 limitation to one microborrower would allow an MDO to have 50 or more loans outstanding at any time. MDOs with significant loan activity are also eligible to apply for IRP program awards for their revolving loan funds.

Comment: All the mandatory grants should be funded at the authorized 25 percent of the loan balances.

Agency response: The 2018 Farm Bill amended Section 379E of the Con Act to require that grant amounts to MDOs be in an amount equal to not less than 20 percent and not more than 25 percent of the total outstanding balance of microloans made by MDOs.

Comment: The current methodology of calculating the annual MDO grant based on the amount of outstanding loan balances is inadequate.

Agency response: The Agency disagrees with this comment as technical assistance funds are to be used for existing and potential microborrowers and offers no alternative methodology to determining the amount of technical assistance provided.

Comment: The Agency should accept collaborative applications stating that MDOs often partner to leverage areas of expertise, expand service areas, and lower costs.

Agency response: The Agency understands that entities will use collaborative resources to administer their programs and does allow for such in the applicant's scope of work and program management, including microborrower application reviews.

Comment: There are many reasons for communities to be considered underserved including but not limited to loss of major employer, natural disasters, chronic low income, and they suggested that the TA training grants be targeted to underserved communities.

Agency response: The Agency agrees that there are many reasons for a community to be considered underserved and elected not to define or limit the requirements for an underserved community as this is best applied by local knowledge.

Comment: The definition of microentrepreneur needs to be clarified to include the number of employees, ability to obtain conventional financing, and the maximum dollars needed for the project.

Agency response: An eligible microentrepreneur must meet the definition of a microenterprise, which is defined as an entity with 10 or fewer employees. The definition of microenterprise provides that business types may also include agricultural producers provided they meet the stipulations in this definition. The microentrepreneur is subject to a credit elsewhere test in Section 4280.322(d). The maximum loan amount for a project is the lesser of \$50,000 or 75 percent of the project cost as stated in the regulation.

Comment: Several comments on the cost structure of projects. One commenter suggested utilizing the IRP regulation; two groups suggested that a microborrower's equity in its business be allowed to be considered for the 25 percent non-federal portion of the project. And, finally two groups of commenters point out that the 75 percent federal fund limitations do not apply to a micro borrower's project.

Agency Response: The Agency did not agree. The 25 percent non-federal funds requirement is to meet project equity and also for program leverage to protect the MDO from credit losses. This generally cannot be met by allowing only balance sheet equity.

Comment: The value of matching funds serves no purpose.

Agency response: The Agency did not agree as program leverage is used as a credit enhancement to the microborrower's project costs and protects the MDO from increased credit losses.

Comment: Priority designations for race and ethnicity within populations is discriminatory.

Agency response: The Agency does not agree with the comment as there is not a priority designation based on race and ethnicity and the application scoring criteria is based on the diversity of the MDO's loan portfolio matching the diversity of their program service area. The race and ethnicity criteria is often used in the determination of an underserved community and

such information is also obtained voluntarily from applicants for compliance with Federal civil rights requirements.

The Agency has carefully reviewed the above comments and is modifying the regulation based on an analysis of responsive comments received, program delivery experience, and changes required by Section 379E of the 2018 Farm Bill.

The modifications to the Program's regulations will allow the Agency to implement the requirements of the 2018 Farm Bill, address comments received after publication of the interim regulation in 2010 and implement the final regulation.

III. Summary of Changes to the Rule

This section presents the major changes to the existing RMAP interim rule.

The authority citation was updated from 7 U.S.C. 1989(a), 7 U.S.C. 2009s to accurately read as 7 U.S.C. 1989(a), 7 U.S.C. 2008s.

The definitions of "close relative", "Indian tribe" and "rural or rural area" were modified to match the definitions in other RD programs. These changes will provide consistency across RD programs as well as clarify the definitions for applicants.

The definitions of "loan loss reserve fund (LLRF)" and "rural microloan revolving fund (RMRF)" were modified to remove the requirement for the deposit accounts to be interest-bearing. Microenterprise Development Organizations have found it difficult to obtain interest-bearing accounts and when they are available, the monthly bank fees often exceed the interest earned.

At § 4280.310, "Program requirements for MDOs," a requirement for all applicants to be registered in the System for Awards Management (SAM) prior to submitting an application was added. This requirement was added as a result of the Office of Management and Budget's

publication of revisions to OMB Guidance for Grants and Agreements (2 CFR part 200) at 85 FR 49506, on August 13, 2020.

At § 4280.310(c), the minimum score required to be considered eligible to participate in the program was reduced from 70 to 60 points. The Agency's experience shows that 70 points was too restrictive and eliminated many small, rural MDOs from the program.

Section 4280.311(e) was revised to more closely align with the application and servicing process flows.

Clarification was provided, at § 4280.311(e)(3), that, in the event that the repayment terms of a loan are modified by the Agency, the term of the loan may not exceed a 20-year period from the loan origination date.

As a satisfactory participation designation impacts lending practices of the MDO after the first five years of participation in the program, additional information was added to § 4280.311(e)(4) to expand and clarify the performance metrics that must be met to be considered in "satisfactory participation" for the program.

Provisions were added to § 4280.311(e)(10) to allow for a greater than 25 percent disbursement of loan proceeds at closing to the extent that there are commitments to fund projects within 60 days of loan closing. This provision allows MDOs to promote their programs and provide funds needed by the small business community.

The frequency of fund distribution was changed at § 4280.311(e)(11) from "not more often than quarterly" to "should be not more often than quarterly" to allow some flexibility to the

MDOs to request funds to more readily meet the needs of their customers.

At § 4280.311(e)(14), the Agency strengthened the penalties for using revolving microloan revolving funds for other than approved purposes to include default due to non-performance rather than just restricting access to future withdrawals. This provides the Agency with an additional option in the event of egregious or multiple instances of improper use of loan funds.

In order to meet the requirements of the 2018 Farm Bill, § 4280.313(a) was modified to allow for microlenders to receive up to 25 percent of their new loan amount as a technical assistance grant. Currently, the amount is limited to 25 percent of the first \$400,000 of loans, then 5 percent of any amount over \$400,000. The change will potentially increase the amount of technical assistance available to microborrowers.

The Agency clarified the annual grant process at § 4280.313(a)(1). The additional language provides information to applicants and grantees regarding grant awards, that are non-competitive and based on the microlender's loan balance as of June 30th of each year, as well as replenishment levels and the process used to distribute funds if full replenishment is not possible within available grant funds. This clarification provides details needed by grantees for planning and budgeting purposes.

Applicants are reminded at § 4280.315(a) to provide the documentation listed for a complete application and scoring purposes. Some applicants were confused as to what constituted a complete application. The Agency believes this reminder will reduce that confusion.

The scoring criteria at § 4280.316 was modified to clarify requirements for applicants and

emphasize Agency priorities for the overall delivery of the program. While there are numerous changes, the total score possible has not changed. These changes include:

- Replacing “within” with “between” at § 4280.316.(b)(3)(iii)(A) and (B) to more accurately state that the calculated ratio must be within the intervals of the listed ratio in each priority level
- Increased points from 1 to 2 for applicants that provide success stories to demonstrate the effect of technical assistance on their clients at § 4280.316(b)(4)(ii). This change allows the Agency to further prioritize this action.
- Removed § 4280.316(b)(4)(iv) “Applicants that present their narrative clearly and concisely (five pages or less) and at a level expected by trainers and teachers will be awarded 1 point.” This paragraph was removed as the Agency determined that it was vague and too subjective.
- At § 4280.316(b)(5)(iii), § 4280.316(c)(8)(iii) and § 4280.316(d)(4)(iii) the Agency removed, “up to and including 10 percent”. This change made the criteria, “8 percent or greater, 0 points will be awarded”. The Agency prioritizes maximizing the amount of actual technical assistance provided. This change serves to meet the goal of reducing the amount of grant funds that will be used for administrative expenses.
- Changed § 4280.316(c)(5) to remove subjective scoring for references and recommendations from other entities, to awarding one point for each support letter received from potential program beneficiaries or a local organization. The maximum points for this section is unchanged at five points.
- Merged the previous § 4280.316(d)(1)(i) and (ii) into one item at § 4280.316(d)(1)(i). The previous § 4280.316(d)(1)(i) was a data collection request that was needed to support subsequent paragraphs and not a scoring priority in

and of itself.

- Changed § 4280.316(d)(2)(iii) from subjective scoring of client evaluations to awarding 3 points if the Applicant conducts client evaluations. A scoring method for the evaluations is included with an additional 2 points awarded if the evaluation average is above 3.0 on a 5-point scale. The maximum total of 5 points for the criterion is unchanged.
- Changed § 4280.316(d)(4)(i) from “less than 5 percent” to “up to and less than 5.0 percent” so that 5.0 percent is included in this scoring criterion. Paragraph (ii) was changed to “more than 5.0 percent but less than 8 percent” from “between 5 percent and 8 percent,…” so that 5.0 percent is not included in this score and lastly § 4280.316(d)(4)(iii) was changed from “Between 8 percent up to and including 10 percent” to “8 percent or greater” so that all percentages greater than 8 are included.
- At § 4280.316(e)(3) information was added to provide information to applicants on how the Agency will handle unsuccessful applications under this section.

Application submission information at § 4280.317(a)(1) was updated to remove the requirement for the application package to be submitted in a three-ring binder.

Section 4280.317(a)(2) was modified to provide clarity to applicants on application submission and acceptance and funding cycles.

The Agency added clarifying language at § 4280.322(a) emphasizing that the total outstanding loan balance to any one microborrower may not exceed \$50,000. The language was added as previous language limited individual loans to \$50,000 not the total loans outstanding.

To comply with the provisions of Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations), the Agency has added “Loans supporting explicitly religious activities, such as worship, religious instruction or proselytization” as an ineligible project type at § 4280.323(k). This addition provides additional guidance to applicants on activities that cannot be supported with Agency grant funds.

IV. Executive Orders/Acts

Executive Order 12866, Regulatory Impact Analysis

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the Rural Microentrepreneur Assistance Program is 10.870. All active CFDA programs and the CFDA Catalog can be found at the following web site: <https://beta.sam.gov/>. The Government Printing Office (GPO) prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's on-line bookstore.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to MDOs in accordance with the process and procedures outlined in 2 CFR part 415, subpart C. Assistance to rural microenterprises will not require intergovernmental review.

Rural Development will conduct intergovernmental consultation using RD Instruction 1970-I “Intergovernmental Review,” available in any Rural Development office, on the Internet at <http://www.rd.usda.gov/sites/default/files/1970i.pdf> and in 2 CFR part 415, subpart C. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site:

<https://www.whitehouse.gov/omb/management/office-federal-financial-management/>.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule, and, in accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. Sec. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0570-0062 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 et seq.).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The APA exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

Unfunded Mandates Reform Act

This final rule contains no federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of § 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 - Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the National Government and the states, or on the distribution of power

and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

This executive order imposes requirements on the Agency in the development of regulatory policies that have tribal implications or preempt tribal laws. The Agency has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RBCS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: AIAN@usda.gov to request such a consultation.

E-Government Act Compliance

Rural Development is committed to the E-Government Act of 2002, which generally requires government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

Rural Development, a mission area for which RBCS is an agency, has reviewed this rule in accordance with USDA Departmental Regulation 4300-4, Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. Based on the analysis of the final rule, available data (including anecdotal), program purpose, application submission and eligibility criteria, issuance of this Final Rule is not likely to adversely or disproportionately impact very

low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disabilities, by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and the Department's civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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: (1) Mail: U.S. Department of Agriculture, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR Part 4280

Business and industry, Energy, Grant programs-business, Loan programs-business, Rural areas.

Accordingly, for the reasons discussed in the preamble, the Agency amends 7 CFR part 4280 as follows:

PART 4280 – LOANS AND GRANTS

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

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

2. Revise subpart D to read as follows:

Subpart D - Rural Microentrepreneur Assistance Program

Sec.

- 4280.301 Purpose and scope.
- 4280.302 Definitions and abbreviations.
- 4280.303 Exception authority.
- 4280.304 Review or appeal rights and administrative concerns.
- 4280.305 Nondiscrimination and compliance with other Federal laws.
- 4280.306 Forms, regulations, and instructions.
- 4280.307 - 4280.309 [Reserved]
- 4280.310 Program requirements for MDOs.
- 4280.311 Loan provisions for Agency loans to microlenders.
- 4280.312 Loan approval and closing.
- 4280.313 Grant provisions.
- 4280.314 [Reserved]
- 4280.315 MDO application and submission information.
- 4280.316 Application scoring.
- 4280.317 Selection of applications for funding.
- 4280.318 - 4280.319 [Reserved]
- 4280.320 Grant administration.
- 4280.321 Grant and loan servicing.
- 4280.322 Loans from the microlenders to the microentrepreneurs.
- 4280.323 Ineligible microloan purposes and uses.
- 4280.324 - 4280.399 [Reserved]

4280.400 OMB control number.

Subpart D - Rural Microentrepreneur Assistance Program

§ 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, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H), 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. 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.

§ 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, D.C. 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 Web site 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

§ 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.

Mark Brodziski

Acting Administrator

Rural Business-Cooperative Service

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