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Title 7
Agriculture

Part 2000 to End

Revised as of January 1, 2026

Containing a codification of documents
of general applicability and future effect

As of January 1, 2026

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To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 2003.1 *refers to title 7, part 2003, section 1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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OLIVER A. POTTS,
Director,
Office of the Federal Register
January 1, 2026.

THIS TITLE

Title 7—AGRICULTURE is composed of fifteen volumes. The parts in these volumes are arranged in the following order: Parts 1–26, 27–52, 53–209, 210–299, 300–399, 400–699, 700–899, 900–999, 1000–1199, 1200–1599, 1600–1759, 1760–1939, 1940–1949, 1950–1999, and part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2026.

The Food and Nutrition Service current regulations in the volume containing parts 210–299 include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing parts 400–699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900–999. All marketing agreements and orders for milk appear in the volume containing parts 1000–1199.

For this volume, Susannah C. Hurley was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 7—Agriculture

(This book contains part 2000 to end)

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EDITORIAL NOTE: Nomenclature changes to chapter XVIII appear at 61 FR 1109, Jan. 16, 1996, and 61 FR 2899, Jan. 30, 1996.

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 6941; and 7 CFR 2.17.

SOURCE: 62 FR 67259, Dec. 24, 1997, unless otherwise noted.

Subpart A—Functional Organization of the Rural Development Mission Area

§ 2003.1 Definitions.

EEO—the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e *et seq*.

O&M—Operations and Management.

P&P—Policy and Planning.

RBS—Rural Business-Cooperative Development Service, USDA, or any successor agency.

RHS—Rural Housing Service, USDA, or any successor agency.

Rural Development—Rural Development mission area of USDA.

RUS—Rural Utilities Service, USDA, or any successor agency.

Secretary—the Secretary of USDA.

USDA—the United States Department of Agriculture.

[62 FR 67259, Dec. 24, 1997, as amended at 84 FR 59923, Nov. 7, 2019]

§ 2003.2 General.

The Rural Development mission area of the Department of Agriculture was established as a result of the Department of Agriculture Reorganization Act of 1994, Title II of Pub.L. 103–354. Rural Development's basic organization consists of Headquarters in Washington, D.C. and 47 State Offices. Headquarters maintains overall planning, coordination, and control of Rural Development agency programs. Administrators head RHS, RBS, and RUS under the direction of the Under Secretary for Rural Development. State Directors head the State Offices and are directly responsible to the Under Secretary for the execution of all Rural Development agency programs within the boundaries of their states.

§§ 2003.3–2003.4 [Reserved]

§ 2003.5 Headquarters organization.

(a) The Rural Development Headquarters is comprised of:

(1) The Office of the Under Secretary;

(2) Two Deputy Under Secretaries; and,

(3) Three Administrators and their staffs.

(b) The Rural Development Headquarters is located at 1400 Independence Avenue, SW., Washington, DC. 20250–0700

§ 2003.6 Office of the Under Secretary.

In accordance with 7 CFR § 2.17 the Secretary has delegated to the Under Secretary, Rural Development, authority to manage and administer programs and support functions of the Rural Development mission area.

(a) *Office of the Deputy Under Secretary for P&P*. This office is headed by the Deputy Under Secretary for P&P. The Under Secretary, Rural Development, has delegated to the Deputy Under Secretary for P&P, responsibility for formulation and development of short-and long-range rural development policies of the Department in accordance with 7 CFR § 2.45. The Deputy Under Secretary for P&P reports directly to the Under Secretary, Rural

Development, and provides guidance and supervision for research, policy analysis and development, strategic planning, partnerships and special initiatives. For budget and accounting purposes, all of the staff offices under the Deputy Under Secretary for P&P are housed in RBS.

(1) The Budget Analysis Division assesses potential impacts of alternative policies on the mission area's programs and operations and develops recommendations for change. The units are headed by the Chief Budget Officer, who individually serves as the top policy advisor to the Under Secretary and Deputy Under Secretary on all matters relating to mission area budget policy.

(2) The Research, Analysis and Information Division analyzes information on rural conditions and the strategies and techniques for promoting rural development. The division performs, or arranges to have conducted, short-term and major research studies needed to formulate policy.

(3) The Reinvention and Capacity Building Division coordinates the mission area's strategic planning initiatives, both at the National level and in the State Offices. The division assists the Rural Development agencies in their implementation of the Government Performance and Results Act (GPRA) and special initiatives of the Administration, USDA, and the Office of the Under Secretary.

(4) The Rural Initiatives and Partnership Division manages the mission area's involvement and coordination with other Federal and state departments and agencies to assess rural issues and develop model partnerships and initiatives to achieve shared rural development goals. The division is responsible for managing the National Rural Development Partnership and providing support and oversight of 37 State Rural Development Councils.

(b) *Office of the Deputy Under Secretary for O&M.* In accordance with 7 CFR 2.45, the Under Secretary, Rural Development, has delegated to the Deputy Under Secretary for O&M responsibility for providing leadership in planning, developing, and administering overall administrative management program policies and operational activities of the Rural Development mission area. The Deputy Under Secretary for O&M reports directly to the Under Secretary, Rural Development.

(1) *Office of the Deputy Administrator for O&M.* Headed by the Deputy Administrator for O&M, this office reports directly to the Deputy Under Secretary for O&M, and is responsible for directing and coordinating the consolidated administrative and financial management functions for Rural Development. This office provides overall guidance and supervision for budget and financial management, human resources management and personnel services, administrative and procurement services, information resources management and automated data systems. For budget and accounting purposes, all of the staff offices under the Deputy Administrator for O&M are housed in RHS.

(i) *Office of the Controller.* Headed by the Chief Financial Officer, this office supports the Deputy Administrator for O&M in executing Rural Development requirements related to compliance with the Chief Financial Officers Act of 1990 and provides leadership, coordination, and oversight of all financial management matters and financial execution of the budget for the Rural Development agencies. This office also has full responsibility for Rural Development agencies' accounting, financial, reporting, and internal controls. The office provides direct oversight to the Headquarters Budget Division, Financial Management Division, and the Office of the Assistant Controller, located in St. Louis, Missouri.

(ii) *Office of Assistant Administrator for Procurement and Administrative Services.* Headed by the Assistant Administrator for Procurement and Administrative Services, this office is responsible to the Deputy Administrator for O&M for overseeing the Procurement Management Division, the Property and Supply Management Division, and the Support Services Division:

(A) The Procurement Management Division is responsible for developing, implementing, and interpreting procurement and contracting policies for the Rural Development mission area. Major functions include planning outreach efforts and goals for small and disadvantaged businesses, providing

staff assistance reviews in State and Local Offices, administering the Contracting Officer Professionalism Warrant program for Rural Development agencies, and coordinating the development of Rural Development's acquisition plans.

(B) The Property and Supply Management Division is responsible for developing office space acquisition and utilization policies, providing training to field office leasing officers, administering the Leasing Officer Warrant program, assuring accessibility compliance in Rural Development's work sites, administering Rural Development's Physical Security program, and establishing and providing oversight to the worksite Energy Conservation program. This office operates a nationwide supply warehousing and distribution program, and oversees a nationwide Personal Property Management and Utilization Program, manages the U.S. Department of Agriculture (USDA) Excess Personal Property Program for field level activities, and provides direct support services to Rural Development's St. Louis facilities.

(C) The Support Services Division has responsibility for designing, developing, administering, and controlling Rural Development's directives management and issuance system, coordinating Rural Development's Regulatory Agenda and Regulatory Program submissions to USDA and OMB, serving as FEDERAL REGISTER liaison, and analyzing and coordinating regulatory work plans for the Under Secretary. This office submits Paperwork Reduction Act public burden clearances to OMB, administers all printing programs, manages Rural Development travel policies and programs, and manages Freedom of Information Act, Privacy Act and Tort Claims programs.

(iii) *Office of Information Resources Management (IRM)*. Headed by the Chief Information Officer, this office is responsible to the Deputy Administrator for O&M for developing Rural Development's IRM policies, regulations, standards and guidelines. This office provides overall leadership and direction to activities assigned to the following four major divisions:

(A) The Customer Services Division is responsible for direct customer and technical support (hardware and software).

(B) The Management Services Division coordinates all IRM acquisition, budget, and policy and planning activities in support of Rural Development automation.

(C) The Information Technology Division provides support technical services in the areas of data administration, system integrity management, research and development, and telecommunications.

(D) The Systems Services Division is responsible for planning, directing, and controlling activities related to Rural Development's Automated Information Systems.

(iv) *Office of the Assistant Administrator for Human Resources*. Headed by the Assistant Administrator for Human Resources, this office is responsible to the Deputy Administrator for O&M for the overall development, implementation, and management, of personnel and human resources support services for Rural Development. The office provides direction to the Headquarters Personnel Services, Human Resources Training and Mission Area Personnel Services Division, and Labor Relations Staff offices. The office is also responsible for the establishment of recruitment, retention, and development policies and programs supporting workforce diversity and affirmative action.

(2) *Office of Civil Rights Staff*. Headed by a staff director, this staff has primary responsibility for providing leadership and administration of the Civil Rights Program for the Rural Development mission area. The staff conducts on-site reviews of borrowers and beneficiaries of Federal financial assistance to ensure compliance with Titles VI and VII of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and prepares compliance reports. The staff conducts and evaluates Title VII compliance visits to insure that EEO programs are adequately implemented. In addition, the office develops, monitors, and evaluates Affirmative Employment programs for minorities, women and

persons with disabilities, and coordinates and conducts community outreach activities at historically black colleges and universities. It also has oversight of special emphasis programs such as the Federal Women's Program, Hispanic Emphasis Program, and Black Emphasis Program. The staff director reports directly to the Deputy Under Secretary for O&M.

(3) *Office of Communications.* Headed by a director who reports directly to the Deputy Under Secretary for O&M, this office has primary responsibility for tracking legislation and development and institution of policies to provide public communication and information services related to the Rural Development. The office maintains a constituent data base and conducts minority outreach efforts and administers a public information and media center responsible for media inquiries, news releases, program announcements, media advisories, and information retrieval. This office also serves as a liaison with Office of Congressional Relations (OCR), Office of the General Counsel (OGC), and other Departmental units involved in Congressional relations and public information. This office drafts testimony, prepares witnesses, and provides staff for hearings and markups. In addition, the office briefs Congressional members and staff on the Rural Development matters, coordinates Rural Development's legislative activities with other USDA agencies and OMB and develops and implements legislative strategy. The staff also coordinates development and production of brochures, press releases, and other public information materials.

§§ 2003.7–2003.9 [Reserved]

§ 2003.10 Rural Development State Offices.

(a) Headed by State Directors, State Offices report directly to the Under Secretary, Rural Development, and are responsible to the three Rural Development agency Administrators for carrying out agency program operations at the State level, ensuring adherence to program plans approved for the State by the Under Secretary, and rendering staff advisory and manpower support to Area and Local offices. The Rural Development State Directors, for budget and accounting purposes, are housed in the RHS agency.

(b) Program Directors within the State Office provide oversight and leadership on major program functions. Major program functions include: Single Family and Multi-Family Housing loans and grants, Community Facility, Water and Waste Disposal, Business and Cooperative, and the Empowerment Zones and Enterprise Communities (EZ/EC) programs.

(c) The USDA Rural Development State Office locations are as follows:

State	Location
Alabama	Montgomery, AL
Alaska	Palmer, AK
Arizona	Phoenix, AZ
Arkansas	Little Rock, AR
California	Woodland, CA
Colorado	Lakewood, CO
Delaware	Camden, DE
Florida	Gainesville, FL
Georgia	Athens, GA
Hawaii	Hilo, HI
Idaho	Boise, ID
Illinois	Champaign, IL
Indiana	Indianapolis, IN
Iowa	Des Moines, IA
Kansas	Topeka, KS
Kentucky	Lexington, KY
Louisiana	Alexandria, LA
Maine	Bangor, ME
Massachusetts	Amherst, MA
Michigan	East Lansing, MI
Minnesota	St. Paul, MN
Mississippi	Jackson, MS
Missouri	Columbia, MO
Montana	Bozeman, MT
Nebraska	Lincoln, NE
Nevada	Carson City, NV
New Jersey	Mt. Holly, NJ
New Mexico	Albuquerque, NM
New York	Syracuse, NY
North Carolina	Raleigh, NC
North Dakota	Bismarck, ND
Ohio	Columbus, OH
Oklahoma	Stillwater, OK
Oregon	Portland, OR
Pennsylvania	Harrisburg, PA
Puerto Rico	Hato Rey, PR
South Carolina	Columbia, SC
South Dakota	Huron, SD
Tennessee	Nashville, TN
Texas	Temple, TX
Utah	Salt Lake City, UT
Vermont	Montpelier, VT
Virginia	Richmond, VA
Washington	Olympia, WA
West Virginia	Charleston, WV
Wisconsin	Stevens Point, WI
Wyoming	Casper, WY

[62 FR 67259, Dec. 24, 1997; 63 FR 3256, Jan. 22, 1998]

§§ 2003.11–2003.13 [Reserved]

§ 2003.14 Field Offices.

Rural Development field offices report to their respective State Director and State Office Program Directors. State Directors may organizationally structure their offices based on the program workloads within their respective State. Field offices generally are patterned in a three or two tier program delivery structure. In a three tier system, Local offices report to an Area office, that reports to the State Office. In a two tier system, a ''Local'' or ''Area'' office reports to the State Office. Locations and telephone numbers of Area and Local Offices may be obtained from the appropriate Rural Development State Office.

§§ 2003.15–2003.16 [Reserved]

§ 2003.17 Availability of information.

Information concerning Rural Development programs and agencies may be obtained from the Office of Communications, Rural Development, U. S. Department of Agriculture, STOP 0705, 1400 Independence Avenue SW., Washington, DC 20250–0705.

§ 2003.18 Functional organization of RHS.

(a) *General.* The Secretary established RHS pursuant to section 233 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6943).

(b) *Office of the Administrator.* According to 7 CFR 2.49, the Administrator has responsibility for implementing programs aimed at delivering loans and grant assistance to rural Americans and their communities in obtaining adequate and affordable housing and community facilities, in accordance with Title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) and the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

(1) *Legislative Affairs Staff.* The duties and responsibilities of this staff have now been aligned under the Office of Communication, headed by a director who reports directly to the Under Secretary for O&M. The Office of Communication is responsible for providing and carrying out legislative, public communication, and information services for the Rural Development mission area.

(2) *Office of Program Support Staff.* The Program Support Staff is headed by a staff director who is responsible to the Administrator for monitoring managerial and technical effectiveness of RHS programs. The staff coordinates review and analysis of legislation, Executive Orders, OMB circulars, and Department regulations for their impact on Agency programs. The staff develops, implements, and reports on architectural and environmental policies, in cooperation with the Department. Staff responsibilities also include managing RHS's Hazardous Waste Management Fund, coordinating the Debarment and Suspension process for RHS, tracking the use of Program Loan Cost Expense funds, and maintaining the RHS Internet ''Home Page.''

(3) *Office of Deputy Administrator, Single Family Housing.* Headed by the Deputy Administrator, Single Family Housing, this office is responsible to the Administrator for the development and implementation of RHS's Single Family Housing programs, which extend supervised housing credit to rural people of limited resources, for adequate, modest, decent, safe, and sanitary homes. The office is responsible for administering and managing sections 502 and 504 Rural Housing direct and guaranteed loan and grant programs, Rural Housing and Self-Help Site loans, the Self-Help Technical Assistance grant program, Housing Application Packaging and Technical and Supervisory Assistance grants, and Home Improvement and Repaid loans and grants. The office directs the following three divisions: Single Family Housing Processing Division, Single Family Housing Servicing and Property Management Division, and Single Family Housing Centralized Servicing Center in St. Louis, Mo.

(i) *Office of Single Family Housing Processing Division.* Headed by a division director, this division is responsible for development and nationwide implementation of policies on processing Single Family Housing direct and guaranteed program loans. In addition, the division provides direction on the following: the Rural Housing Targeted Area Set-Aside program,

debarments, payment assistance, title clearance and loan closing, site/subdivision development, Deferred Mortgage Payment Program; construction defects, credit reports, appraisals, Manufactured Housing, coordinated assessment reviews, Home Buyer's Counseling/Education Program, and allocation of loan and grant program funds.

(ii) *Office of Single Family Housing Servicing and Property Management Division*. Headed by a division director, this division is responsible for the development and implementation of nationwide policies for servicing RHS's multi-billion dollar portfolio of Single Family Housing loans, and managing and selling Single Family Housing inventory properties. The division also conducts state program evaluations, identifies program weaknesses, makes recommendations for improvements, and identifies corrective actions.

(iii) *Office of Single Family Housing Centralized Servicing Center (CSC)—St. Louis, Missouri*. Headed by a director, CSC is responsible for centrally servicing RHS's multi-billion dollar portfolio of Single Family Housing loans. CSC provides interest credit or payment assistance renewals, performs escrow activities for real estate taxes and property hazard insurance, oversees collection of loan payments, and grants interest credit, payment assistance, and moratoria.

(4) *Office of the Deputy Administrator, Multi-Family Housing Division*. Headed by the Deputy Administrator, Multi-Family Housing, this office is responsible for the development and nationwide implementation of RHS's Multi-Family Housing programs, which extend supervised housing credit to rural residents an opportunity to have decent, safe, and sanitary rental housing. The following programs are administered and managed by this office: Section 515 Rural Rental Housing, Rural Cooperative and Congregate Housing Programs, Section 521 Rental Assistance, Farm Labor Housing loan and grant programs, Housing Preservation Grants, rural housing vouchers, and Housing Application Packaging Grants. This office directs the following two divisions:

(i) *Multi-Family Housing Processing Division*. Headed by a division director, this division is responsible for the development and nationwide implementation of policies on processing Multi-Family Housing program loans. The division manages the following program areas: elderly and family rental housing, Farm Labor Housing loans and grants, outreach contacts, congregate facilities, Housing Preservation Grants, cooperative housing, rural housing vouchers, appraisals, Congregate Housing Services Grants, Rental Assistance, Housing Application Packaging Grants, targeted area and nonprofit set asides, Multi-Family Housing suspensions and debarments, title clearance and loan closing, allocation and monitoring of loan and grant funds, adverse decisions and appeals, commercial credit reports, individual credit reports, and, site development.

(ii) *Multi-Family Housing Portfolio Management Division*. Headed by a division director, this division is responsible for the development and institution of policies on the management and servicing of the nationwide Multi-Family Housing programs. The Division implements current and long range plans for servicing Rural Rental Housing loans, Labor Housing loans and grants, and Rental Assistance or similar tenant subsidies.

(5) *Office of the Deputy Administrator, Community Programs*. Headed by the Deputy Administrator, Community Programs, this office is responsible for overseeing the administration and management of Community Facilities loans and grants to hospitals and nursing homes, police and fire stations, libraries, schools, adult and child care centers, etc. The office monitors and evaluates the administration of loan and grant programs on a nationwide basis and provides guidance and direction for community programs through two divisions, Community Programs Loan Processing Division and Servicing and Special Authorities Division.

(i) *Community Programs Loan Processing Division*. Headed by a director, this division is responsible for the overall administration, policy development, fund distribution, and processing of Community Facilities loans and grants and other loan and grant programs assigned to the Division.

(ii) *Servicing and Special Authorities Division*. Headed by a division director, this division is responsible for the overall administration, policy development, and servicing of the Community Facilities loan and grant programs. The division conducts program evaluations, identifies program weaknesses, makes recommendations for improvements, and identifies corrective actions. The division also administers and services Nonprofit National Corporation loans and grants.

[62 FR 67259, Dec. 24, 1997, as amended at 64 FR 32388, June 17, 1999]

§§ 2003.19–2003.21 [Reserved]

§ 2003.22 Functional organization of RUS.

(a) *General*. The Secretary established RUS pursuant to § 232 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6942).

(b) *Office of the Administrator*. According to 7 CFR 2.47, the Administrator has responsibility for managing and administering the programs and support functions of RUS to provide financial and technical support for rural infrastructure to include electrification, clean drinking water, telecommunications, and water disposal systems, pursuant to the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et. seq.*), and the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et. seq.*). The office develops and implements strategic plans concerning the Rural Electrification Act of 1936, as amended.

(1) *Borrower and Program Support Services*. Borrower and Program Support Services consist of the three following staffs which are responsible to the Administrator for planning and carrying out a variety of program and administrative services in support of all RUS programs, and providing expert advice and coordination for the Administrator:

(i) *Administrative Liaison Staff*. Headed by a staff director, this staff advises the Administrator on management issues and policies relating to human resources, EEO, labor-management partnership, administrative services, travel management, automated information systems, and administrative budgeting and funds control.

(ii) *Program Accounting Services Division*. Headed by a division director, this division develops and evaluates the accounting systems and procedures of Electric, Telecommunications, and Water and Wastewater borrowers; assures that accounting policies, systems, and procedures meet regulatory, Departmental, General Accounting Office, OMB, and Treasury Department requirements; examines borrowers' records and operations, and reviews expenditures of loans and other funds; develops audit requirements; and approves Certified Public Accountants to perform audits of borrowers.

(iii) *Program and Financial Services Staff*. Headed by a staff director, this staff evaluates the financial conditions of troubled borrowers, negotiates settlements of delinquent loans, and makes recommendations to program Assistant Administrators on ways to improve the financial health of borrowers.

(2) *Office of Assistant Administrator—Electric Program*. Headed by the Assistant Administrator—Electric Program, this office is responsible to the Administrator for directing and coordinating the Rural Electrification program of RUS nationwide. This office develops, maintains, and implements regulations and program procedures on processing and approving loans and loan-related activities for rural electric borrowers. The office directs the following three divisions:

(i) *Electric Regional Divisions*. Headed by division directors, these two divisions are responsible for administering the Rural Electrification program in specific geographic areas and serving as the single point of contact for all distribution borrowers. The divisions provide guidance to borrowers on RUS loan policies and procedures, maintain oversight of borrower rate actions, and make recommendations to the Administrator on borrower applications for RUS financing. The divisions also assure that power plant, distribution, and transmission systems and facilities are designed and constructed in accordance with the terms of the loan and proper engineering practices and specifications.

(ii) *Power Supply Division.* Headed by a division director, this division is responsible for administering the Rural Electrification program responsibilities with regard to power supply borrowers nationwide and serves as primary point of contact between RUS and all such borrowers. The division develops and maintains a loan processing program for Rural Electrification Act purposes, and develops and administers engineering and construction policies related to planning, design, construction, operation, and maintenance for power supply borrowers.

(iii) *Electric Staff Division.* Headed by a division director, this division is responsible for engineering activities related to the design, construction, and technical operations and maintenance of power plants; distribution of power; and transmission systems and facilities, including load management and communications. The division develops criteria and techniques for evaluating the financing and performance of electric borrowers and forecasting borrowers' future power needs; and maintains financial expertise on the distribution and power supply loan program, and retail and wholesale rates.

(3) *Office of Assistant Administrator—Telecommunications Program.* Headed by the Assistant Administrator—Telecommunications Program, this office is responsible to the Administrator for directing and coordinating the National Rural Telecommunications, Distance Learning, and Telemedicine programs of RUS. The Assistant Administrator, Telecommunications Program, is responsible for developing, maintaining, and implementing regulations and program procedures on the processing and approval of grants, loans, and loan-related activities for all rural telecommunications borrowers and grant recipients. The office directs the following three divisions:

(i) *Telecommunications Standards Division.* Headed by a division director, this division is responsible for engineering staff activities related to the design, construction, and technical operation and maintenance of rural telecommunications systems and facilities. The office develops engineering practices, policies, and technical data related to borrowers' telecommunications systems; and evaluates the application of new communications network technology, including distance learning and telemedicine, to rural telecommunications systems.

(ii) *Advanced Telecommunications Services Staff.* Headed by a staff director, this staff primarily serves the Assistant Administrator, Telecommunications Program in the role of the Assistant Governor of the RTB. The office performs analyses and makes recommendations to the AAT on issues raised by the RTB Governor, Board of Directors, or RTB borrowers. This staff maintains official records for the RTB Board and prepares minutes of RTB Board meetings. The staff director serves as the Assistant Secretary to the RTB. The staff performs the calculations necessary to determine the cost of money rate to RTB borrowers and recommends and develops program- wide procedures for loan and grant programs. The office is responsible for the Telecommunications Program's home page on the Internet.

(iii) *Telecommunications Area Offices.* Headed by area directors, these four offices are responsible for administering the Telecommunications, Distance Learning, and Telemedicine programs for specific geographic areas, and serving as the single point of contact for all program applicants and borrowers within their respective areas. The offices provide guidance to applicants and borrowers on RUS loan policies and procedures and make recommendations to the Administrator on applications for loans, guarantees, and grants. The offices assure that borrower systems and facilities are designed and constructed in accordance with the terms of the loan, acceptable engineering practices and specifications, and acceptable loan security standards.

(4) *Office of the Assistant Administrator—Water and Environmental Programs.* Headed by the Assistant Administrator, Water and Environmental Programs, this office is responsible to the Administrator for directing and coordinating a nationwide Water and Waste Disposal Program for RUS as authorized under Section 306 of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926). The office oversees administration of RUS

policies on making and servicing loans and grants for water and waste facilities in rural America, and the development of engineering policies, and practices related to the construction and operation of community water and waste disposal systems. This office is responsible for development and coordination of environmental programs with regard to the Water and Waste Disposal Program and directs the following two divisions:

(i) *Water Programs Division*. Headed by the division director, this division is responsible for administering the Water and Waste Disposal loan and grant making and servicing and special authorities activities nationwide. This office also makes allocation of loan and grant funds to field offices and manages National Office reserves.

(ii) *Engineering and Environmental Staff*. Headed by a staff director, this staff is responsible for engineering activities at all stages of program implementation, including: review of preliminary engineering plans and specifications, procurement practices, contract awards, construction monitoring, and system operation and maintenance. The staff also develops Agency engineering practices, policies, and technical data related to the construction and operation of community water and waste disposal systems. The staff is responsible for coordinating environmental policy and providing technical support in areas such as: hazardous waste, debarment and suspension, flood insurance, drug free workplace requirements, and computer program software.

[62 FR 67259, Dec. 24, 1997, as amended at 84 FR 59923, Nov. 7, 2019]

§§ 2003.23–2003.25 [Reserved]

§ 2003.26 Functional organization of RBS.

(a) *General*. The Secretary established RBS pursuant to section 234 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6944).

(b) *Office of the Administrator*. According to 7 CFR 2.48, the Administrator is responsible for managing and administering the programs and support functions of RBS to provide assistance to disadvantaged communities through grants and loans and technical assistance to businesses and communities for rural citizens and cooperatives, pursuant to the following authorities: the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c and 950aa *et seq.*), the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457), the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), and the Food Security Act of 1985 (7 U.S.C. 1932). These grants, loans, and technical assistance improve community welfare by enhancing organizational and management skills, developing effective economic strategies, and expanding markets for a wide range of rural products and services.

(1) *Resources Coordination Staff*. Headed by the staff director, this staff is responsible to the Administrator for preparing legislative initiatives and modifications for program enhancement. The staff monitors legislative and regulatory proposals that potentially impact RBS functions. The staff serves as liaison on budgetary and financial management matters between RBS staff and the Office of the Controller, and assists the Administrator in presenting and supporting RBS's budget and program plans. The staff also advises the Administrator and RBS officials on management issues and policies related to: human resources, labor relations, civil rights, EEO, space, equipment, travel, Senior Executive Service and Schedule C activities, contracting, automated information systems, and accounting. The staff provides analysis and recommendations on the effectiveness of administrative and management activities, and performs liaison functions between RBS and the Office of the Deputy Under Secretary for O&M on a wide variety of administrative functions.

(2) *Office of the Deputy Administrator, Business Programs*. Headed by the Deputy Administrator, Business Programs, this office is responsible to the Administrator for overseeing and coordinating the Business and Industry Guaranteed and Direct Loan programs, Intermediary Relending Program loans, Rural Business Enterprise grants, Rural Business Opportunity grants, Rural Economic Development

loan and grant programs, and the Rural Venture Capital Demonstration Program. The office participates in policy planning, and program development and evaluation. It also directs the following three divisions:

(i) *Processing Division*. Headed by the division director, this division is responsible for developing and maintaining loan processing regulations, and directs the processing and approval of guaranteed and direct business and industry loans, and the Rural Venture Capital Demonstration Program. It provides technical assistance to field employees and borrowers on loan processing and develops approval criteria and performance standards for loans. The division recommends plans, programs, and activities related to business loan programs and provides environmental guidance and support.

(ii) *Servicing Division*. Headed by the division director, this office is responsible for developing and maintaining servicing regulations. It directs and provides technical assistance to field employees and borrowers on servicing business loans and grants. The division reviews large, complex, or potentially controversial loan and grant dockets related to loan servicing and recommends servicing plans, programs, and activities related to business loan and grant programs.

(iii) *Specialty Lenders Division*. Headed by the division director, this office is responsible for directing and developing and maintaining regulations concerning the processing and approval of Intermediary Relending loans, Rural Business Enterprise grants, Rural Business Opportunity grants, and Rural Economic Development loan and grant programs. The division provides technical assistance to field employees and borrowers on loan and grant processing and other activities. It also develops approval criteria and performance standards and recommends plans, programs, and activities related to business loan and grant programs.

(3) *Office of the Deputy Administrator, Cooperative Services Programs*. Headed by the Deputy Administrator, Cooperative Services Programs, this office is responsible to the Administrator for providing service to cooperative associations by administering a program of research and analysis of economic, social, legal, financial, and other related issues concerning cooperatives. The office administers programs to assist cooperatives in the organization and management of their associations and a program for economic research and analysis of the marketing aspects of cooperatives. The division administers and monitors activities of the National Sheep Industry Improvement Center and the Appropriate Technology Transfer to Rural Areas Program, and the Rural Cooperative Development Grant Program. The office directs the following three divisions:

(i) *Cooperative Marketing Division*. Headed by the division director, this division is responsible for participating in the formulation of National policies and procedures on cooperative marketing. The division conducts research and analysis and gives technical assistance to farmer cooperatives on cooperative marketing of certain crops, livestock, aquaculture, forestry, poultry, semen, milk, and dairy products to improve their market performance and economic position.

(ii) *Cooperative Development Division*. Headed by the division director, this division is responsible for participating in the formulation of National policies and procedures on cooperative development. The office conducts evaluations and analysis of proposed new cooperatives to develop plans for implementing feasible operations, and advises and assists rural resident groups and developing cooperatives in implementing sound business plans for new cooperatives. It provides research, analysis, and technical assistance to rural residents on cooperative development initiatives and strategies to improve economic conditions through cooperative efforts.

(iii) *Cooperative Resource Management Division*. Headed by the division director, this division is responsible for participating in the formulating of National policies and procedures on cooperative resource management. The division conducts research and analysis and gives technical assistance to cooperatives on their overall structure,

strategic management and planning, financial issues, and operational characteristics to improve their use of resources, financial policies, and ability to adapt to market conditions. The division conducts research and analysis of policy, taxation, Federal laws, State statutes, and common laws that apply to cooperative incorporation, structure, and operation to assist cooperatives in meeting legal requirements.

(4) *Office of the Deputy Administrator, Community Development.* Headed by the Deputy Administrator, Community Development, this office is responsible to the Under Secretary, Rural Development, for coordinating and overseeing all functions in the Community Outreach and Empowerment Program areas. The office assists in providing leadership and coordination to National and local rural economic and community development efforts. For appropriation and accounting purposes, this office is located under RBS. The office directs the following two divisions:

(i) *Empowerment Program Division.* Headed by the division director, this division is responsible for formulating policies and developing plans, standards, procedures, and schedules for accomplishing RBS activities related to ''community empowerment programs'', including EZ/EC, AmeriCorps, and other initiatives. The office develops informational materials and provides technical advice and services to support States on community empowerment programs. It also generates information about rural conditions and strategies and techniques for promoting rural economic development for community empowerment programs.

(ii) *Community Outreach Division.* Headed by the division director, this division is responsible for designing and overseeing overall systems and developing resources to support State and community level implementation activities for RBS programs. The office designs program delivery systems and tools, removes impediments to effective community-level action, supports field offices with specialized skills, and establishes partnerships with National organizations with grass-roots membership to assure that programs and initiatives are designed and implemented in a way that empowers communities. It develops methods for working with rural business intermediaries to assist them in providing technical assistance to new, small business, and provides Internet-based services to 1890 Land-grant universities, EZ/EC, and AmeriCorps volunteers, linking RBS information support to communities with high levels of need.

(5) *Alternative Agricultural Research and Commercialization Corporation.* Headed by a director, this Corporation is responsible for providing and monitoring financial assistance for the development and commercialization of new nonfood and nonfeed products from agricultural and forestry commodities in accordance with 7 U.S.C. 5901 *et seq.* The Corporation acts as a catalyst in forming private and public partnerships and promotes new uses of agricultural materials. It expands market opportunities for U.S. farmers through development of value-added industrial products and promotes environmentally friendly products. For budget and accounting purposes, this office is assigned to RBS. The director of the Corporation is responsible to the Office of the Secretary.

§§ 2003.27–2003.50 [Reserved]

PART 2018—GENERAL

Subparts A–E [Reserved]

Subpart F—Availability of Information

Sec.

2018.251 General statement.
2018.252 Public inspection and copying.
2018.253 Indexes.
2018.254 Requests for records.
2018.255 Appeals.
2018.256–2018.300 [Reserved]

AUTHORITY: 5 U.S.C. 552.

Subparts A–E [Reserved]

Subpart F—Availability of Information

SOURCE: 61 FR 32645, June 25, 1996, unless otherwise noted.

§ 2018.251 General statement.

In keeping with the spirit of the Freedom of Information Act (FOIA), the policy of Rural Development and its component agencies, Rural Housing Service (RHS), Rural Utilities Service (RUS), and Rural Business-Cooperative Service (RBS), governing access to information is one of nearly total availability, limited only by the countervailing policies recognized by the FOIA.

§ 2018.252 Public inspection and copying.

Facilities for inspection and copying are provided by the Freedom of Information Officer (FOIO) in the National Office, by the State Director in each State Office, by the Rural Development Manager (formerly, District Director) in each District Office, and by the Community Development Manager (formerly, County Supervisor) in each County Office. A person requesting information may inspect such materials and, upon payment of applicable fees, obtain copies. Material may be reviewed during regular business hours. If any of the Rural Development materials requested are not located at the office to which the request was made, the request will be referred to the office where such materials are available.

§ 2018.253 Indexes.

Since Rural Development does not maintain any materials to which 5 U.S.C. 552(a)(2) applies, it maintains no indexes.

§ 2018.254 Requests for records.

Requests for records are to be submitted in accordance with 7 CFR 1.3 and may be made to the appropriate Community Development Manager, Rural Development Manager, State Administrative Management Program Director (formerly, State Administrative Officer), State Director, Freedom of Information/Privacy Act Specialist, or Freedom of Information Officer. The last two positions are located in the Rural Development Support Services Division, Washington, DC 20250. The phrase ''FOIA REQUEST'' should appear on the outside of the envelope in capital letters. The FOIA requests under the Farm Credit Programs (formally FmHA Farmer Programs) should be forwarded to the Farm Service Agency (FSA), Freedom of Information Officer, Room 3624, South Agriculture Building, 14th & Independence Avenue, SW., Washington, DC 20250–0506. Requests should be as specific as possible in describing the records being requested. The FOIO, Freedom of Information/Privacy Act Specialist, each State Administrative Management Program Director, each State Director, each Rural Development Manager, and each Community Development Manager are delegated authority to act respectively at the national, state, district, or county level on behalf of Rural Development to:

(a) Deny requests for records determined to be exempt under one or more provisions of 5 U.S.C. 552(b);

(b) Make discretionary releases (unless prohibited by other authority) of such records when it is determined that the public interests in disclosure outweigh the public and/or private ones in withholding; and

(c) Reduce or waive fees to be charged where determined to be appropriate.

§ 2018.255 Appeals.

If all or any part of an initial request is denied, it may be appealed in accordance with 7 CFR 1.7 to that particular Agency possessing the documents. Please select the appropriate Agency to forward your FOIA appeal from the following addresses: Administrator, Rural Housing Service, Room 5014, AG Box 0701, 14th & Independence Avenue, SW.—South Building, Washington, DC 20250–0701; Administrator, Rural Business-Cooperative Service, Room 5045, AG Box 3201, 14th & Independence Avenue, SW.—South Building, Washington, DC 20250–3201 and Administrator, Rural Utilities Service, Room 4501, AG Box 1510, 14th & Independence Avenue, SW.—South Building, Washington, DC 20250–1510. The phrase ''FOIA APPEAL'' should appear on the front of the envelope in capital letters.

§§ 2018.256–2018.300 [Reserved]

PART 2045—GENERAL

Subparts A–II [Reserved]

Subpart JJ—Rural Development—Utilization of Gratuitous Services

Sec.
2045.1751 General.
2045.1752 Policy.
2045.1753 Authority to accept gratuitous services.
2045.1754 Scope of gratuitous services performed.
2045.1755 Preparation and disposition of agreement forms.
2045.1756 Records and reports.
EXHIBIT A TO SUBPART JJ OF PART 2045—AGREEMENT FORM

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480.

SOURCE: 43 FR 3694, Jan. 27, 1978, unless otherwise noted.

Subparts A–II [Reserved]

Subpart JJ—Rural Development—Utilization of Gratuitous Services

§ 2045.1751 General.

Section 331(b) of the Consolidated Farm and Rural Development Act (Pub. L. 92–419), and section 506(a) of the Housing Act of 1949, empower the Secretary of Agriculture to accept and utilize voluntary and uncompensated services in carrying out the provisions of the above cited Acts. The Secretary has delegated those authorities to the Administrator of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 in 7 CFR 2.70(a) (1) and (2).

§ 2045.1752 Policy.

Voluntary and uncompensated (gratuitous) services may be accepted with the consent of the agency concerned, from the following sources under the conditions set forth in Exhibit A, ''Agreement for Utilization of Employee of (*Enter Official Title of Governing Body or Other Authorized Organization*) By the Farmers Home Administration or its successor agency under Public Law 103–354'' (Agreement Form).

(a) Any agency of State government or of any territory or political subdivision.

(b) Non-profit, educational, and charitable organizations, provided that no partisan, political, or profit motive is involved either explicitly or implicitly.

§ 2045.1753 Authority to accept gratuitous services.

(a) State Directors, Director, Personnel Division, and Director, Finance Office, are hereby authorized to accept and utilize gratuitous services offered by the governmental agencies listed in § 2045.1752(a).

(b) An offer received by an FmHA or its successor agency under Public Law 103–354 State or County Office from a source listed in § 2045.1752(b) shall be transmitted to the National Office, Attention: Director, Personnel Division, for decision. The offer will be accompanied by copies of the Articles of Incorporation and By-laws (if the organization is incorporated), a statement that the organization accepts the conditions set forth in the Agreement Form, and evidence that the organization is financially able to meet the required fiscal obligations of the agreement.

§ 2045.1754 Scope of gratuitous services performed.

(a) Gratuitous services accepted in accordance with this subpart may be utilized to perform any function performed by regular FmHA or its successor agency under Public Law 103–354 employees (excluding Committee members). Such services must not result in the displacement of employees. Most of the gratuitous services should be performed at the County Office level and conform to a standard FmHA or its successor agency under Public Law 103–354 position description. A nonstandard position description may be developed and used, depending on current agency needs in a particular office and gratuitous skills available.

(b) Orientation and other training will be provided by FmHA or its successor agency under Public Law 103–354 so that gratuitous services may be performed in accordance with current FmHA or its successor agency under Public Law 103–354 procedure.

(c) Persons performing authorized gratuitous services will be held to the same standard as regular FmHA or its successor agency under Public Law 103–354 employees performing similar duties. The issuance of, and accountability for, identification cards and clearance of employee accountability will be as prescribed in FmHA or its successor agency under Public Law 103–354 Instruction 2024–B which is available in all FmHA or its successor agency under Public Law 103–354 Offices. Such persons, except Construction Inspectors may, when under direct supervision of County Supervisors, act as Collection Officers and be allowed to use receipt books.

[43 FR 3694, Jan. 27, 1978, as amended at 68 FR 61333, Oct. 28, 2003]

§ 2045.1755 Preparation and disposition of agreement forms.

(a) Agreements to accept and utilize gratuitous services must be identical to the attached Exhibit A (Agreement Form) with such exceptions as may be authorized by the Office of the General Counsel, Department of Agriculture.

(b) Two copies of each signed Agreement Form will be forwarded to the Personnel Division. One copy will be retained in the State or Finance Office.

§ 2045.1756 Records and reports.

The FmHA or its successor agency under Public Law 103–354 official signing the Agreement Form will maintain records to show the names, duty assignments, time worked and work locations of all persons performing gratuitous services. Copies of time reports submitted to the persons' employers should suffice. These records will be necessary to respond to occasional requests for reports on the acceptance and utilization of gratuitous services in the FmHA or its successor agency under Public Law 103–354.

EXHIBIT A TO SUBPART JJ OF PART 2045—AGREEMENT FORM

FOR UTILIZATION OF EMPLOYEES OF (OFFICIAL TITLE OF GOVERNING BODY OR OTHER AUTHORIZED ORGANIZATION, *i.e.*, PICKENS COUNTY, ALA., BOARD OF COMMISSIONERS)

BY THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

1. This Agreement, date _____ between, _____, a (political subdivision), (educational), (charitable), (or nonprofit) an organization of the State of_____(hereinafter called the Agency) and the United States of America acting through Farmers Home Administration or its successor agency under Public Law 103–354, U.S. Department of Agriculture (hereinafter called the Administration) is entered into for the purpose of permitting certain employees of the Agency (hereinafter called the Agency employees) to assist in the Administration's effort to provide agricultural, housing and other assistance for rural people of the State of_____in accordance with Section 331(b) of the Consolidated Farm and Rural Development Act and Section 506(a), Title V of the Housing Act of 1949.

2. The Administration certifies that it is empowered by the current Federal laws cited above, and related rules and regulations, to accept personnel assistance from the Agency as provided in paragraphs 4 and 5 below; and that the work assigned to Agency employees will be useful, in the public interest, could not otherwise be provided, and will not result in the displacement of employed workers.

3. The Agency certifies that it has the authority under the laws of the State of_____to enter into this Agreement and to provide the services agreed upon in the manner provided for.

4. The Administration hereby supplies the Agency with a narrative description which is made a part of this Agreement as Attachment ''A,'' explicitly setting forth the duties, knowledge, skills, and abilities to be required of Agency employees.

5. The Administration agrees to:

(a) Provide training for and responsible supervision of qualified and acceptable Agency employees in accordance with Attachment ''A.''

(b) Provide work within the State of_____for qualified and acceptable Agency employees for periods not to exceed eight hours per day and 40 hours per week.

(c) Provide the office space, tools, equipment, and supplies to be used by Agency employees in performing work for the Administration.

(d) Report in the Agency, as required, the time worked by and work accomplishments of Agency employees.

(e) Consult with the Agency, as necessary, on situations involving delinquency, misconduct, neglect of work, and apparent conflicts of interest of Agency employees.

(f) Reimburse Agency employees for proper and reasonable travel and per diem expenses incurred in performing official duties for the Administration, in accordance with Administration travel regulations.

(g) Consider Agency employees to be Federal employees for the purposes of the Federal Employees Compensation Act (5 U.S.C. 8101) and of the Federal Tort Claims Act (28 U.S.C. 2671–2680).

6. The Agency agrees to:

(a) Not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, marital status, physical handicap, or national origin. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, marital status, physical handicap, or national origin. Such action shall include, but not be limited to, the following Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Agency will post in conspicuous places, available to employees and appliants for employment, notices setting forth the provisions of this nondiscriminating clause.

(b) Obtain fingerprints, police records, and work qualifications checks on potential assignees, and divulge the results to the Administration or permit the Administration to obtain this information.

(c) Assign only Agency employees who are acceptable to the Administration in terms of meeting the same ability and suitability standards which are applied to Federal employment.

(d) Pay all salaries and other expenses of Agency employees and comply with Federal, State, and local minimum wage statutes. No monies will be paid by the Administration under this agreement, either to the Agency or its employees.

(e) Consider any Tort claims by third parties under applicable laws and regulations.

(f) Reassign or terminate the assignment of Agency employees upon request of the Administration.

7. The Agency and the Administration mutually understand and agree that the reasons for determining that an Agency employee is unacceptable or unsuitable for initial or continued assignment to Administration work may include but shall not be limited to the following:

(a) Practicing or appearing to practice discrimination for reasons of race, color, religion, sex, age, marital status, physical handicap, or national origin.

(b) Being or becoming involved in real or apparent conflicts of interest, such as, engaging directly or indirectly in business transactions with Administration applicants or borrowers, or using or appearing to use the Administration work assignment for private gain.

(c) Engaging in or having engaged in criminal, dishonest, or immoral conduct, or conducting himself in a manner which might embarrass or cause criticism of the Administration.

(d) Being absent from duty without authorization.

(e) Engaging in partisan political activity prohibited to Federal employees doing similar work.

(f) Lack of work.

(g) Inability of the employee to perform the duties of the assignment.

8. The term of this Agreement shall commence on the date thereof. It shall end on_____, unless extended by mutual agreement, or unless terminated earlier by at least (30) days advanced written notice by either party to the other.

9. The Agency and the Administration respectively certify, each for itself, that its officer signing this Agreement is duly authorized thereto.

(ENTER OFFICIAL TITLE OF AGENCY, *i.e.*, CITY COUNCIL, MODESTO, CALIF.)

BY

CHAIRMAN, CITY COUNCIL,

MODESTO, CALIF.

FARMERS HOME

ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

BY

FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 STATE DIRECTOR FOR ( )

USDA

PARTS 2046–2099 [RESERVED]

CHAPTER XX [RESERVED]

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PART 2100—TECHNICAL GUIDELINES FOR CLIMATE-SMART AGRICULTURE CROPS USED AS BIOFUEL FEEDSTOCKS

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Subpart D—Chain of Custody Standards

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Subpart A—General Provisions

§ 2100.001 Purpose.

The purpose of this rule is to establish technical guidelines for quantifying, reporting, and verifying the greenhouse gas (GHG) emissions associated with agricultural production of biofuel feedstock commodity crops grown in the United States.

§ 2100.002 Definitions.

Accreditation means a formal recognition by an authorized body that a third-party verifier operates according to a set of standards.

Agricultural expert means persons who are employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by Federal Crop Insurance Corporation, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Audit means a process for obtaining relevant information about an entity's practices or processes, recordkeeping, and management and evaluating it objectively.

Biofuel means a liquid or gaseous fuels and fuel blending components produced from biomass feedstock.

Biofuel feedstock crop means a crop that can be used as raw material for biofuel production.

Biofuel Feedstock Report means a report generated by a farm producer that includes documentation of carbon intensity calculations and the Farm Producer Attestation.

Biofuel refiner means an entity that refines biomass feedstocks into a biofuel.

Biomass means any organic material other than oil and natural gas (or any product thereof), and coal (including lignite) or any product thereof.

Carbon intensity (CI) means a measure of GHG performance reflecting the estimated quantity of GHG emissions associated with one unit of production. For biofuel feedstock crops, carbon intensity is expressed as grams of carbon dioxide equivalent (CO_2-eq) per bushel of produced crop (g CO_2-eq/bushel).

Climate-smart agriculture (CSA) crop means a crop that is produced with CSA practices according to subparts A through F of this part.

Climate-smart agriculture (CSA) practices means agricultural management, practices, systems, and technologies

that have been demonstrated to generally reduce GHG emissions or increase soil carbon sequestration.

Conventional crop means a crop that is produced without the use of CSA practices according to this part.

Cover crop means grasses, legumes, and forbs planted for seasonal vegetative cover, and not intended for harvest, between harvested production crops in rotation.

Crop interval means the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, including fallow periods.

Crushing yield means a number representing the amount of oilseed produced from crushing one bushel of seed oil crop. Crushing yield is usually expressed in pounds per bushel (lbs/bu).

Farm means a business entity that produces (that is, grows and harvests) biofuel feedstock crops.

Farm producer means a person who is involved in making decisions for the farm operation. These decisions may include planting, harvesting, management, and marketing. The farm producer may be the owner, a member of the owner's household, a hired manager, a tenant, a renter, or a sharecropper. If a person rents land to others or has land worked on shares, they are considered the farm producer only for the land retained for their own operation.

Farm Producer Attestation means a document generated by the farm producer, who has operational control, that provides assurance that the farm producer followed standards in this part. The Farm Producer Attestation is included in the Biofuel Feedstock Report.

Feedstock means raw material that is converted into fuels and coproducts during the fuel production process.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries, such as fences, permanent waterways, woodlands, roads, croplines, or other similar features. In addition to a permanent, contiguous boundary, a field has common land cover and management.

First point of aggregation means the entity that purchases crops directly from the farm. Entities serving as the first point of aggregation distribute, trade, or further process these feedstocks.

Intensive tillage means a tillage operation that involves full width soil disturbance and multiple operations with implements such as moldboard, disk, or chisel plow. Intensive tillage does not meet the standards of reduced till or no-till in this part.

Intermediary entity means any entity in the biofuel supply chain that falls between the first point of aggregation and the biofuel refiner. Intermediary entities may include crushers, processors, storage facilities, or other entities.

Leguminous cover crop means a cover crop that fixes atmospheric nitrogen and are planted for seasonal vegetative cover, and not intended for harvest, between harvested production crops in rotation.

Management unit means field, group of fields, or other land units of the same land use and having similar treatment needs and planned management.

Mass balance system means a system in which materials or products with specified characteristics are mixed with materials or products without some or all of these characteristics, resulting in a claim on a part of the output, proportional to the input.

No-till means a practice that limits soil disturbance to manage the amount, orientation, and distribution of crop and plant residue on the soil surface year-round.

Nutrient management means the practice of managing the rate, source, placement, and timing of plant nutrients and soil amendments to optimize their economic benefits while minimizing environmental impacts.

Operational control means authority possessed by the person who runs the farm, making day-to-day management decisions. A person with operational control could be an owner, hired manager, cash tenant, share tenant, or a partner. If land is rented or worked on shares, the tenant or renter has operational control.

Planting green means a system where a cover crop is left in place and a production crop is planted into the cover crop without prior termination.

Process means any mechanical operation that transforms the physical properties of a product. Processing includes extracting oil from seed oil crops (for example, soybeans).

Reduced-carbon intensity (reduced-CI) crop means a crop that is produced by a farm that employs CSA practices on some or all of the fields or management units used for that crop's production. A farm that does not employ any CSA practices does not have crop that is considered reduced-CI crop.

Reduced-carbon intensity processed product (Reduced-CI processed product means a product derived from reduced-CI crops.

Reduced till means the practice of managing the amount, orientation, and distribution of crop and other plant residue on the soil surface year-round while limiting soil-disturbing activities used to grow and harvest crops in systems where the field surface is tilled prior to planting.

Soil Tillage Intensity Rating (STIR) means a numerical value that measures the severity and type of soil disturbance caused by tillage operations. STIR values range from 0 to 200, with higher values indicating more soil disturbance. The STIR rating applies to the entire tillage system used in producing a crop. The components of the rating include tillage type, recommended equipment operating speed, recommended tillage depth, and surface area disturbed.

Third-party verifier means an accredited person or organization independent of the verified entity that performs a verification activity or audit.

Subpart B—Applicability

§ 2100.010 Entities in the biofuel supply chain.

The supply chain for feedstock crops used in biofuel production begins at a farm and ends at a biofuel refiner. Any entity within this supply chain that produces, processes, or takes ownership of reduced-CI crop or reduced-CI processed product must meet all applicable standards of this part. These entities include farms, first points of aggregation, intermediary entities, and biofuel refiners. If a biofuel refiner sources directly from a farm, the biofuel refiner is the first point of aggregation.

§ 2100.011 Biofuel feedstock crops.

Crops produced using one or more CSA practices, in accordance with subpart F of this part, are referred to as CSA crops. Crops produced without the use of CSA practices are referred to as conventional crops. A farm producer may produce both CSA crops and conventional crops. CSA crops and conventional crops can be physically mixed. Crops that are sold with an associated reduced-CI, as compared to the national average CI, are referred to as reduced-CI crops. Reduced-CI crops may be composed of solely CSA crops or a combination of CSA crops and conventional crops. If CSA crops and conventional crops are produced at the same farm, the commingled crop must have an associated CI that reflects the proportion of CSA crops, quantified in accordance with subpart C of this part. Crops for which a reduced-CI may be quantified include:

(a) Field corn;

(b) Soybeans; and

(c) Sorghum.

§ 2100.012 CSA practices to produce CSA crops.

CSA crops must be produced using one or more CSA practices:

(a) Field corn produced using no-till, reduced till, cover crops, nitrification inhibitors, split in-season nitrogen application, or no fall nitrogen application;

(b) Soybeans produced using no-till, reduced till, cover crops, or nitrification inhibitors; or

(c) Sorghum produced using no-till, reduced till, cover crops, nitrificiation inhibitors, or split in-season nitrogen application.

Subpart C—Quantification of Farm-level Crop-specific Carbon Intensity

§ 2100.020 Quantification of CI.

Any farm producing and selling reduced-CI crops must calculate a farm-level CI for each crop type (field corn,

soybeans, or sorghum). The farm-level crop-specific CI represents the carbon emissions resulting from production of one bushel of that crop. The farm-level crop-specific CI applies to the year in which the crop was harvested, and the total amount of a crop harvested in a given year must be included in the calculation. Once a farm-level CI is calculated for a specific crop, the total amount of that crop is assigned the farm-level crop-specific CI and may be sold as reduced-CI crop. To calculate the farm-level CI for each crop:

(a) Farm producers must calculate the CI for each field or management unit on which CSA practice(s) were implemented, in accordance with subpart F of this part, using the U.S. Department of Agriculture (USDA) Feedstock Carbon Intensity Calculator (FD–CIC). This step must be repeated for every field or management unit producing CSA crops. To calculate a field or management unit-level CI in USDA FD–CIC, farm producers must input data on:

(1) farm location (county and state);
(2) crop type produced;
(3) crop yield;
(4) field or management unit acres;
(5) use of no-till or reduced till;
(6) use of a cover crop;
(7) timing of nitrogen fertilizer application; and
(8) nitrification inhibitor usage.

(b) For any conventional crop, farm producers must input crop and yield (excluding yield of crop produced using CSA practices) into USDA FD–CIC. USDA FD–CIC will assign these crops the default national value CI.

(c) USDA FD–CIC will use the farm producer inputs from paragraphs (a) and (b) of this section to calculate a weighted average, which is the farm-level crop-specific CI.

(d) Farm producers must repeat paragraphs (a) through (c) of this section for each crop type that is sold as reduced-CI.

Subpart D—Chain of Custody standards

§ 2100.030 General recordkeeping and reporting standards.

(a) The total amount of reduced-CI crop and associated CI must be maintained and tracked from the farm to the biofuel refiner using records and mass balance accounting.

(b) Crops with different CIs can be physically mixed at any entity along the supply-chain.

(c) Processed products derived from crops (for example, seed oils) can be produced using crops with different CIs.

(d) All entities specified in § 2100.010 must maintain required documentation for 5 years from when reduced-CI crops or processed products are sold, including documentation of previous verification activities and audits conducted as required by this part. Documentation must be readily available to accredited third-party verifiers and provided upon request during an audit.

§ 2100.031 Farm recordkeeping and reporting standards.

(a) Farm producers must keep records demonstrating implementation of the CSA practices used in calculation of a CI.

(1) For reduced till or no-till, see § 2100.051(c), titled Tillage management recordkeeping standards.

(2) For cover crops, see § 2100.052(b), titled Cover crop recordkeeping standards.

(3) For nutrient management, see § 2100.053(g), titled Nutrient management recordkeeping standards.

(b) Farm producers must keep records demonstrating all sales of crop as a reduced-CI crop. These records must indicate the total amount sold, the purchasing entity, and the date of the transaction.

(c) For each crop that is sold as a reduced-CI crop, farm producers must prepare and maintain a Biofuel Feedstock Report. Farm producers must provide the Biofuel Feedstock Report to any entity purchasing reduced-CI crop. The Biofuel Feedstock Report must:

(1) State the farm name, farm producer name, and farm location (county and state);

(2) Demonstrate the quantification of the farm-level crop-specific CI, including:

(i) Documentation of USDA FD–CIC calculation for each field or management unit (for example, screenshots or

printouts from the USDA FD–CIC excel tool, or similar documentation showing USDA FD–CIC inputs and outputs including CI for each field or management unit) including a unique identifier for each field or management unit; and

(ii) Calculation of the farm-level crop-specific CI for each crop; and

(3) Include a Farm Producer Attestation declaring that the farm producer:

(i) Has operational control over all fields using CSA practices and has decision-making authority to manage fields as specified for practice standards in subpart F of this part;

(ii) Implemented CSA practice(s) that were used in calculation of the CI according to the implementation standards in subpart F of this part;

(iii) Calculated the farm-level CI as specified in subpart C of this part;

(iv) Will retain required records for 5 years and make records available upon request to accredited third-party verifier;

(v) Will not double sell greenhouse gas benefits resulting from CSA practice(s) that are used in calculation of the CI (that is, will not sell the CI information, attributes, or greenhouse gas benefits associated with CSA crops in more than one market);

(vi) When implementing no-till, will continue no-till for a minimum of four out of every five years; and

(vii) Did not convert the land used to produce CSA biofuel feedstock crops into crop production after the date that this rule was published.

§ 2100.032 First point of aggregation and intermediary entity recordkeeping and reporting standards.

(a) The first point of aggregation and intermediary entities must establish and maintain a reporting system to ensure a clear link between reduced-CI crops and documentation at all times. The first point of aggregation and intermediary entities must have a documented system in place to prevent the double sale of crops associated with a CI. At minimum, the entity must keep:

(1) Records of incoming and outgoing reduced-CI crop, including:

(i) the total amount of reduced-CI crop purchased, sold, or both;

(ii) the entity from and to which the crop was purchased, sold, or both;

(iii) the associated CI; and

(iv) the date of the transaction;

(2) List of and contracts with all suppliers and recipients of reduced-CI crop; and

(3) List of and contracts with subcontractors and service providers who have a direct role in data management, accounting, processing, or other activities that involve the receipt, storage, sale, or tracking of reduced-CI crop.

(b) In addition to the standards in paragraph (a) of this chapter, the first point of aggregation and intermediary entities must maintain some documentation from the previous entity in the supply chain:

(1) The first point of aggregation must maintain the Biofuel Feedstock Report from each farm supplying reduced-CI crops; and

(2) Intermediary entities must maintain documentation showing that entities supplying reduced-CI crops or reduced-CI processed products received accredited third-party verification under this part.

(c) When a first point of aggregation or intermediary entity sells reduced-CI crops or reduced-CI processed products, the entity must provide the following documentation to the purchasing entity:

(1) documentation that the selling entity received third-party verification in accordance with this part;

(2) total amount of reduced-CI crop or reduced-CI processed product sold; and

(3) CI(s) associated with the amount of reduced-CI crop or reduced-CI processed product sold.

§ 2100.033 Additional recordkeeping standards for entities that process reduced-CI crops, or sell or purchase reduced-CI processed product.

(a) Any entity that processes product using reduced-CI crops is subject to additional recordkeeping standards. Processing includes extracting oil from seed oil crops (for example, soybeans). Entities that process reduced-CI crops must:

(1) Keep records on processing of reduced-CI crops, including the entity's crushing yield, the amount of reduced-

CI crop used in processing, and the corresponding amount of reduced-CI processed product; and

(2) Demonstrate calculation of the amount of reduced-CI processed product corresponding to the amount of reduced-CI crop, using the entity specific crushing yield and the following equation:

reduced CI processed product = crushing yield × reduced CI crop

(b) Any entity that sells or purchases reduced-CI processed product must keep records demonstrating:

(1) The amount of reduced-CI crop used as an input for reduced-CI processed product sold or purchased;

(2) The CI associated with reduced-CI crop used as an input for reduced-CI processed product sold or purchased; and

(3) The amount of reduced-CI processed product sold or purchased.

§ 2100.034 Mass balance recordkeeping standards.

(a) First points of aggregation and intermediary entities must calculate and record the mass balance of incoming and outgoing reduced-CI crops, such that the incoming and outcoming amounts of reduced-CI crops with a specific CI are equal over a defined period of time. If an entity processes, purchases, or sells reduced-CI processed product, the mass balance accounting must document the amount of reduced-CI crop that was used in the reduced-CI processed product.

(b) To complete mass balance calculations, entities must define mass balance time periods such that mass balance time periods are continuous (that is, no gaps between mass balance periods occur). Each mass balance time period may not exceed three months. Entities must document the mass balance time period used for the mass balance calculation.

(c) Entities must provide documentation of the mass balance calculation for each time period to the third-party verifier during audits.

(d) For any given CI, records must indicate that incoming and outgoing crops and processed products are balanced according to the equation:

incoming feedstock$_{i,c,m}$ + beginning stored feedstock$_{i,c,m}$ = outgoing feedstock$_{i,c,m}$ + ending stored feedstock$_{i,c,m}$

(1) Where feedstocks (incoming, stored, and outgoing) for entity i are identified by their carbon intensity, c, and the pre-defined mass balance accounting time period, m.

(i) Incoming feedstocks include those purchased by entity i in time period m.

(ii) Outgoing feedstocks must include both sold and discarded or wasted feedstocks in time period m.

(iii) Stored feedstocks are those maintained by the entity during time period m and must be accounted for in the mass balance accounting.

(iv) If reduced-CI crops or processed product is remaining at the end of a mass balance time period m, it is accounted for as ending stored feedstock for that time period and as beginning stored feedstock for the subsequent time period.

(2) To ensure that the mass balance accounting for entity i appropriately accounts for different forms of reduced-CI processed products (that is, oils), the entity's crushing yield must be used to convert reduced-CI processed products back to their crop volume or weight equivalents using the following equation:

processed feedstock crop equivalent = (processed feedstock)/(crushing yield)

§ 2100.035 Biofuel refiner recordkeeping standards.

(a) For reduced-CI crop that a biofuel refiner sources directly from a farm, the biofuel refiner is acting as a first point of aggregation and must follow the standards in § 2100.032.

(b) For reduced-CI crops and reduced-CI processed products that are sourced from a first point of aggregation or intermediary entity, a biofuel refiner must keep:

(1) Records of incoming reduced-CI crops or reduced-CI processed products, which, at a minimum this includes records of incoming reduced-CI crop or reduced-CI processed products, including the total amount of reduced-CI crop or reduced-CI processed product purchased, the entity from which the crop or processed product was purchased, the associated CI, and the date of the transaction; and

(2) Documentation that the entity supplying reduced-CI crop or reduced-CI processed product has undergone third-party verification by an accredited third-party verifier and met the standards of this part.

(c) For all reduced-CI crops, a biofuel refiner must establish a system to track all incoming reduced-CI crops and the associated CI.

Subpart E—Audits and Verification

§ 2100.040 Third-party audits.

(a) *Audit standards for first point of aggregation.* Each audit for a first point of aggregation must meet the following standards.

(1) First points of aggregation must hire a third-party verifier to conduct an audit annually;

(2) An audit, conducted by a third-party verifier, must verify that the first point of aggregation:

(i) Operates a mass balance system as specified in § 2100.034; and

(ii) Correctly recorded the CI associated with reduced-CI crops delivered from each farm; and

(3) The first point of aggregation must include supplying farms in its audit scope. The first point of aggregation and third-party verifier must adhere to the following standards when selecting the audit sample.

(i) The first point of aggregation must provide farm producer information to enable the third-party verifier to select a sample of supplying farms for verification. Farm producer information must include the total number of farms supplying reduced-CI crops, geographic location of each farm, type and amount of crop supplied by each farm, and CI associated with the crop from each farm;

(ii) The third-party verifier will determine the total number of farms to be included in the audit sample. The third-party verifier must determine the minimum size of the farm audit sample by taking the square root, rounded up to the nearest whole number, of the total number of farms supplying the first aggregation point with reduced-CI crops; and

(iii) The third-party verifier must select the individual farms to be included in the sample for verification. The third-party verifier should select the sample in a way that is representative of supplying farms' characteristics including types of supplied reduced-CI crop, size of farm, geographic location, and risk of non-conformity or fraud. If an audit occurs at the same first aggregation point in subsequent years, the sample of farms should avoid selecting those audited in prior years.

(b) *Audit standards for farms.* Each audit for a farm must meet the following standards.

(1) Farms that supply reduced-CI crops to a first point of aggregation may be selected for an audit by the first point of aggregation's third-party verifier;

(2) If the farm is selected as part of the audit sample as the first point of aggregation, the farm may be considered for exemption from an additional audit when an audit was previously completed for the applicable year. Farm producers can elect to proactively retain an accredited third-party verifier to complete an audit at their farm per the standards of paragraph (b)(3) of this section. To be considered for exemption from an additional audit, the farm producer must provide results of the completed audit. It is up to the discretion of the third-party verifier to determine whether the farm is exempt from an additional audit or if a full or partial audit is necessary; and

(3) For farms that are audited individually or included in an audit sample:

(i) The third-party verifier must verify that CSA practices and practice recordkeeping is in accordance with the standards in subpart F of this part;

(ii) The third-party verifier must verify that the weighted average CI for each crop is calculated correctly in accordance with subpart C; and

(iii) Records from relevant sub-contractors or service providers must be made available during the farm audit at the request of the third-party verifier if necessary to audit practice standards.

(c) *Audit standards for intermediary entities.* Each audit for an intermediary entity must meet the following standards.

(1) Intermediary entities must hire a third-party verifier to conduct an audit annually; and

(2) An audit, conducted by a third-party verifier, must verify that the intermediary entity:

(i) Operates a mass balance system as specified in § 2100.034; and

(ii) Correctly recorded the CI associated with reduced-CI crops or reduced-CI processed product delivered to the intermediary entity.

(d) *Additional audit standards for entities that process, sell, or purchase reduced-CI processed product.* Each audit for a first point of aggregation or intermediary entity that processes, sells, or purchases reduced-CI processed products must meet the following standards.

(1) For entities that process, sell, or purchase reduced-CI processed products, an audit, conducted by a third-party verifier, must verify that the entity implemented recordkeeping standards specified in § 2100.033.

(2) [Reserved]

(e) *Additional audit standards for entities that process reduced-CI crop.* Each audit for a first point of aggregation or intermediary entity that processes reduced-CI processed products must meet the following standards.

(1) For entities that process reduced-CI crop, the third-party verifier must verify that internal records support the calculation and application of the entity's crushing yield used to:

(i) Determine the amount of reduced-CI processed product derived from the amount of inputs; and

(ii) Perform the mass balance calculation.

(2) [Reserved]

(f) *Audit standards for biofuel refiners.* Each audit for a biofuel refiner must meet the following standards.

(1) Biofuel refiners must hire a third-party verifier to conduct an audit annually; and

(2) An audit, conducted by a third-party verifier, must verify that the biofuel refiner:

(i) Operates a system to correctly record the CI associated with reduced-CI crop or reduced-CI processed product as specified in § 2100.035(c); and

(ii) Followed the standards in paragraph (a) of this section, if the biofuel refiner acted as a first point of aggregation for any reduced-CI crop.

§ 2100.041 Accreditation of third-party verifiers.

Third-party verifiers that conduct audits in accordance with this part must be accredited to ISO 14065: General principles and requirements for bodies validating and verifying environmental information by a member of the International Accreditation Forum.

Subpart F—Climate-Smart Agriculture (CSA) Practice Standards

§ 2100.050 General.

CSA practices may be implemented individually or in combination on a field or management unit.

§ 2100.051 Tillage management.

(a) *Reduced till standards.* To qualify as reduced till under this part, field(s) or management unit(s) must be managed according to the following standards:

(1) Tillage methods where the entire soil surface is disturbed by tillage operations such as chisel plowing, field cultivating, tandem disking, vertical tillage, or ridge tillage are permitted, provided that the STIR value is no greater than 80. The STIR value must include all field operations that are performed during the crop interval (that is, from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, including fallow periods). Permitted methods are also commonly referred to as mulch tillage, conservation tillage, or ridge till;

(2) Primary inversion tillage implements (for example, moldboard plow) must not be used;

(3) Residue must not be burned; and

(4) Removing residue from the crop planting row area prior to or as part of the planting operation is allowed.

(b) *No-till standards.* To qualify as no-till under this part, field(s) or management unit(s) must be managed according to the following standards:

(1) Full-width soil disturbance must not be performed, from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, regardless of the depth of the tillage operation. Strip tillage and fertilizer injection are permitted, provided that the STIR value is no greater than 20. The STIR value must include all field operations that are performed during the crop interval (that is, from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, including fallow periods);

(2) Residue must not be burned; and

(3) Removing residue from directly within the seeding, planting, or transplanting area prior to or as part of the planting operation is allowed.

(c) *Tillage management recordkeeping standards.* Farm producers must maintain records for 5 years demonstrating required implementation of the reduced till or no-till practice. Records must contain sufficient detail to be readily understood and auditable. Records may be of varying types and origins including, but not limited to, physical documentation (for example, paper forms, invoices, receipts, seed tags), digital files (including from farm management software), data generated by farm equipment (for example, precision agriculture equipment), remotely sensed data, georeferenced and timestamped photographs, or data and records used for participation in USDA programs. Records must demonstrate:

(1) Field(s) or management unit(s) where the practice is implemented, including location and acreage;

(2) All field operations including tillage and all other operations (including fertilizing, planting, controlling pests, seeding, harvesting) that may cause surface disturbance;

(3) Type of field operation including depth and width of disturbance and average speed of operation;

(4) Equipment used;

(5) Date(s) that each operation occurred; and

(6) Total bushels of the harvested production crop harvested from field(s) or management unit(s) where the practice was implemented. If the farm producer uses both reduced till and no-till on different fields, records must indicate the total bushels produced using each CSA practice.

(d) *Tillage management verification.* When auditing the reduced till or no-till practice, third-party verifiers must review documentation demonstrating all field operations including the type of operation, equipment used, and timing of operation. Using these records, third-party verifiers must verify the correct calculation (or perform the calculation) of a crop interval STIR value and verify that the value meets the standards of the reduced till or no-till practice.

§ 2100.052 Cover crop management.

(a) *Cover crop standards.* To qualify for the cover crop practice under this part, field(s) or management unit(s) must be managed according to the following standards:

(1) Cover crop species selection, seedbed preparation, seeding rate(s), seeding date, seeding depth, and seeding method must be consistent with applicable soil and site conditions;

(2) When a leguminous cover crop is used individually or as part of a mix, the farm producer must develop a nutrient budget which demonstrates:

(i) The available nitrogen resulting from the cover crop; and

(ii) An adjustment in total planned nitrogen application to the harvested production crop following the cover crop;

(3) Cover crops must be seeded in the fall. Cover crop may be interseeded into an existing or established crop. Cover crop species and seeding dates should not adversely affect crop yield or interfere with the maintenance and harvest process;

(4) Cover crops should be seeded as early as possible and terminated as late as practical (late vegetative stage or later), with termination timing established to minimize the risk of yield loss and soil moisture depletion;

(5) Cover crops must be terminated via winter kill or using herbicide or non-soil disturbing mechanical methods (that is, roller crimper, mowing) in the spring;

(6) Planting green is permitted;

(7) Cover crop biomass must not be mechanically harvested or grazed. Residues must remain on the surface following termination and may not be burned; and

(8) Cover crops may not be fertilized.

(b) *Cover crop recordkeeping standards.* Farm producers must maintain records for 5 years demonstrating required implementation of the cover crop practice. Records must contain sufficient detail to be readily understood and auditable. Records may be of varying types and origins including, but not limited to, physical documentation (for example, paper forms, invoices, receipts, seed tags), digital files (including from farm management software), data generated by farm equipment (for example, precision agriculture equipment), remotely sensed data, georeferenced and timestamped photographs, or data and records used for participation in USDA programs. Records must demonstrate:

(1) Purchase and receipt of cover crop seed in sufficient quantities to cover the area seeded;

(2) Field(s) or management unit(s) where cover crop practice is implemented, including location and acreage;

(3) Cover crop seeding date, method, and seeding rate;

(4) Total acreage seeded in cover crop across the operation;

(5) Photographic evidence of cover crop establishment;

(6) Cover crop termination date and method; and

(7) Total bushels of the crop harvested from field(s) or management unit(s) where the cover crop practice was implemented immediately prior to seeding or planting the harvested production crop.

(c) *Cover crop verification.* When auditing the cover crop practice, third-party verifiers must review documentation demonstrating cover crop species selection, seeding date, seeding method, seeding rate, total seeded acreage, termination date, and termination method. Through an on-site visit, remote video conferencing, remote sensing data, or georeferenced and timestamped photographs, third-party verifiers must verify the establishment of cover crops.

§ 2100.053 Nutrient management.

(a) *Nutrient management standards.* To qualify for any nutrient management practice (nitrification inhibitors, controlled release fertilizers, no fall application, split in-season application) under this part, field(s) or management unit(s) must be managed according to the following standards:

(1) Prior to implementation, the farm producer must develop and document a planned nutrient budget, yield goal, and applications of at a minimum, nitrogen, phosphorous, and potassium (N–P–K) in pounds per acre. The nutrient budget must account for all known measurable nutrient sources and removals. Sources of nitrogen may include, but are not limited to, commercial fertilizers (including starter and in-furrow starter or pop-up fertilizer), animal manures, legume crops, green manures, plant or crop residues, compost, organic by-products, municipal and industrial biosolids, wastewater, organic materials, estimated plant available soil nutrients, and irrigation water; and

(2) The farm producer must base the nutrient budget on current soil test results or the professional opinion of an agricultural expert who is employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by the Federal Crop Insurance Corporation (FCIC), whose research or occupation is related to the specific crop or practice for which such expertise is sought. Soil test must be no older than 2 years. Tissue testing may be used for monitoring or adjusting the nutrient management plan in accordance with the state LGU guidance, or industry practice recognized by the state LGU.

(b) *Nitrification inhibitor standards.* To qualify for the practice under this part, field(s) or management unit(s) must be managed in accordance with paragraph (a) of this section and with the following standards:

(1) The farm producer must apply an inhibitor with all synthetic nitrogen (synthetic N) applications, including any pre-emergent applications. Inhibitors must be defined by the Association of American Plant Food Control Officers (AAPFCO) and be accepted for use by the State fertilizer control official,

or similar authority, with responsibility for verification of product guarantees, ingredients (by AAPFCO definition), and label claims.

(2) [Reserved]

(c) *No fall application standards.* To qualify for the no fall application practice under this part, field(s) or management unit(s) must be managed as specified in paragraph (a) of this section and with the following standards:

(1) The first synthetic N application must occur within 30 days prior to or at the time of planting; and

(2) The farm producer must not apply synthetic N in the fall on fallow fields or fields in cover crop. This includes any synthetic N included in phosphorus fertilizers.

(d) *Split in-season application standards.* To qualify for the split in-season application practice under this part, field(s) or management unit(s) must be managed accordingly in accordance with paragraph (a) of this section and with the following standards:

(1) Farm Producer must apply at least 75 percent of total crop synthetic N needs after crop emergence. Post emergent synthetic N may be reduced based on crop scouting, in-season soil sampling or analysis, or plant tissue sampling or analysis. Nutrient availability should be timed to crop uptake.

(2) [Reserved]

(e) *Nutrient management recordkeeping standards.* Farm producers must maintain records demonstrating correct implementation of the nutrient management practice(s) for 5 years. Records must contain sufficient detail to be readily understood and auditable. Records may be of varying types and origins, including, but not limited to, physical documentation (for example, paper forms, invoices, receipts, seed tags), digital files (including from farm management software), data generated by farm equipment (for example, precision agriculture equipment), remotely sensed data, georeferenced and timestamped photographs, or data and records used for participation in USDA programs. Records must demonstrate:

(1) Development of a nutrient budget that accounts for realistic yield goal and all known and measurable sources of N–P–K;

(2) Soil test results, soil test methods, laboratory where soil test was conducted, and date of the soil test within 2 years of the development of the nutrient budget. In-season soil samples or tissue samples results for N analysis should be provided along with methods, laboratory, and date sampled;

(3) Date(s), method(s), location(s) of all nutrient applications in pounds per acre for N–P–K;

(4) The source and type of nutrients supplied, including nutrient content;

(5) Field(s) or management unit(s) where nutrient management practice(s) is implemented, including location and acreage;

(6) Planting or seeding date for field(s) and management unit(s) where nutrient management practice(s) is implemented;

(7) Total acreage using each nutrient management practice across the operation; and

(8) Total bushels of the crop harvested from field(s) or management unit(s) where each nutrient management practice was implemented.

(f) *Nutrient management verification.* When auditing nutrient management practice(s), the third-party verifier must verify development of a nutrient management budget that accounts for all known and measurable sources of nutrients (that is, N–P–K). For nitrification inhibitors, the third-party verifier must verify that inhibitors were used with 100 percent of synthetic N application on all field(s) or management unit(s) where the practice was implemented. For timing practices (no fall application or split in-season application), the third-party verifier must verify application timing through management records.

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PART 2500—OAO FEDERAL FINANCIAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROCEDURES

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AUTHORITY: 7 U.S.C. 6934, 7 U.S.C. 2279.

SOURCE: 76 FR 66170, Oct. 26, 2011, unless otherwise noted.

Subpart A—General Information

§ 2500.001 Applicability of regulations.

The regulations in subparts A through E of this part apply to the programs authorized under section 14013 of the FCEA to be administered within the Office of Advocacy and Outreach (OAO). The purpose of this part is to set forth regulations for competitive and noncompetitive grants, cooperative agreements, and other assistance agreements awarded through OAO.

§ 2500.002 Definitions.

Applicant means the entity that has submitted a proposal in response to an OAO Request For Proposal (RFP).

Authorized Departmental Officer (ADO) means the Secretary or any employee of the Department with delegated authority to issue or modify award instruments on behalf of the Secretary.

Authorized Organizational Representative (AOR) means the President or Chief Executive Officer of the applicant organization or the official, designated by the President or Chief Executive Officer of the applicant organization, who has the authority to commit the resources of the organization to the project.

Award means financial assistance that provides support to accomplish a public purpose. Awards may be grants, cooperative agreements, or other assistance agreements.

Award agreement means the agreement between OAO and the awardee which sets forth the terms and conditions under which the OAO funds will be made available. Award agreement is used as a general term to describe grant agreements, cooperative agreements, and other assistance agreements.

Award closeout means the process by which the award operation is concluded

at the expiration of the award period or following a decision to terminate the award.

Award period means the timeframe of the award from the beginning date to the ending date as defined in the award agreement.

Awardee means the entity designated in the grant agreement, cooperative agreement, or other assistance agreement as the legal entity to which the award is given.

Baseline monitoring is the minimum, basic monitoring that will take place on an ongoing basis throughout the lifetime of every award.

Beginning date means the date the award agreement is executed by the awardee and OAO and from which costs can be incurred.

Community-based organization means a nongovernmental organization with a well-defined constituency that includes all or part of a particular community.

Cooperative agreement means the award of funds to an eligible awardee to assist in meeting the costs of conducting a project which is intended and designed to accomplish the purpose of the program as identified in the RFP, and where substantial involvement is expected between OAO and the awardee when carrying out the activities included in the agreement. This agreement may also be referred to more generally as an award.

Department means the U.S. Department of Agriculture.

Disallowed costs means the use of Federal financial assistance funds for unauthorized activities or items as stipulated in the applicable Federal cost principles (2 CFR part 220, 2 CFR part 225, and 2 CFR part 230).

Ending date means the date the award agreement is scheduled to be completed. It is also the latest date award funds will be provided under the award agreement, without an approved time extension.

Participant means an individual or entity that participates in awardee-led activities funded under the award agreement. Furthermore, a participant is any individual or entity who has applied for, otherwise participated in, or received a payment, or other benefit as a result of participating in an activity funded by an OAO award.

Partnering means a joint effort among two or more eligible entities with the capacity to conduct projects intended and designed to accomplish the purpose of the program.

Program leader means the program supervisor within OAO.

Project means activities supported under an OAO award.

Project Director (PD) means the individual designated by the awardee in the proposal and award documentation, and approved by the ADO who is responsible for the direction and management of the award.

Project Officer (PO) means an individual within OAO who is responsible for the programmatic oversight of the award on behalf of the Department.

Request for Proposals (RFP) means an official USDA funding opportunity. At OAO discretion, funding opportunities may be referred to as request for proposals, request for applications, notice of funding availability, or funding opportunity.

Review panel means an evaluation process involving qualified individuals within the relevant field to give advice on the merit of proposals submitted to OAO.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom authority may be delegated.

Terminate funding means the cancellation of Federal assistance, in whole or in part, at any time before the ending date.

§ 2500.003 Other applicable statutes and regulations.

Several Federal statutes and regulations apply to proposals for Federal assistance considered for review and to grants and cooperative agreements awarded by OAO. These include, but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular No. A–129, regarding debt management;

(c) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), as amended, which prohibits discrimination on the basis of race, color, or national origin, and 7

CFR part 15, subpart A (USDA implementation);

(d) 2 CFR part 415, General Program Administrative Regulations.

(e) 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments.

(f) 2 CFR part 417, Nonprocurement Debarment and Suspension.

(g) 2 CFR part 418, New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans.

(h) 2 CFR part 200, subparts B—General Provisions, C—Pre-Federal Award Requirements and Contents of Federal Awards, and D—Post-Federal Award Requirements, as adopted by USDA through 2 CFR part 400.

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

(j) 2 CFR part 200, subpart F—Audit Requirements, as adopted by USDA through 2 CFR part 400.

(k) 7 U.S.C. 3318—conferring upon the Secretary general authority to enter into contracts, grants, and cooperative agreements to further the research, extension, or teaching programs in the food and agricultural sciences of the Department of Agriculture.

(l) 29 U.S.C. 794 (Section 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

(m) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, promoting the utilization of inventions arising from federally supported research or development; encouraging maximum participation of small business firms in federally supported research and development efforts; and promoting collaboration between commercial concerns and nonprofit organizations, including universities, while ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions (implementing regulations are contained in 37 CFR part 401)

(n) Title IX of the Education Amendment of 1972 (20 U.S.C. 1681–1683 and 1685–1686), as amended, which prohibits discrimination on the basis of sex;

(o) Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), as amended, which prohibits discrimination on the basis of age;

(p) Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse;

(q) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(r) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(s) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing;

(t) Any other nondiscrimination provisions in the specific statute(s) under which proposals for Federal assistance are made, and the requirements of any other nondiscrimination statute(s) which may apply to the proposal.

[76 FR 66170, Oct. 26, 2011, as amended at 85 FR 31938, May 28, 2020]

Subpart B—Pre-Award: Solicitation and Proposals

§ 2500.011 Competition.

(a) *Standards for competition.* Except as provided in paragraph (b) of this section, OAO will enter into discretionary grants or cooperative agreement only after competition, unless restricted by statute.

(b) *Exception.* The OAO ADO may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Federal Government and necessary to the goals of the program. Non-competitive determinations will comply with regulations established in 7 CFR 3015.158(d).

§ 2500.012 Requests for proposals.

(a) *General.* For each competitive grant or cooperative agreement, OAO will prepare a program solicitation (also called a request for proposals (RFP)). The RFP may include all or a portion of the following items:

(1) Contact information.

(2) Catalog of Federal Domestic Assistance (CFDA) number.

(3) Legislative authority and background information.

(4) Purpose, priorities, and fund availability.

(5) Program-specific eligibility requirements.

(6) Program-specific restrictions on the use of funds, if applicable.

(7) Matching requirements, if applicable.

(8) Acceptable types of proposals.

(9) Types of projects to be given priority consideration, including maximum anticipated awards and maximum project lengths, if applicable.

(10) Program areas, if applicable.

(11) Funding restrictions, if applicable.

(12) Directions for obtaining additional requests for proposals and proposal forms.

(13) Information about how to obtain proposal forms and the instructions for completing such forms.

(14) Instructions and requirements for submitting proposals, including submission deadline(s).

(15) Explanation of the proposal evaluation process.

(16) Specific evaluation criteria used in the review process.

(17) Type of Federal assistance awards (*i.e.*, grants or cooperative agreements).

(b) *RFP variations.* Where program-specific requirements differ from the requirements established in this part, program solicitations will also address any such variation(s). Variations may occur in the following:

(1) Award management guidelines.

(2) Restrictions on the delegation of fiscal responsibility.

(3) Required approval for changes to project plans.

(4) Expected program outputs and reporting requirements, if applicable.

(5) Applicable Federal statutes and regulations.

(6) Confidential aspects of proposals and awards, if applicable.

(7) Regulatory information.

(8) Definitions.

(9) Minimum and maximum budget requests and whether proposals outside of these limits will be returned without further review.

(c) *Program announcements.* Occasionally, OAO will issue a program announcement (PA) to alert potential applicants and the public about new and ongoing funding opportunities. These PAs may provide tentative due dates and are released without associated proposal packages. No proposals are solicited under a PA. PAs will be announced in the FEDERAL REGISTER or on the OAO Web site.

§ 2500.013 Types of proposals.

The type of proposal acceptable may vary by funding opportunity. The RFP will stipulate what will be required for submission to OAO in response to the funding opportunity.

§ 2500.014 Eligibility requirements.

Program-specific eligibility requirements appear in the subpart applicable to each program and in the corresponding RFPs.

§ 2500.015 Content of a proposal.

The RFP provides instructions on how to access a funding opportunity. The funding opportunity contains the proposal package, which includes the forms necessary for completion of a proposal in response to the RFP. The RFP will be posted on *http://www.Grants.gov.* OAO may also publish the RFP in the FEDERAL REGISTER.

§ 2500.016 Submission of a proposal.

The RFP will provide deadlines for the submission of proposals. OAO may issue separate RFPs and/or establish separate deadlines for different types of proposals, different award instruments, or different topics or phases of the assistance programs. If proposals are not received by applicable deadlines, they will not be considered for funding. Exceptions will be considered only when extenuating circumstances exist, as determined by OAO, and justification and supporting documentation are provided by the applicant.

Conformance with preparation and submission instructions is required and will be strictly enforced unless a deviation has been approved. OAO may establish additional requirements. OAO may return without review proposals that are not consistent with the RFP instructions.

§ 2500.017 Confidentiality of proposals and awards.

(a) *General.* Names of entities submitting proposals, as well as proposal contents and evaluations, except to those involved in the review process, will be kept confidential to the extent permissible by law.

(b) *Identifying confidential and proprietary information in a proposal.* If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided that the information is clearly marked by the applicant with the term ''confidential and proprietary information.'' In addition, the following statement must be included at the bottom of the project narrative or any other attachment included in the proposal that contains such information: ''The following pages (specify) contain proprietary information which (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation.''

(c) *Disposition of proposals.* By law, OAO is required to make the final decisions as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the applicant. However, the Department will retain for three years one file copy of each proposal received; extra copies will be destroyed. Public release of information from any proposal submitted will be subject to existing legal requirements. Any proposal that is funded will be considered an integral part of the award and normally will be made available to the public upon request, except for information designated proprietary by OAO.

(d) *Submission of proprietary information.* The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items that, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information that could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports that attempt to restrict dissemination of large amounts of information may be found unacceptable by OAO and constitute grounds for return of the proposal without further consideration. Without assuming any liability for inadvertent disclosure, OAO will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis.

§ 2500.018 Electronic submission.

Applicants and awardees are encouraged, but not required, to submit proposals and reports in electronic form as prescribed in the RFP issued by OAO and in the applicable award agreement.

Subpart C—Pre-Award: Proposal Review and Evaluation

§ 2500.021 Guiding principles.

The guiding principle for Federal assistance proposal review and evaluation is to ensure that each proposal is treated in a consistent and fair manner. After the evaluation process by the review panel, OAO will provide an opportunity for applicant feedback in as timely a manner as possible.

§ 2500.022 Preliminary proposal review.

Prior to technical examination, a preliminary review will be made of all proposals for responsiveness to the administrative requirements set forth in the RFP. Proposals that do not meet the administrative requirements may be eliminated from program competition. However, OAO retains the right

to conduct discussions with applicants to resolve technical and/or budget issues, as deemed necessary by OAO.

§ 2500.023 Selection of reviewers.

(a) *Requirement.* OAO is responsible for performing a review of proposals submitted to OAO competitive award programs. The RFP will identify the criteria that OAO will use for the selection of the proposal review panel.

(b) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants. Names of applicants, as well as proposal content and evaluation comments will be kept confidential to the extent permitted by law, except to those involved in the review process. Reviewers will comply with the above-mentioned confidentiality guidelines.

(c) *Conflicts of interest.* During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Reviewers are expected to be in compliance with the Conflict-of-Interest process made a part of the RFP.

§ 2500.024 Evaluation criteria.

(a) *General.* To ensure any project receiving funds from OAO is consistent with the broad goals of the funding program, the content of each proposal submitted to OAO will be evaluated based on a pre-determined set of review criteria as indicated in the RFP.

(b) *Guidance for reviewers.* In order that all potential applicants for a program have similar opportunities to compete for funds, all reviewers will receive an orientation from the Program Leader of the review criteria. Reviewers are instructed to use those same evaluation criteria, and only those criteria, to judge the merit of the proposals they review.

§ 2500.025 Procedures to minimize or eliminate duplication of effort.

OAO may implement appropriate business processes to minimize or eliminate the awarding of Federal assistance to projects that unnecessarily duplicate activities already being sponsored under other awards, including awards made by other Federal agencies.

§ 2500.026 Applicant feedback.

Unsuccessful applicants may submit a request for applicant feedback in writing to OAO within 10 days after receiving written notice of not being selected for further processing. Applicant feedback requests are to be mailed to the Program Leader at the address below, unless otherwise stated in the ''Notice of Non-Selection'' or in the RFP. At OAO's discretion, either written or oral feedback will be provided to unsuccessful applicants.

U.S. Department of Agriculture, Departmental Management, Office of Advocacy and Outreach, *Attn:* Program Leader (Applicant Feedback), Whitten Building, Rm. 520–A, stop 9821, 1400 Independence Avenue, SW., Washington, DC 20250–9821.

Subpart D—Award

§ 2500.031 Administration.

(a) *General.* Within the limit of funds available for such purpose, the OAO ADO shall make Federal assistance awards to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in the RFP. The date specified by the OAO ADO as the effective date of the award shall be no later than September 30th of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds awarded by OAO shall be expended solely for the purpose for which the funds are awarded in accordance with the approved statement of work and budget, the regulations, the terms and conditions of the OAO award agreement, the applicable Federal cost principles, and the Department's assistance regulations (e.g., 7 CFR parts 3015, 3016, and 3019).

(b) *Award agreement.* The award agreement and accompanying terms and conditions will provide pertinent

instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to which OAO has awarded a grant or cooperative agreement.

(2) Title of project.

(3) Name(s) of Project Director(s).

(4) Identifying award number assigned by OAO.

(5) Project period.

(6) Total amount of OAO financial assistance approved.

(7) Legal authority under which the grant or cooperative agreement is awarded.

(8) Appropriate CFDA number.

(9) Approved budget plan (that may be referenced).

(10) Terms and Conditions

Subpart E—Post-Award and Closeout

§ 2500.041 Payment.

(a) *General.* All payments will be made in advance unless a deviation is accepted or as specified in paragraph (b) of this section. All payments to the awardee shall be made via the approved electronic funds transfer (EFT) method. Awardees are expected to request funds via the federally-approved electronic payment system for reimbursement in a timely manner. Exact payment method will be described in the terms and conditions of the award agreement.

(b) *Reimbursement method.* OAO shall use the reimbursement method if it determines that advance payment is not feasible or that the awardee does not maintain or demonstrate the willingness to maintain written procedures that minimize the elapse of time between the transfer of funds and disbursement by the awardee, and financial management systems that meet the standards for fund control and accountability.

§ 2500.042 Cost sharing and matching.

(a) *General.* Awardees may be required to match the Federal funds received under an OAO award. The required percentage of matching, type of matching (e.g., cash and/or in-kind contributions), sources of match (e.g., non-Federal), and whether OAO has any authority to waive the match will be specified in the subpart applicable to the specific Federal assistance program, as well as in the RFP.

(b) *Indirect costs as in-kind matching contributions.* Indirect costs may be claimed under the Federal portion of the award budget. However, unless explicitly authorized in the RFP, indirect costs may not be claimed on both the Federal and nonfederal portion of the award budget.

§ 2500.043 Program income.

(a) *General.* OAO shall apply the standards set forth in this subpart in requiring awardee organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Addition method.* Unless otherwise provided in the authorizing statute, in accordance with the terms and conditions of the award, program income earned during the project period shall be retained by the awardee and shall be added to funds committed to the project by OAO and the awardee and used to further eligible project or program objectives. Any specific program deviations will be identified in the individual subparts.

(c) *Award terms and conditions.* Unless the program regulations identified in the individual subpart provide otherwise, awardees shall follow the terms and conditions of the OAO award. Such terms and conditions will be made a part of the OAO award agreement.

§ 2500.044 Indirect costs.

Indirect cost rates for grants and cooperative agreements shall be determined in accordance with the applicable assistance regulations and cost principles, unless superseded by another authority.

§ 2500.045 Technical reporting.

All projects supported with Federal funds under this part must be documented according to the terms and conditions of the OAO award agreement.

§ 2500.046 Financial reporting.

(a) *SF–425, Federal Financial Report.* As stated in the award terms and conditions of the OAO award agreement, a

final SF–425, Federal Financial Report, is due 90 days after the expiration of the award and should be submitted to OAO electronically. The awardee shall report program outlays and program income on the same accounting basis (*i.e.*, cash or accrual) that it uses in its normal accounting system. When submitting a final SF–425, Federal Financial Report, the total matching contribution, if required, should be shown in the report. The final SF–425 must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the report is due, it shall request an extension of time for submitting the report pursuant to paragraph (c) of this section; submit a provisional report (showing the unliquidated obligations) by the due date; and submit a final report when all obligations have been liquidated, but no later than the approved extension date. SF–425, Federal Financial Reports, must be submitted by all awardees, including Federal agencies and national laboratories.

(b) *Awards with required matching.* For awards requiring a matching contribution, an annual SF–425, Federal Financial Report, is required and this requirement will be indicated in the terms and conditions of the OAO award agreement, in which case it must be submitted no later than 45 days following the end of the budget or reporting period.

(c) *After the due date.* Requests are considered late when they are submitted after the 90-day period following the award expiration date. Requests to submit a late final SF–425, Federal Financial Report, will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date, a justification for the late submission, and a justification for the extenuating circumstances. If an awardee needs to request additional funds, procedures in paragraph (d) of this section apply.

(d) *Overdue SF–425, Federal Financial Reports.* Awardees with overdue SF–425, Federal Financial Reports, or other required financial reports (as identified in the award terms and conditions), will have their applicable balances in the approved federal electronic funds transfer system restricted or placed on ''manual review,'' which restricts the awardee's ability to draw funds, thus requiring prior approval from OAO. If any remaining available balances are needed by the awardee (beyond the 90-day period following the award expiration date) and the awardee has not requested an extension to submit a final SF–425, Financial Status Report, the awardee will be required to contact OAO to request permission to draw any additional funds and will be required to provide justification and documentation to support the draw. Awardees also will need to comply with procedures in paragraph (c) of this section. OAO will approve these draw requests only in extenuating circumstances.

(e) *Additional reporting requirements.* OAO may require forecasts of Federal cash requirements in the ''Remarks'' section of the report; and when practical and deemed necessary, OAO may require awardees to report in the ''Remarks'' section the amount of cash advances received in excess of three days (*i.e.*, short narrative with explanations of actions taken to reduce the excess balances). When OAO needs additional information or more frequent reports, a special provision will be added to the award terms and conditions and identified in the OAO award agreement. Should OAO determine that an awardee's accounting system is inadequate, additional pertinent information to further monitor awards may be requested from the awardee until such time as the system is brought up to standard, as determined by OAO. This additional reporting requirement will be required via a special provision to the award terms and conditions of the OAO award agreement.

§ 2500.047 Project meetings.

In addition to reviewing and monitoring the status of progress and final technical reports and financial reports, OAO Project Officers may use regular and periodic conference calls to monitor the awardee's performance as well as conferences, workshops, meetings, and symposia to not only monitor the awards, but to facilitate communication and the sharing of project results.

These opportunities also serve to eliminate or minimize OAO funding of unneeded duplicative project activities. Required attendance at these conference calls, conferences, workshops, meetings, and symposia will be identified in the RFP or award document.

§ 2500.048 Review of disallowed costs.

(a) *Notice.* If the OAO Project Officer (PO) determines that there is a basis for disallowing a cost, OAO shall provide the awardee written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(b) *Awardee response.* Within 60 days of receiving written notice of the PO's intent to disallow the cost, the awardee may respond with written evidence and arguments to show the cost is allowable, or that, for equitable, practical, or other reasons, shall not recover all or part of the amount, or that the recovery should be made in installments. An extension of time will be granted only in extenuating circumstances.

(c) *Decision.* Within 60 days of receiving the awardee's written response to the notice of intent to disallow the cost, the PO shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal that has been provided under this section. If the awardee does not respond to the written notice under paragraph (a) of this section within the time frame specified in paragraph (b) of this section, the PO shall issue a management decision on the basis of the information available to it. The management decision shall constitute the final action with respect to whether the cost is allowed or disallowed. In the case of a questioned cost identified in the context of an audit subject to 7 CFR part 3052, the management decision will constitute the management decision under 7 CFR 3052.405(a).

(d) *Demand for payment.* If the management decision under paragraph (c) of this section constitutes a finding that the cost is disallowed and, therefore, that a debt is owed to the Government, the PO shall provide the required demand and notice pursuant to 7 CFR 3.11.

(e) *Review process.* Within 60 days of receiving the demand and notice referred to in paragraph (d) of this section, the awardee may submit a written request to the OAO Director for a review of the final management decision that the debt exists and the amount of the debt. Within 60 days of receiving the written request for a review, the OAO Director will issue a final decision regarding the debt. A review by the OAO Director or designee constitutes an administrative review for debts under 7 CFR part 3, subpart F.

§ 2500.049 Prior approvals.

(a) *Subcontracts.* No more than 50 percent of the award may be subcontracted to other parties without prior written approval of the ADO. Any subcontract awarded to a Federal agency under an award must have prior written approval of the ADO. To request approval, a justification for the proposed subcontractual arrangements, a performance statement, and a detailed budget for the subcontract must be submitted to the ADO.

(b) *No-cost extensions of time*—(1) *General.* Awardees may initiate a one-time no-cost extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply: the terms and conditions of the award prohibit the extension; the extension requires additional Federal funds; and the extension involves any change in the approved objectives or scope of the project. For the first no-cost extension, the awardee must notify OAO in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award.

(2) *Additional requests for no-cost extensions of time before expiration date.* When more than one no-cost extension of time or an extension of more than 12 months is required, the extension(s) must be approved in writing by the PO. The awardee must submit a written request, which must be received no later than 10 days prior to the expiration date of the award, to the PO. The request must contain, at a minimum, the following information: The length of

the additional time required to complete the project objectives and a justification for the extension; a summary of the progress to date; an estimate of the funds expected to remain unobligated on the scheduled expiration date; a projected timetable to complete the portion(s) of the project for which the extension is being requested; and signature of the AOR and the PD.

(3) *Requests for no-cost extensions of time after expiration date.* OAO may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be approved only for extenuating circumstances, as determined by OAO. The awardee's AOR must submit the requirements identified under paragraph (b)(2) of this section as well as an ''extenuating circumstance'' justification and a description of the actions taken by the awardee to minimize these requests in the future.

(4) *Other requirements.* No-cost extensions of time may not be exercised merely for the purpose of using unobligated balances.

§ 2500.050 Suspension, termination, and withholding of support.

(a) *General.* If an awardee has failed to materially comply with the terms and conditions of the award, OAO may take certain enforcement actions, including, but not limited to, suspending the award pending corrective action and terminating the award for cause.

(b) *Suspension.* OAO generally will suspend (rather than immediately terminate) an award to allow the awardee an opportunity to take appropriate corrective action before OAO makes a termination decision. OAO may decide to terminate the award if the awardee does not take appropriate corrective action during the period of suspension. OAO may terminate, without first suspending, the award if the deficiency is so serious as to warrant immediate termination. Termination for cause may be appealed under the terms and conditions identified in the OAO award agreement.

(c) *Termination.* An award also may be terminated, partially or wholly, by the awardee or by OAO with the consent of the awardee. If the awardee decides to terminate a portion of the award, OAO may determine that the remaining portion of the award will not accomplish the purposes for which the award was originally made. In any such case, OAO will advise the awardee of the possibility of termination of the entire award and allow the awardee to withdraw its termination request. If the awardee does not withdraw its request for partial termination, OAO may initiate procedures to terminate the entire award for cause.

§ 2500.051 Debt collection.

The collection of debts owed to OAO by awardees, including those resulting from cost disallowances, recovery of funds, unobligated balances, or other circumstances, are subject to the Department's debt collection procedures as set forth in 7 CFR part 3, and, with respect to cost disallowances, § 2500.048.

§ 2500.052 Award appeals procedures.

(a) *General.* OAO permits awardees to appeal certain adverse post-award administrative decisions made by OAO. Such adverse decisions include: Termination, in whole or in part, and determination that an award is void. An award may be terminated for failure of the awardee to carry out its approved project in accordance with the applicable law and the terms and conditions of award; or for failure of the awardee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the award. Additionally, an award may be determined to be void if, for example, it was not authorized by statute or regulation or because it was fraudulently obtained. Appeals of determinations regarding the allowability of costs are subject to the procedures in § 2500.048.

(b) *Appeal Procedures.* The formal notification of an adverse determination will contain a statement of the awardee's appeal rights. To appeal an adverse determination, the awardee must submit a request for review to the OAO official specified in the notification, detailing the nature of the disagreement with the adverse determination and providing supporting documents in accordance with the procedures contained in the notification. The awardee's request to OAO for review must be received within 60 days after receipt of

the written notification of the adverse determination; however, an extension may be granted if the awardee can show good cause why an extension is warranted. OAO will carefully consider the merits of all requests for appeals and further reviews. However, at the conclusion of the OAO appeal review process, the OAO decision rendered on the appeal is considered final. The awardee will be notified in writing by OAO of final appeal review determinations.

§ 2500.053 Expiring appropriations.

(a) *OAO awards supported with office appropriations.* Most OAO awards are supported with annual appropriations. On September 30th of the 5th fiscal year after the period of availability for obligation ends, the funds for these appropriations accounts expire per 31 U.S.C. 1552 and the account is closed, unless otherwise specified by law. Funds that have not been drawn through the approved electronic funds transfer system, by the awardee or disbursed through any other system or method by August 31st of that fiscal year are subject to be returned to the U.S. Department of the Treasury after that date. The August 31st requirement also applies to awards with a 90-day period concluding on a date after August 31st of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the OAO award terms and conditions.

(b) *OAO awards supported with funds from other Federal agencies (reimbursable funds).* OAO may require that all draws and reimbursements for awards supported with reimbursable funds (from other Federal agencies) be completed prior to June 30th of the 5th fiscal year after the period of availability for obligation ends to allow for the proper billing, collection, and close-out of the associated interagency agreement before the appropriations expire. The June 30th requirement also applies to awards with a 90-day period concluding on a date after June 30th of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the terms and conditions of the OAO award agreement.

§ 2500.055 Audit.

Awardees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which Federal financial assistance funds are received and years in which work is accomplished using these funds.

§ 2500.056 Civil rights.

Awardees must comply with the civil rights requirements of 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended. In accordance, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

Subpart F—Outreach and Assistance For Socially Disadvantaged Farmers and Ranchers Program

§ 2500.101 Applicability of regulations.

The regulations in this subpart apply to the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers (OASDFR) Program authorized under section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 2279), as amended. Unless otherwise specified in this subpart, the requirements of 7 CFR part 2500 subparts A through E will apply in addition to the requirements discussed in this subpart.

§ 2500.102 Purpose.

(a) The purpose of the OASDFR Program is to make competitive awards to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers in:

(1) Owning and operating farms, ranches and non-industrial forest lands; and

(2) In participating equitably in the full range of agricultural programs offered by the Department.

(b) The OASDFR Program awards shall be used exclusively to:

(1) Enhance coordination of the outreach, technical assistance, and education efforts authorized under agriculture programs;

(2) Assist in reaching current and prospective socially disadvantaged farmers, ranchers or forest landowners in a linguistically appropriate manner; and

(3) Improve the participation of those farmers and ranchers in agricultural programs.

§ 2500.103 Definitions.

The definitions provided in subpart A apply to this subpart. In addition, the definitions that apply specifically to the OASDFR Program under this subpart include:

Agriculture programs means those programs administered within the Department, by agencies including but not limited to: Forest Service (FS), Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), Rural Development (RD), Rural Business Cooperative Service (RBCS), National Institute of Food and Agriculture (NIFA), and Agricultural Marketing Service (AMS), and other such programs as determined by the Department on a case-by-case basis either at the OAO Director's initiative or in response to a written request with supporting explanation for inclusion of a program. (For further details on specific programs included under this subpart see 7 U.S.C. 2279(e)(3) or the RFP).

Alaska Native means a citizen of the United States who is a person of one-fourth or more Alaska Indian, Eskimo, or Aleut blood, or combination thereof. (For further specification, see 43 U.S.C 1602(b) or the RFP).

Alaska Native cooperative colleges means an eligible post-secondary educational institution that has an enrollment of undergraduate full-time equivalent students that is at least 20 percent Alaska Native students at the time of submission of a proposal.

Assistance means providing educational and technical assistance to socially disadvantaged farmers, ranchers, and forest landowners in (1) owning and operating farms, ranches, and non-industrial forest lands; and (2) in participating equitably in the full range of agricultural programs offered by the Department through workshops, site visits and other means of contact in a linguistically appropriate manner.

Farmer, rancher, or forest landowner means the person who primarily cultivates, operates, or manages a farm, ranch, or forest for profit, either as owner or tenant. A farm includes livestock, dairy, poultry, fish, fruit, and truck farms. It also includes plantations, ranches, ranges, and orchards.

Hispanic-serving institution means an eligible institution of higher education that has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of submission of a proposal (see 20 U.S.C. 1101a(5)).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (For further specification, see 25 U.S.C. 450b).

Indian tribal community college means a post-secondary education institution which is formally controlled, or has been officially sanctioned, or chartered, by the governing body of an Indian tribe or tribes. (See 25 U.S.C. 1801(a)(4)).

Institution of higher education means an educational institution in any State that is a public or other nonprofit institution that is legally authorized and accredited by a nationally recognized accrediting agency or association to provide a program of education beyond secondary education for which the institution awards a bachelor's degree. (For further specification, see 20 U.S.C. 1001(a)).

Outreach means the use of formal and informal educational materials and activities in a linguistically appropriate

manner that serve to encourage and assist socially disadvantaged farmers and ranchers in:

(1) Owning and operating farms and ranches; and in

(2) Participating equitably in the full range of agricultural programs offered by the Department.

Socially disadvantaged farmer, rancher or forest landowner means a farmer, rancher, or forest landowner who is a member of a socially disadvantaged group. (See 7 U.S.C. 2279(e)(2)).

Socially disadvantaged group means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. (See 7 U.S.C. 2279(e)(1)).

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and federally recognized Indian tribes.

Supplemental funding means funding to an existing awardee in addition to the amount of the original award contained in the grant or cooperative agreement. Such additional funding is intended to continue or expand work that is within the scope of the original agreement and statement of work.

Tribal organization means the recognized governing body of any Indian tribe. A tribal organization is any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community. In any case where an award is made to an organization to perform services benefiting more than one Indian tribe, the approval of each participating Indian tribe shall be a prerequisite to the making of such an award. (See 25 U.S.C. 1603(25).

§ 2500.104 Eligibility requirements.

Proposals may be submitted by any of the following:

(a) Any community-based organization, network, or coalition of community-based organizations that:

(1) Has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers, ranchers, and forest landowners;

(2) Has provided to the Secretary documentary evidence of work with, and on behalf of socially disadvantaged farmers, ranchers, or forest landowners during the three-year period preceding the submission of a proposal for assistance under this program; and

(3) Does not engage in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) An 1890 institution or 1994 institution (as defined in 7 U.S.C. 7601), including West Virginia State University.

(c) An Indian tribal community college or an Alaska Native cooperative college.

(d) A Hispanic-serving institution (as defined in 7 U.S.C. 3103).

(e) Any other institution of higher education (as defined in 20 U.S.C. 1001) that has demonstrated experience in providing agriculture education or other agriculturally related services to socially disadvantaged farmers, ranchers, and forest landowners in a region.

(f) An Indian tribe (as defined in 25 U.S.C. 450b) or a national tribal organization that has demonstrated experience in providing agriculture education or other agriculturally-related services to socially disadvantaged farmers, ranchers, and forest landowners in a region.

(g) Other organizations or institutions that received funding under this program before January 1, 1996, but only with respect to projects that the Secretary considers are similar to projects previously carried out by the entity under this program.

§ 2500.105 Project types and priorities.

For each RFP, OAO may develop and include the appropriate project types and focus areas based on the critical needs of the socially disadvantaged farmer and rancher community. For standard OASDFR projects, competitive grants or cooperative agreements will be awarded to support programs and services, as appropriate, to encourage and assist socially disadvantaged

farmers and ranchers in the following focus areas:

(a) Owning and operating farms and ranches;

(b) Participating equitably in the full range of agricultural programs offered by the Department; and

(c) Other areas as specified by the Secretary in the RFP.

§ 2500.106 Funding restrictions.

Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

§ 2500.107 Matching.

Matching funds are not required as a condition of receiving awards under this subpart.

§ 2500.108 Term of award.

The award term will be defined in the OAO award agreement, and can be later amended upon approval of OAO.

§ 2500.109 Program requirements.

Grants and cooperative agreements under this subpart shall address the priorities in the Department that involve providing outreach and technical assistance to socially disadvantaged farmers, ranchers, and forest landowners to own and operate farms and participate equitably in agricultural programs; and other priorities as determined by the Secretary.

PART 2502—AGRICULTURAL CAREER AND EMPLOYMENT (ACE) GRANTS PROGRAM

Subpart A—General Information

Sec.

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Subpart C—Grant Applications and Administration

2502.8 Pre-award, award, and post-award procedures and administration of grants.

AUTHORITY: 7 U.S.C. 2008q–1

SOURCE: 76 FR 69117, Nov. 8, 2011, unless otherwise noted.

Subpart A—General Information

§ 2502.1 Applicability of regulations.

(a) This part contains program-specific definitions for the ACE Grants Program.

(b) Subpart B establishes the criteria to be used in determining eligibility for an ACE grant award and the requirements for the delivery of program benefits and services, including who is considered eligible to receive such benefits and services and what the responsibilities are of ACE grantees.

(c) Subpart C establishes that, unless otherwise provided herein, the procedures for applying for ACE grants, the processes to be followed by OAO in evaluating grant proposals and awarding program funds, and the procedures for post-award administration of ACE grants are those set forth in a rule proposed ON DATE to codify provisions at 7 CFR part 2500, subparts A, B, C, D, and E.

§ 2502.2 Definitions.

As used in this part (unless otherwise indicated):

Agency means the Office of Advocacy and Outreach (OAO), an agency of the United States Department of Agriculture (USDA) or a successor agency.

Agricultural Employer means any person or entity which employs, as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802, individuals engaged in agricultural employment and may include farmers, ranchers, dairy operators, agricultural cooperatives, and farm labor contractors.

Agricultural Employment means any service or activity as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802, including any activity defined as ''agriculture'' in Section 3(f) or the Fair Labor Standards Act of 1938, 29 U.S.C.

203(f), any activity defined as ''agricultural labor'' in 26 U.S.C. 3121(g) (the Internal Revenue Code); as well as the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. Authorized Departmental Officer (ADO) means the individual, acting within the scope of delegated authority, who is responsible for executing and administering awards on behalf of the U.S. Department of Agriculture.

Community-based organization means a non-governmental organization with a well-defined constituency that includes all or part of a particular community.

Consortium means a group formed by entities with similar goals and objectives for the purpose of pooling resources to undertake a project that would otherwise be reasonably beyond the capabilities of any one member.

Eligible entity, as described in section 379C(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008q(a)), means a non-profit organization, or a consortium of nonprofit organizations, agribusinesses, State and local governments, agricultural labor organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farm workers.

Farmworker means an individual hired to perform agricultural employment, including migrant, seasonal, and hired family farm workers. The term farmworker includes individuals who are not currently employed as a farmworker but who are actively seeking work as such. The term does not include agricultural employers or individuals who are self-employed.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Legally present in the United States shall have the same meaning as the term ''lawfully present'' in the United States as defined at 8 CFR 103.12(a) (addressing eligibility for Title II Social Security benefits under Pub. L. 104–193).

Notice of Funding Availability (NOFA) means a notice published in the FEDERAL REGISTER announcing the availability of money for the grants program which lists the application deadlines, eligibility requirements and locations where interested parties can get help in applying.

Office of Advocacy and Outreach (OAO) means the Office of Advocacy and Outreach, an office within the USDA's Departmental Management.

Request for Proposal (RFP) refers to a grant competition and is used interchangeably with the phrase grant application notice and solicitation for grant applications (SFA).

Retaining an agricultural job means continuing agricultural employment, including upgraded employment.

Returning from an agricultural job means returning to a home area from a position in agricultural employment.

Secretary means the Secretary of Agriculture and any other officer or employee of the United States Department of Agriculture to whom the authority involved is delegated.

Securing an agricultural job means obtaining agricultural employment.

State means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

United States worker (U.S. worker) shall have the same meaning as the term U.S. worker defined by the Department of Labor at 20 CFR 655.4.

Upgrading an agricultural job means advancement to a position in agricultural employment which offers more hours of work and/or better terms and conditions of employment and/or an increase in wages.

§ 2502.3 Deviations.

Any request by the applicant or grantee for a waiver or deviation from any provision of this part shall be submitted to the ADO identified in the agency specific requirements. OAO shall review the request and notify the applicant/grantee whether the request to deviate has been approved within 30 calendar days from the date of receipt of the deviation request. If the deviation request is still under consideration at the end of 30 calendar days, OAO shall inform the applicant/grantee in writing of the date when the applicant/grantee may expect the decision.

Subpart B—Program Eligibility, Services and Delivery

§ 2502.4 Program eligibility.

(a) Entities eligible to apply for and receive a grant under this part include:

(1) A non-profit organization;

(2) A consortium of nonprofit organizations; or

(3) A consortium which includes a non-profit organization(s) and one or more of the following: agribusinesses, State and local governments, agricultural labor organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farm workers.

(b) Additional information about eligible entities may be included in the RFP. In addition, the RFP will specify the criteria by which an entity's capacity to train farm workers will be evaluated, but at a minimum, the entity shall be required to demonstrate that it has:

(1) An understanding of the issues facing hired farmworkers and conditions under which they work;

(2) Familiarity with the agricultural industry in the geographic area to be served, including agricultural labor needs and existing services for farmworkers; and

(3) The capacity to effectively administer a program of services and benefits authorized by the ACE program.

(c) An applicant will be required to submit information to OAO, as specified in the RFP and/or FOA as part of the grant application.

§ 2502.5 Program benefits and services.

(a) The ACE grants program will be centrally administered by the USDA in a manner consistent with these regulations, as well as the pertinent requirements of 7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3018, 7 CFR part 3019 and 7 CFR 3052.

(b) The Office of Advocacy and Outreach (OAO) has been designated as the organizational unit responsible for administering the ACE program, including, among other things, determining the number and amount of grants to be awarded, the purposes for the grants to be awarded, as well as the criteria for the evaluation and award of grants.

(c) Services and benefits provided under the ACE grants program are limited to those which will assist eligible farmworkers in securing, retaining, upgrading or returning from agricultural jobs.

(d) Such services will include the following:

(1) Agricultural labor skills development

(2) Provision of agricultural labor market information:

(3) Transportation:

(4) Short-term housing while in transit to an agricultural worksite;

(5) Workplace literacy and assistance with English as a second language;

(6) Health and safety instruction, including ways of safeguarding the food supply of the United States;

(7) Such other services as the Secretary deems appropriate.

(e) Grant funds shall not be used to deliver or replace any services or benefits which an agricultural employer, association, contractor, or any other entity is legally obliged to provide.

§ 2502.6 Recipients of program benefits or services.

(a) Those eligible to receive program services or benefits under the ACE program are farmworkers who meet the definition of ''United States Workers'' as set forth in § 2502.2 of this part.

(b) Grantees shall be responsible for verifying the employment of farmworkers who are actively employed and are seeking to participate in program services or benefits. Unemployed farmworkers seeking to participate shall be required to certify to grantees that they are eligible for program services and benefits as provided herein. Additional eligibility requirements may be included in the RFP.

§ 2502.7 Responsibilities of grantees.

Each grantee is responsible for providing services and/or benefits authorized by this program in accord with a service delivery strategy described in its approved grant plan. The services must reflect the needs of the relevant farmworker population in the area to be served and be consistent with the

goals of assisting farmworkers in securing, retaining, upgrading, or returning from agricultural jobs. The necessary components of a service delivery strategy and grant plan will be fully set forth in an RFP but the plan shall include, at a minimum, the following:

(a) The employment and education needs of the farmworker population to be served;

(b) The manner in which the proposed services to be delivered will assist agricultural employers and farmworkers in securing, retaining, upgrading or returning from agricultural jobs;

(c) The manner in which the proposed services will be coordinated with other available services;

(d) The number of participants the grantee expects to serve for each service provided, the results expected and the anticipated expenditures for each category of service.

Subpart C—Grant Applications and Administration

§ 2502.8 Pre-award, award, and post-award procedures and administration of grants.

(a) Unless otherwise provided in this rule, the requirements governing pre-award solicitation and submission of proposals and/or applications, the review and evaluation of such, the award of grant funds, and post-award and close-out procedures are those set forth at 7 CFR part 2500, subparts A, B, C, D, and E.

(b) For purposes of the ACE Grants Program, the provisions of Subpart E, at 7 CFR 2500.49, ''Prior Approvals,'' shall not apply. In lieu of that provision, the following requirements shall apply: Awardees may not subcontract more than 20 percent of the award to other parties without prior written approval of the ADO. To request approval, a justification for the proposed subcontract, a performance statement, and a detailed budget for the subcontract must be submitted in writing to the ADO.

PARTS 2503–2599 [RESERVED]

CHAPTER XXVI—OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF AGRICULTURE

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PARTS 2600–2609 [RESERVED]

PART 2610—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

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2610.5 Delegations of authority.

AUTHORITY: 5 U.S.C. 301, 552; Inspector General Act of 1978, as amended, 5 U.S.C. app.; 7 U.S.C. 2270.

SOURCE: 81 FR 93574, Dec. 21, 2016, unless otherwise noted.

§ 2610.1 General statement.

(a) The Inspector General Act of 1978, as amended, 5 U.S.C. app. (IG Act), established an Office of Inspector General (OIG) in the U.S. Department of Agriculture (USDA) and transferred to it the functions, powers, and duties of offices referred to in the Department as the ''Office of Investigation'' and the ''Office of Audit,'' previously assigned to the OIG created by the Secretary's Memoranda 1915 and 1727, dated March 23, 1977, and October 5, 1977, respectively. Under the IG Act, OIG was established as an independent and objective unit, headed by the Inspector General (IG), who is appointed by the President and reports to and is under the general supervision of the Secretary.

(b) OIG conducts and supervises audits and investigations relating to Department programs and operations; provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations; and provides a means for keeping the Secretary of Agriculture and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(c) The IG has specific duties, responsibilities, and authorities pursuant to the IG Act, including to:

(1) Provide policy direction for, and conduct, supervise, and coordinate audits and investigations relating to USDA programs and operations.

(2) Review existing and proposed legislation and regulations related to USDA programs and operations and make recommendations to the Secretary and the Congress on the impact such laws or regulations will have on the economy and efficiency of program administration or in the prevention and detection of fraud and abuse in USDA programs and operations.

(3) Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by USDA for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse, in USDA programs and operations.

(4) Recommend policies for, and conduct, supervise, or coordinate relationships between, USDA and other Federal, State, and local governmental agencies and nongovernmental entities regarding the promotion of economy and efficiency, prevention of fraud and abuse, or the identification and prosecution of participants in fraud and abuse.

(5) Keep the Secretary and the Congress fully and currently informed about problems, abuses, and deficiencies, and the necessity for and progress of corrective actions in the administration of USDA programs and operations.

(6) Report expeditiously to the Attorney General any matter where there are reasonable grounds to believe there has been a violation of Federal criminal law.

(7) Have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department which relate to programs and operations for which the IG has responsibility.

(8) Make such investigations and reports relating to the administration of USDA programs and operations as are, in the judgment of the IG, necessary or desirable.

(9) Request such information or assistance as may be necessary for carrying out the duties and responsibilities of the IG Act from any Federal,

State, or local governmental agency or unit thereof.

(10) Issue subpoenas for the production of information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of functions assigned by the IG Act, except that procedures other than subpoenas shall be used to obtain documents and information from Federal agencies.

(11) Whenever necessary in the performance of functions assigned by the IG Act, administer to or take from any person an oath, affirmation, or affidavit, which shall have the same force and effect as if administered or taken by or before an officer having a seal.

(12) Have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under the IG Act.

(13) Select, appoint, and employ necessary officers and employees in OIG in accordance with laws and regulations governing the civil service, including an Assistant Inspector General for Audit (AIG/A) and an Assistant Inspector General for Investigations (AIG/I).

(14) Obtain services as authorized by 5 U.S.C. 3109.

(15) Enter into contracts and other arrangements for audits, inspections, studies, analyses, and other services with public agencies and private persons, and make such payments as may be necessary to carry out the provisions of the IG Act, to the extent and in such amounts as may be provided in advance by an appropriation act.

(16) Receive and investigate complaints or information from any Department employee concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety.

(17) Designate a Whistleblower Protection Ombudsman, who will educate Department employees about prohibitions on retaliation for protected disclosures; and who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures.

(d) Pursuant to § 2.33 of this title, the Secretary has made the following delegations of authority to the IG:

(1) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(2) At the request of the Secretary's security office, determine the availability of OIG law enforcement personnel to assist the security office in providing for the personal security of the Secretary and Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the Government Accountability Office.

(e) The IG, under section 1337 of the Agriculture and Food Act of 1981, Public Law 97–98, 7 U.S.C. 2270, and pursuant to rules issued by the Secretary in part 1a of this title, has the authority to:

(1) Designate OIG employees who investigate alleged or suspected felony criminal violations of statutes administered by the Secretary of Agriculture or any agency of USDA, when engaged in the performance of official duties to:

(i) Make an arrest without a warrant for any such criminal felony violation if such violation is committed, or if the employee has probable cause to believe that such violation is being committed, in his/her presence;

(ii) Execute and serve a warrant for an arrest, for the search of premises, or the seizure of evidence when issued under authority of the United States upon probable cause to believe that such a violation has been committed; and

(iii) Carry a firearm.

(2) Issue directives and take the actions prescribed by the Secretary's rules.

§ 2610.2 Headquarters organization.

(a) OIG has a headquarters office in Washington, DC, and regional offices throughout the United States. The headquarters office consists of the immediate office of the IG, which includes three component offices, and four operational units.

(b) *Immediate Office Components.* (1) The Director of the Office of Compliance and Integrity (OCI) performs independent quality assurance and internal control reviews of OIG operations. OCI also investigates allegations of criminal and/or serious administrative misconduct by OIG employees.

(2) Section 3(g) of the IG Act mandates that each IG shall obtain legal advice from a counsel either reporting directly to the IG or to another IG. Within USDA–OIG, such legal advice is provided by the Counsel to the Inspector General. The Office of Counsel (OC) provides legal advice and representation on issues arising during the course of audit, investigative, and Office of Data Sciences (ODS) activities or on internal administrative and management issues. OC also manages OIG's congressional, media relations, ethics, Freedom of Information Act, and Privacy Act programs; and reviews proposed legislation, regulations, and procedures.

(3) The Director of the Office of Diversity and Conflict Resolution advises OIG leadership on applying the principles of civil rights, equal employment opportunity, dispute resolution, diversity, and inclusion, on matters affecting the OIG workforce, program activities, and development of policy. This office also guides all OIG personnel through the use of the Federal sector employment discrimination complaints and dispute resolution processes, as needed.

(c) *Operational units.* (1) The AIG/A carries out the OIG's domestic and foreign audit operations through a headquarters office and three regional offices shown in § 2610.3(a). The staff provides for audit review of information technology (IT) security throughout USDA. Auditing officials conduct operational liaison on audit matters; schedule and conduct audits; release audit reports to management; monitor agency action to assure that audit reports have been properly acted upon through review of Department management follow up systems; monitor the quality of OIG audit reports; and coordinate activities with the AIG/I. The staff also provides an integrated approach to fraud prevention and detection and management improvement in USDA programs and operations; coordinates analyses and reports on vulnerability assessments; and recommends policies and provides technical assistance for audit operations. The Auditing headquarters office consists of the immediate office of the AIG/A and five staff divisions.

(2) The Assistant Inspector General for Data Sciences carries out OIG's data sciences operations through a headquarters office. OIG officials within ODS perform predictive data analysis, statistical sampling, modeling, computer matching, data mining, and data warehousing of USDA programs and operations in support of OIG audits, investigations, and other activities.

(3) The AIG/I carries out OIG's domestic and foreign investigative operations through a headquarters office and the five regional offices shown in § 2610.3(b). Investigations officials conduct operational and intelligence liaison on investigative matters with the Federal Bureau of Investigation, Secret Service, Internal Revenue Service, Interpol, and other Federal, State, and local law enforcement organizations; determine the need for investigative action; conduct investigations; prepare factual reports of investigative findings; refer reports for appropriate administrative or legal action; follow up on agency actions to assure that OIG investigative reports have been properly acted upon; monitor the quality of investigative reports; and coordinate activities with the AIG/A. The staff also conducts special investigations of major programs, operations, and high level officials; can assist the Secretary's security office in providing for the protection of the Secretary and Deputy Secretary; and receives and processes employee complaints concerning possible violations of laws, rules, regulations or mismanagement. The OIG Whistleblower Protection Ombudsman described in § 2610.1(c)(17) is located within the Office of Investigations.

(4) The Assistant Inspector General for Management (AIG/M) manages formulation of OIG policies and procedures; develops, administers and directs comprehensive programs for the

management, budget, financial, personnel, systems improvement, and information activities and operations of OIG; and is responsible for OIG IT and information management systems. The staff maintains OIG's directives system, and Departmental Regulations and FEDERAL REGISTER issuances. The immediate office of the AIG/M and four divisions carry out these functions.

§ 2610.3 Regional organization.

(a) Each regional Audit Director is responsible to the IG and to the AIG/A for supervising the performance of all OIG auditing activities relating to the Department's domestic and foreign programs and operations within an assigned geographic area. The addresses and telephone numbers of the three Audit regional offices and the territories served are as follows:

AUDIT REGION, ADDRESS, TELEPHONE NUMBER, AND TERRITORY

Eastern Region, 5601 Sunnyside Avenue, Suite 2–2230 (Mail Stop 5300), Beltsville, Maryland 20705–5300, (301) 504–2100; Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin.

Midwestern Region, 8930 Ward Parkway, Suite 3016, Kansas City, Missouri 64114, (816) 926–7667; Colorado, Iowa, Kansas, Missouri, Montana, Minnesota, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Western Region, 1333 Broadway, Suite 400, Oakland, California 94612, (510) 208–6800; Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Territory of Guam, Trust Territories of the Pacific, and Washington.

(b) Each regional Special Agent-in-Charge (SAC) is responsible to the IG and to the AIG/I for supervising the performance of all OIG investigative activities relating to the Department's domestic and foreign programs and operations within an assigned geographic area. The addresses and telephone numbers of the five Investigations regional offices and the territories served are as follows:

INVESTIGATIONS REGION, ADDRESS, TELEPHONE NUMBER, AND TERRITORY

Midwest Region, 111 N. Canal Street, Suite 325, Chicago, Illinois 60606–7296, (312) 353–1358; Illinois, Indiana, Iowa, Michigan, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin.

Northeast Region, 26 Federal Plaza, Room 1409, New York, New York 10278–0004, (212) 264–8400; Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Southeast Region, 401 W. Peachtree Street NW., Room 2329, Atlanta, Georgia 30308, (404) 730–3274; Alabama, Florida, Georgia, Kentucky, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands.

Southwest Region, 101 South Main, Room 311, Temple, Texas 76501, (254) 743–6535; Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

Western Region, 1333 Broadway, Suite 400, Oakland, California 94612, (510) 208–6860; Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Territory of Guam, Trust Territories of the Pacific, Utah, Washington, and Wyoming.

§ 2610.4 Requests for service.

(a) Heads of USDA agencies will direct requests for audit or investigative service to the AIG/A, AIG/I, Audit Director, SAC, or to other OIG audit or investigation officials responsible for providing service of the type desired in the geographical area where service is desired.

(b) Agency officials or other employees may, at any time, direct to the personal attention of the IG any audit or investigation matter that warrants such attention.

(c) Other persons (*i.e.*, non-USDA personnel) may address their communications regarding audit or investigative matters to: The Inspector General, U.S. Department of Agriculture, USDA Stop 2301, Washington, DC 20250.

(d) OIG has established several channels for USDA employees and the general public to report fraud, waste, abuse, and mismanagement in USDA programs, or misconduct by a USDA employee. These include a general OIG Hotline, a Bribery/Assault Line, and (for USDA employees) a Whistleblower Ombudsman.

(1) General fraud, waste, and abuse hotline:

(i) File complaint online: *http://www.usda.gov/oig/hotline.htm* (click on ''Submit a Complaint'' button);

(ii) Telephone: (800) 424–9121, (202) 690–1622, or (202) 690–1202 (Telecommunication Device for the Deaf);

(iii) Facsimile: (202) 690–2474; or

(iv) Write a letter to United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026.

(2) Bribery/Assault Line: (202) 720–7257 (24 hours a day).

(3) Whistleblower Protection Ombudsman. USDA employees may contact the Ombudsman via email at: *OIGombudsman@oig.usda.gov*. Additional information about the Ombudsman is available online at *https://www.usda.gov/oig/ombudsman.htm*.

§ 2610.5 Delegations of authority.

(a) AIGs, Directors, and Counsel listed in § 2610.2, and Audit Directors and SACs listed in § 2610.3, are authorized to take whatever actions are necessary to carry out their assigned functions. This authority may be re-delegated.

(b) The IG reserves the right to establish audit and investigation policies, program, procedures, and standards; to allocate appropriated funds; to determine audit and investigative jurisdiction; and to exercise any of the powers or functions or perform any of the duties referenced in the above delegation.

PART 2620—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

2620.1 General statement.
2620.2 Public inspection.
2620.3 Requests.
2620.4 Denials.
2620.5 Appeals.

AUTHORITY: 5 U.S.C. 301, 552; Inspector General Act of 1978, as amended, 5 U.S.C. app. 3.

SOURCE: 81 FR 94230, Dec. 23, 2016, unless otherwise noted.

§ 2620.1 General statement.

This part supplements the regulations of the Secretary of Agriculture implementing the Freedom of Information Act, 5 U.S.C. 552 (FOIA) (subpart A of part 1 of this title, including the appendix), and governs the availability of records of the Office of Inspector General (OIG) to the public upon request.

§ 2620.2 Public inspection.

The FOIA requires that certain materials be made available for public inspection in an electronic format. OIG records are available for public inspection on OIG's public Web site, *https://www.usda.gov/oig/foia.htm*.

§ 2620.3 Requests.

Requests for OIG records shall be submitted to OIG's Office of Counsel and will be processed in accordance with subpart A of part 1 of this title. Specific guidance on how to submit requests (including current contact methods) is available through OIG's Web site, *https://www.usda.gov/oig/foiareq.htm*, and USDA's public FOIA Web site.

§ 2620.4 Denials.

If it is determined that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the Counsel to the Inspector General or the Counsel's designee shall give written notice of denial in accordance with subpart A of part 1 of this title.

§ 2620.5 Appeals.

The denial of a requested record may be appealed in accordance with subpart A of part 1 of this title. Appeals shall be addressed to the Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW., Whitten Building, Suite 441–E, Washington, DC 20250–2308. The Inspector General will give notice of the determination concerning an appeal in accordance with subpart A of part 1 of this title.

PARTS 2621–2699 [RESERVED]

CHAPTER XXVII—OFFICE OF INFORMATION RESOURCES MANAGEMENT, DEPARTMENT OF AGRICULTURE

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2700	Organization and functions	67
2710	Availability of information to the public	67
2711–2799	[Reserved]	

PART 2700—ORGANIZATION AND FUNCTIONS

Sec.
2700.1 General statement.
2700.2 Organization.
2700.3 Functions.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 2.81.

SOURCE: 47 FR 39128, Sept. 7, 1982, unless otherwise noted.

§ 2700.1 General statement.

This part is issued in accordance with 5 U.S.C. 552(a) to provide guidance for the general public as to the organization and functions of the Office of Information Resources Management.

§ 2700.2 Organization.

The Office of Information Resources Management (OIRM) was established on January 12, 1982. Delegations of authority to the Director, OIRM appear at 7 CFR 2.81. The organization is comprised of five headquarters divisions, an administrative staff and three computer centers to serve the Department. The organization is headed by the Director or, in the Director's absence, by the Deputy Director or, in the absence of both, by the Director's desginee.

§ 2700.3 Functions.

(a) *Director*. Provides executive direction for OIRM. Develops and recommends Departmental information resources management principles, policies, and objectives; develops and disseminates Departmental information resources management standards, guidelines, rules, and regulations necessary to implement approved principles, policies, and programs; designs, develops, implements, and revises systems, processes, work methods, and techniques to improve the management of information resources and the operational effectiveness of the Department; provides telecommunications and automated data processing services to the Department's agencies and staff offices.

(b) *Deputy Director*. Assists the Director and, in the absence of the Director, serves as the Acting Director.

(c) *Administrative Management Staff*. Provides support for agency management regarding budget, accounting, personnel, and other administrative matters.

(d) *Planning Division*. Defines, develops, guides, and administers the Department's long-range planning process for information resources.

(e) *Information Management Division*. Develops policy, standards and guidelines for collection, protection, access, use and management of information.

(f) *Review and Evaluation Division*. Reviews and evaluates information resources programs and activities of Department agencies and staff offices for conformance with plans, policies, and standards.

(g) *Agency Technical Services Division*. Advises and consults with and assists Department agencies and staff offices on activities related to the development and implementation of automated information systems.

(h) *Operations and Telecommunications Division*. Coordinates the development and implementation of programs for ADP and telecommunications resource planning within Departmental computer centers and the National Finance Center, and for the acquisition and use of Department-wide telecommunications facilities and services.

(i) *Departmental Computer Centers*. The following centers provide ADP facilities and services to agencies and staff offices of the Department.

(1) Washington Computer Center, 14th and Independence Ave., SW., Rm. S–107–South, Washington, DC 20250.

(2) Fort Collins Computer Center, 3825 E. Mulberry Street (P.O. Box 1206), Fort Collins, CO 80524.

(3) Kansas City Computer Center, 8930 Ward Parkway (P.O. Box 205), Kansas City, MO 64141.

PART 2710—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
2710.1 General statement.
2710.2 Public inspection and copying.
2710.3 Indexes.
2710.4 Initial request for records.
2710.5 Appeals.
APPENDIX A TO PART 2710—LIST OF ADDRESSES

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

SOURCE: 47 FR 39129, Sept. 7, 1982, unless otherwise noted.

§ 2710.1 General statement.

This part is issued in accordance with 7 CFR 1.4 of the U.S. Department of Agriculture regulations governing the availability of records (7 CFR 1.1–1.16 and Appendix A) under the Freedom of Information Act (5 U.S.C. 552). The Department's regulations, as supplemented by the regulations in this part, provide guidance for any person wishing to request records from the Office of Information Resources Management (OIRM).

§ 2710.2 Public inspection and copying.

(a) *Background*. 5 U.S.C. 552(a)(2) required that each agency make certain kinds of records available for public inspection and copying.

(b) *Procedure*. Persons wishing to gain access to OIRM records should contact the Information Access & Disclosure Officer by writing to the address shown in 2710.4(b)(2).

§ 2710.3 Indexes.

(a) *Background*. 5 U.S.C. 552(a)(2) also required that each agency maintain and make available for public inspection and copying current indexes providing identifying information for the public with regard to any records which are made available for public inspection and copying.

(b) *Procedure*. Persons wishing to get an index may contact the division or center that maintains the records. Publication of these indexes as a separate document is unnecessary and impractical.

§ 2710.4 Initial request for records.

(a) *Background*. The Information Access and Disclosure Officer is authorized to:

(1) Grant or deny requests for OIRM records.

(2) Make discretionary releases of OIRM records when it is determined that the public interests in disclosure outweigh the public and/or private ones in withholding.

(3) Reduce or waive fees to be charged where determined to be appropriate.

(b) *Procedure*. Persons wishing to request records from the Office of Information Resources Management may do so as follows:

(1) *How*. Submit each initial request for OIRM records as prescribed in 7 CFR 1.3(a).

(2) *Where*. Submit each initial request to the Information Access and Disclosure Officer, Office of Information Resources Management, USDA, 14th and Independence Ave., SW., Room 407–W, Washington, DC 20250.

§ 2710.5 Appeals.

Procedure. Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.3(e) and 1.7, to the Director, Office of Information Resources Management, by sending the appeal to the Information Access and Disclosure Officer, Office of Information Resources Management, USDA, 14th and Independence Ave., SW., Room 407–W, Washington, DC 20250. The Director, Office of Information Resources Management, will make the determination on the appeal.

APPENDIX A TO PART 2710—LIST OF ADDRESSES

Section 1. General

This list provides the titles and mailing addresses of officials who have custody of OIRM records. This list also identifies the normal working hours, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records, and indexes to those records, is permitted.

Section 2. List of Addresses

Director, Office of Information Resources Management, 14th and Independence Ave., SW., Rm. 113–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Planning Division, OIRM, 14th and Independence Ave., SW., Rm. 446–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Review and Evaluation Division, OIRM, 14th and Independence Ave., SW., Rm. 442–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Agency Technical Services Division, OIRM, 14th and Independence Ave., SW., Rm. 416–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Operations and Telecommunications Division, OIRM, 14th and Independence Ave., SW., Rm. 419–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Information Management Division, OIRM, 14th and Independence Ave., SW., Rm. 404–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, St. Louis Computer Center, OIRM, 1520 Market Street, Rm. 3441, St. Louis, MO 63101; Hours: 8:00 a.m.–4:40 p.m.

Director, Kansas City Computer Center, OIRM, 8930 Ward Parkway, (P.O. Box 205), Kansas City, MO 64141; Hours: 8:00 a.m.–4:45 p.m.

Director, Fort Collins Computer Center, OIRM, 3825 E. Mulberry Street, (P.O. Box 1206), Fort Collins, CO 80521; Hours: 8:00 a.m.–4:30 p.m.

Director, Washington Computer Center, OIRM, 14th and Independence Ave., SW., Rm. S–107–S, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Information Access and Disclosure Officer, OIRM, 14th and Independence Ave., SW., Rm. 407–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

PARTS 2711–2799 [RESERVED]

CHAPTER XXVIII—OFFICE OF OPERATIONS, DEPARTMENT OF AGRICULTURE

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2800–2809	[Reserved]	
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PARTS 2800–2809 [RESERVED]

PART 2810—ORGANIZATION AND FUNCTIONS—OFFICE OF OPERATIONS

Sec.
2810.1 General statement.
2810.2 Organization.
2810.3 Functions.

AUTHORITY: 5 U.S.C. 301 and 552; 7 CFR 2.76.

SOURCE: 54 FR 52013, Dec. 20, 1989, unless otherwise noted.

§ 2810.1 General statement.

This part is issued in accordance with 5 U.S.C. 552(a) to provide guidance for the general public as to Office of Operations (OO) organization and functions.

§ 2810.2 Organization.

The Office of Operations (OO) was established January 12, 1982. Delegations of authority to the Director, OO, appear at 7 CFR 2.76. The organization is comprised of six divisions and one staff located at Department headquarters. Description of the functions of these organizational units are in the following section. The organization is headed by a Director.

§ 2810.3 Functions.

(a) *Director*. Provides executive direction for OO. Develops and promulgates overall policies and provides general direction, leadership, oversight, and coordination of USDA management of procurement, real and personal property activities, mail and copier management. Provides executive services to the Office of the Secretary and operates activities providing consolidated USDA administrative functions and services.

(b) *Deputy Director*. Assists the Director, and in the absence of the Director, serves as Acting Director.

(c) *Administrative Unit*. Provides support for agency management regarding budget, accounting, personnel, and other administrative matters.

(d) *Executive Services Division*. Provides executive services to the Office of the Secretary in travel arrangements, supplies, furnishings, communications, equipment, and records. Operates the central USDA DC imprest fund.

(e) *Facilities Management Division*. Operates and maintains the USDA DC headquarters building complex, including headquarters parking. Oversees management and operation of USDA buildings nationwide, and provides DC area labor services.

(f) *Mail and Reproduction Management Division*. Oversees USDA mail, copier, and duplicating programs. Operates DC area central activities in these areas.

(g) *Personal Property Management Division*. Oversees USDA supply, motor vehicle, and personal property programs. Operates centralized warehouse and property rehabilitation facilities.

(h) *Procurement Division*. Oversees USDA procurement programs. Operates centralized purchasing operations for ADP and Washington area activities.

(i) *Real Property Management Division*. Oversees USDA real property management programs.

PART 2811—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
2811.1 General statement.
2811.2 Public inspection and copying.
2811.3 Indexes.
2811.4 Initial requests for records.
2811.5 Appeals.
2811.6 Fee schedule.
APPENDIX A TO PART 2811—LIST OF ADDRESSES

AUTHORITY: 5 U.S.C. 301 and 552 (as amended); 7 CFR 1.3.

SOURCE: 54 FR 52014, Dec. 20, 1989, unless otherwise noted.

§ 2811.1 General statement.

This part is issued in accordance with 7 CFR 1.3 of the Department of Agriculture regulations governing the availability of records (7 CFR 1.1–1.23 and Appendix A) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Department's regulations, as supplemented by the regulations in this part, provide guidance for any person wishing to request records from Office of Operations.

§ 2811.2 Public inspection and copying.

(a) *Background*. 5 U.S.C. 552(a)(2) requires that each agency maintain and

make available for public inspection and copying certain kinds of records.

(b) *Procedure.* To gain access to OO records that are available for public inspection, contact the division that maintains them. See Appendix A, List of Addresses, for the location and hours of operation.

§ 2811.3 Indexes.

(a) *Background.* 15 U.S.C. 552(a)(2) also requires that each agency maintain and make available for public inspection and copying current indexes provided identifying information for the public with regard to any records which are made available for public inspection and copying. OO does not maintain any materials within the scope of these requirements.

§ 2811.4 Initial requests for records.

(a) *Background.* The head of each OO division, each OO contracting officer, each OO leasing officer, and the OO FOIA officer is authorized to:

(1) Grant or deny requests for OO records.

(2) Make discretionary release of OO records when it is determined that the public interest in disclosure outweighs the public and/or private ones in withholding.

(3) Reduce or waive fees to be charged where determined to be appropriate.

(4) Refer a request to the OO FOIA Officer for determination.

(b) *Procedures.* Persons wishing to request records from the Office of Operations may do so as follows:

(1) How. Submit each initial request for OO records as prescribed in 7 CFR 1.6.

(2) Where. Submit each initial request to the head of the unit that maintains the records. See Appendix A, List of Addresses. Contact the FOIA Officer for guidance as needed. Or, submit the request to the FOIA Officer for forwarding to the proper officials: FOIA Officer, Office of Operations, USDA, Room 134–W Administration Building, 14th & Independence Avenue SW., Washington, DC 20250.

§ 2811.5 Appeals.

Procedure. Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.6(e) and 1.8, to the Director, Office of Operations, USDA, Room 113–W Administration Building, 14th & Independence Avenue SW., Washington, DC 20250.

§ 2811.6 Fee schedule.

Department regulations provide for a schedule of reasonable standard charges for document search and duplication. See 7 CFR 1.2(b). Fees to be charged are set forth in 7 CFR part 1, subpart A, appendix A.

APPENDIX A TO PART 2811—LIST OF ADDRESSES

Section 1. GENERAL

This list provides the titles and mailing address of officials who have custody of OO records. The normal working hours of these offices are 8:30 a.m. to 5:00 p.m., Monday through Friday, exclusing holidays, during which public inspection and copying of certain kinds of records is permitted.

Section 2. List of Addresses

All of the following addresses are located at 14th Street and Independence Avenue, Washington, DC. Address mail as follows:

Director, Office of Operations, USDA, Room 113–W Administration Building, Washington, DC 20250.

FOIA Officer, Office of Operations, USDA, Room 134–W Administration Building, Washington, DC 20250.

Chief, Administrative Unit, Office of Operations, USDA, Room 134–W, Washington, DC 20250.

Chief, Executive Services Division, Office of Operations, USDA, Room 10–A, Administration Building, Washington, DC 20250.

Chief, Facilities Management Division, Office of Operations, USDA, Room S–313 South Building, Washington, DC 20250.

Chief, Mail and Reproduction Management Division, Office of Operations, USDA, Room 1540 South Building, Washington, DC 20250.

Chief, Personal Property Management Division, Office of Operations, USDA Room 1524 South Building, Washington, DC 20250.

Chief, Procurement Division, Office of Operations, USDA, Room 1550 South Building, Washington, DC 20250.

Chief, Real Property Management Division, Office of Operations, USDA, Room 1566, South Building, Washington, DC 20250.

PART 2812—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE DONATION OF EXCESS RESEARCH EQUIPMENT UNDER 15 U.S.C. 3710(i)

Sec.
2812.1 Purpose.
2812.2 Eligibility.
2812.3 Definitions.
2812.4 Procedures.
2812.5 Restrictions.
2812.6 Title.
2812.7 Costs.
2812.8 Accountability and recordkeeping.
2812.9 Disposal.
2812.10 Liabilities and losses.

AUTHORITY: 5 U.S.C. 301; E.O. 12999, 61 FR 17227, 3 CFR, 1997 Comp., p. 180.

SOURCE: 60 FR 34456, July 3, 1995, unless otherwise noted.

§ 2812.1 Purpose.

This part sets forth the procedures to be utilized by USDA agencies and laboratories in the donation of excess research equipment to educational institutions and non-profit organizations for the conduct of technical and scientific education and research activities as authorized by 15 U.S.C. 3710(i). Title to excess research equipment donated pursuant to 15 U.S.C. 3710(i), shall pass to the donee.

§ 2812.2 Eligibility.

Eligible organizations are educational institutions or non-profit organizations involved in the conduct of technical and scientific educational and research activities.

§ 2812.3 Definitions.

(a) *Cannibalization*. The dismantling of equipment for parts to repair or enhance other equipment. The residual is reported for disposal. Cannibalization is only authorized if the property value is greater when cannibalized than retention in the original condition.

(b) *Community-based educational organization* means nonprofit organizations that are engaged in collaborative projects with pre-kindergarten through twelfth grade educational institutions or that have education as their primary focus. Such organizations shall qualify as nonprofit educational institutions for purposes of section 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)).

(c) *Educational institution* means a public or private, non-profit educational institution, encompassing pre-kindergarten through twelfth grade and two- and four-year institutions of higher education, as well as public school districts.

(d) *Educationally useful Federal equipment* means computers and related peripheral tools (e.g., printers, modems, routers, and servers), including telecommunications and research equipment, that are appropriate for use in pre-kindergarten, elementary, middle, or secondary school education. It shall also include computer software, where the transfer of licenses is permitted.

(e) *Excess personal property*. Items of personal property no longer required by the controlling Federal agency.

(f) *Federal empowerment zone or enterprise community (EZ/EC)* means a rural area designated by the Secretary of Agriculture under 7 CFR part 25.

(g) *Non-profit organization* means any corporation, trust association, cooperative, or other organization which:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, or expand its operations. For the purposes of this part, ''non-profit organizations'' may include utilities affiliated with institutions of higher education, or with state and local governments and federally recognized Indian tribes.

(h) *Research equipment*. Federal property determined to be essential to conduct scientific or technical educational research.

(i) *Technical and scientific education and research activities*. Non-profit tax exempt public educational institutions or government sponsored research organizations which serve to conduct technical and scientific education and research.

[60 FR 34456, July 3, 1995, as amended at 65 FR 69857, Nov. 21, 2000]

§ 2812.4 Procedures.

(a) [Reserved]

(b) Each agency head will designate in writing an authorized official to approve donations of excess property/equipment under this part.

(c) After USDA screening has been accomplished, excess personal property targeted for donation under this part will be made available on a first-come, first-served basis. If there are competing requests, donations will be made to eligible recipients in the following priority order:

(1) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations in rural EZ/EC communities;

(2) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations not in rural EZ/EC areas;

(3) All other eligible organizations.

(d) Upon reporting property for excess screening, if the pertinent USDA agency has an eligible organization in mind for donation under this part, it shall enter ''P.L. 102–245'' in the note field. The property will remain in the excess system approximately 30 days, and if no USDA agency or cooperator requests it during the excess cycle, the Departmental Excess Personal Property Coordinator will send the agency a copy of the excess report stamped, ''DONATION AUTHORITY TO THE HOLDING AGENCY IN ACCORDANCE WITH P.L. 102–245.'' The holding USDA agency may then donate the excess property to the eligible organization.

(e) Donations under this Part will be accomplished by preparing a Standard Form (SF) 122, ''Transfer Order-Excess Personal Property''.

(f) The SF–122 should be signed by both an authorized official of the agency and the Agency Property Management Officer. The following information should also be provided.

(1) Name and address of Donee Institution (Ship to)

(2) Agency name and address (holding Agency)

(3) Location of property

(4) Shipping instructions (Donee contact person)

(5) Complete description of property, including acquisition amount, serial no., condition code, quantity, and agency order no.

(6) This statement needs to be added following property descriptions. ''The property requested hereon is certified to be used for the conduct of technical and scientific education and research activities. This donation is pursuant to the provisions of Pub. L. 102–245.''

(g) Once the excess personal property/equipment is physically received, the donee is required to immediately return a copy of the SF–122 to the donating agency indicating receipt of requested items. Cancellations should be reported to DEPPC so the property can be reported to the General Services Administration (GSA).

NOTE: The USDA agency shall send an informational copy of the transaction to GSA.

[60 FR 34456, July 3, 1995, as amended at 65 FR 69857, Nov. 21, 2000]

§ 2812.5 Restrictions.

(a) The authorized official (see § 2812.4(b)) will approve the donation of excess personal property/equipment in the following groups to educational institutions or nonprofit organizations for the conduct of technical and scientific educational and research activities.

ELIGIBLE GROUPS

FSC group	Name
19	Ships, Small Craft, Pontoons, and Floating Docks.
23	Vehicles, Trailers and Cycles.
24	Tractors.
37	Agricultural Machinery and Equipment.
43	Pumps, Compressors.
48	Valves.
58	Communication, Detection, and Coherent Radiation Equipment.
59	Electrical and Electronic Equipment Components.
65	Medical, Dental, and Veterinary Equipment and Supplies.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
68	Chemicals and Chemical Products.
70	General Purpose Automatic Data Processing Equipment, Software Supplies, and Support Equipment.
74	Office Machines and Visible Record Equipment.

NOTE: Requests for items in FSC Groups or Classes other than the above should be referred to the agency head for consideration and approval.

(b) Excess personal property/equipment may be donated for cannibalization purposes, provided the donee submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater potential benefit than utilization of the item in its existing form.

§ 2812.6 Title.

Title to excess personal property/equipment donated under this Part will automatically pass to the donee once the sponsoring agency receives the SF–122 indicating that the donee has received the property.

§ 2812.7 Costs.

Donated excess personal property/equipment is free of charge. However, the donee must pay all costs associated with packaging and transportation, unless the sponsoring agency has made other arrangements. The donee should specify the method of shipment.

§ 2812.8 Accountability and recordkeeping.

USDA requires that property requested by a donee be placed into use by the donee within a year of receipt and used for at least 1 year thereafter. Donees must maintain accountable records for such property during this time period.

§ 2812.9 Disposal.

When the property is no longer needed by the donee, it may be used in support of other Federal projects or sold and the proceeds used for technical and scientific education and research activities.

§ 2812.10 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property/equipment donated under this part. The donee is advised to insure or otherwise protect itself and others as appropriate.

PARTS 2813–2899 [RESERVED]

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

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2900	Essential agricultural uses and volumetric requirements—Natural Gas Policy Act	81
2901	Administrative procedures for adjustments of natural gas curtailment priority	82
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PART 2900—ESSENTIAL AGRICULTURAL USES AND VOLUMETRIC REQUIREMENTS—NATURAL GAS POLICY ACT

Sec.
2900.1 General.
2900.2 Definitions.
2900.3 Essential agricultural uses.
2900.4 Natural gas requirements.
2900.6 Effective date.

AUTHORITY: Pub. L. 95–621, Nov. 9, 1978.

SOURCE: 44 FR 28786, May 17, 1979, unless otherwise noted.

§ 2900.1 General.

Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements, expressed either as volumes or percentages of use, of persons, or classes thereof, for essential agricultural uses in order to meet requirements of full food and fiber production. This rule covers establishments performing functions classed as essential agricultural uses whose natural gas supplies are distributed through the interstate pipeline systems even though such establishments may receive such gas directly from an intrastate pipeline or local distribution company. The rule provides to the Secretary of Energy (for purposes of Section 401(a) of the NGPA) and to the Federal Energy Regulatory Commission the following certifications:

(a) Essential agricultural *uses* of natural gas, expressed as classes of establishments that use gas for essential agricultural purposes; and

(b) Essential agricultural current *requirements* of natural gas, expressed as percentages of use.

§ 2900.2 Definitions.

(a) *Full food and fiber production* means the entire output of food and fiber produced for the domestic market, and for export, for building of reserves, and crops for soil building or conservation. This term also includes the processing of food and fiber into stable and storable products, and the maintenance of food quality after processing.

(b) *Establishment* means an economic unit, generally at a single physical location where business is conducted or where service or industrial operations are performed (for example, a factory, mill, store, mine, farm, sales office, or warehouse). (Note: This is the same definition used in the Standard Industrial Classification Manual, 1972 edition).

(c) *Essential Agricultural Use Establishment* means any Establishment, or the portion of an Establishment, which performs (or has the capability to perform) activities specified in § 2900.3.

(d) *Current Natural Gas Requirements* means the amount of natural gas required by an Essential Agricultural Use Establishment to perform the activities devoted to full food and fiber production.

(Pub. L. 95–621, Nov. 8, 1979, 92 Stat. 3350, 15 U.S.C. 3301 *et seq.*)

[44 FR 28786, May 17, 1979, as amended at 46 FR 47216, Sept. 25, 1981]

§ 2900.3 Essential agricultural uses.

For purposes of Section 401(c) of the NGPA the following classes or portions of classes are certified as essential agricultural uses in order to meet the requirements of full food and fiber production:

Essential Agricultural Uses

Industry SIC No. and Industry Description

FOOD AND NATURAL FIBER PRODUCTION

01 Agricultural Production—Crops
02 Agricultural Production—Livestock Excluding 0272—Horses and Other Equines, and Nonfood Portions of 0279—Animal Specialties, Not Elsewhere Classified.
0723 Crop Preparation Services for Market, Except Cotton Ginning (see fiber processing).
4971 Irrigation Systems.

FERTILIZER AND AGRICULTURAL CHEMICALS

(PROCESS AND FEEDSTOCK USE ONLY)

1474 Potash, Soda, and Borate Materials.
1475 Phosphate Rock.
1477 Sulfur.
2819 Industrial Inorganic Chemicals, n.e.c. (Agricultural related only).
2865 Cyclic Crudes and Cyclic Intermediates, Dyes and Organic Pigments (Agricutural related only).

2869 Industrial Organic Chemicals, n.e.c. (Agricutural related only).
287 Agricultural Chemicals.
2899 Chemicals and Chemical Preparations, n.e.c. (Salt—Feed grade only).
3274 Lime (Agricultural lime only).

FOOD AND NATURAL FIBER PROCESSING-FOOD

20 Food and Kindred Products Except 2047 Dog, Cat and Other Pet Food, and 2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.
2869 Industrial Organic Chemicals (Monosodium Glutamate, Food-grade Citric Acid and Food-grade Enzymes only).
2899 Chemicals and Chemical Preparations, n.e.c. (Salt for food use only).

ANIMAL FEEDS, AND FOOD

(Process and Feedstock Use Only)

2047 Dog, Cat and Other Pet Food.
2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.

NATURAL FIBER

0724 Cotton Ginning.
2141 Tobacco Stemming and Redrying.
2299 Textile Goods, n.e.c. (wool tops, combing and converting).
3111 Leather Tanning and Finishing.

FOOD QUALITY MAINTENANCE—FOOD PACKAGING

2641 Paper Coating and Glazing (food related only).
2643 Bags, Except Textile (food related only).
2645 Die Cut Paper and Paperboard (food related only).
2646 Pressed and Molded Pulp Goods (food related only).
2649 Converted Paper Products (food related only).
2651 Folding Paperboard Boxes (food related only).
2653 Corrugated and Solid Fiber Boxes (food related only).
2654 Sanitary Food Containers.
2655 Fiber Cans, Tubes, Drums, and Similar Products (food related only).
3079 Miscellaneous Plastic Products (food related only).
3221 Glass Containers (food related only).
3411 Metal Cans (food related only).
3412 Metal Shipping Barrels, Drums, Kegs, and Pails (food related only).
3466 Metal Crowns and Closures (Food Related Only).
3497 Metal Foil and Leaf (food related only).
Petroleum wax, synthetic petroleum wax and polyethylene wax (food grade only) as food containers.

MARKETING AND DISTRIBUTION

4221 Farm Product Warehousing and Storage.
4222 Refrigerated Warehousing.
514 Groceries and Related Products.
5153 Farm Product Raw Materials—Grain.
54 Food Stores.

ENERGY PRODUCTION

(1) Agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels;
(2) Sugar refining for production of alcohol; and
(3) Distillation of fuel-grade alcohol from food grains and other biomass by facilities in existence on June 30, 1980 which do not have the installed capability to burn coal lawfully, for a period ending June 29, 1985.

(Pub. L. 95–621, Nov. 8, 1978, 92 Stat. 3350; 15 U.S.C. 3301 *et seq.*)

[44 FR 28786, May 17, 1979, as amended at 45 FR 5298, Jan. 23, 1980; 45 FR 45887, 45888, July 8, 1980; 45 FR 50550, July 30, 1980; 47 FR 25320, June 11, 1982; 48 FR 43670, Sept. 26, 1983; 49 FR 37733, Sept. 26, 1984]

§ 2900.4 Natural gas requirements.

For purposes of Section 401(c), NGPA, the natural gas requirements for each Essential Agricultural Use Establishment, whether such Essential Agricultural Use Establishment is in existence on the effective date of this rule or comes into existence thereafter, are certified to be 100 percent of Current Natural Gas Requirements.

§ 2900.6 Effective date.

This rule shall become effective on May 14, 1979.

PART 2901—ADMINISTRATIVE PROCEDURES FOR ADJUSTMENTS OF NATURAL GAS CURTAILMENT PRIORITY

Sec.
2901.1 Purpose and scope.
2901.2 Definitions.
2901.3 Oral presentation.
2901.4 Interpretations.
2901.5 Modifications and rescissions.
2901.6 Exceptions and exemptions.
2901.7 Review of denials.
2901.8 Judicial review.
2901.9 Effective date.

AUTHORITY: Secs. 502, 507. Pub. L. 95–621, 92 Stat. 3397, 3405, Nov. 9, 1978.

SOURCE: 44 FR 55803, Sept. 28, 1979, unless otherwise noted.

§ 2901.1 Purpose and scope.

The purpose of this part 2901 is to provide procedures for the making of certain adjustments to the Secretary of Agriculture's Essential Agricultural Uses and Requirements regulations in accordance with section 502(c) of the Natural Gas Policy Act of 1978, in order to prevent special hardship, inequity, or an unfair distribution of burdens. The procedures in this part 2901 apply to any person seeking an interpretation of, modification of, rescission of, exception of, or exemption from the Essential Agricultural Uses and Requirements regulations in part 2900 of this chapter.

§ 2901.2 Definitions.

(a) *Person* means any individual, firm, sole proprietorship, partnership, association, company, joint venture or corporation.

(b) *Director* means the Director of the Office of Energy, U.S. Department of Agriculture.

(c) *Secretary* means the Secretary of the U.S. Department of Agriculture.

(d) *Adjustment* means an interpretation, modification, rescission of, exception to or exemption from the Essential Agricultural Uses and Requirements regulations, part 2900 of this chapter.

(e) *NGPA* means the Natural Gas Policy Act of 1978, Pub. L. 95–621.

(f) *Petitioner* means any person seeking an adjustment under this part 2901.

§ 2901.3 Oral presentation.

Any person seeking an adjustment under this part 2901 shall be given an opportunity to make an oral presentation of data, views and arguments in support of the request for an adjustment, provided that a request to make an oral presentation is submitted in writing with the request for the adjustment. An official of the Department of Agriculture shall preside at such oral presentation.

§ 2901.4 Interpretations.

(a) *Request for an interpretation.* (1) Any person seeking an interpretation of the Essential Agricultural Uses and Requirements regulations in part 2900 shall file a formal written request with the Director. The request should contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the request and to the action sought, and should state the special hardship, inequity, or unfair distribution of burdens that will be prevented by the interpretation sought and why the interpretation is consistent with the purposes of NGPA. The Director shall publish a notice in the FEDERAL REGISTER advising the public that a request for an interpretation has been received and that written comments will be accepted with respect thereto, if received within 20 days of the notice. The FEDERAL REGISTER notice will provide that copies of the request for interpretation from which confidential information has been deleted in accordance with paragraph (a)(2) of this section may be obtained from the petitioner.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(b) *Investigations.* The Director may initiate an investigation of any statement in a request and utilize in his evaluation any relevant facts obtained in such investigation. The Director may accept submissions from third persons relevant to any request for interpretation provided that the petitioner

is afforded an opportunity to respond to all such submissions. In evaluating a request for interpretation, the Director may consider any other source of information.

(c) *Applicability.* Any interpretation issued hereunder shall be issued on the basis of the information provided on the request, as supplemented by other information brought to the attention of the Director during the consideration of the request. The interpretation shall, therefore, depend for its authority on the accuracy of the factual statement and may be relied upon only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(d) *Issuance of an interpretation.* Upon consideration of the request for interpretation and other relevant information received or obtained by the Director, the Director may issue a written interpretation. A copy of the written interpretation shall be provided to FERC and the Secretary of Energy. Notice of the issuance of the written interpretation shall be published in the FEDERAL REGISTER. The granting of a request for issuance of an interpretation shall be considered final agency action for purposes of judicial review under § 2901.8.

(e) *Denial of an interpretation.* An interpretation shall be considered denied for purpose of review of such denial under § 2901.7 only if:

(1) The Director notifies the petitioner in writing that the request is denied and that an interpretation will not be issued; or

(2) The Director does not respond to a request for an interpretation, by (i) issuing an interpretation, or (ii) giving notice of when an interpretation will be issued within 45 days of the date of receipt of the request, or within such extended time as the Director may prescribe by written notice within the 45-day period.

(f) For purposes of this part 2901 the word *interpretation* shall not be deemed to include a simple clarification of an actual or purported ambiguity in part 2900. The Director reserves the right to determine whether a request involves simple clarification and shall advise the requester of his decision.

§ 2901.5 Modifications and rescissions.

(a) *Request for modification or rescission.* (1) Any person seeking a modification or a rescission of the Essential Agricultural Uses and Requirements regulations of part 2900 shall file a formal written request with the Director. The request shall contain a full and complete statement of all relevant facts pertaining to the circumstance, act or transaction that is the subject of the request and to the action sought. The request should state the special hardship, inequity or unfair distribution of burdens that will be prevented by making the modification or rescission.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(3) The request shall be filed as a petition for rulemaking and treated in accordance with the procedures, as applicable, of 7 CFR part 1, subpart B.

(b) *Institution of rulemaking.* Upon consideration of the request for modification or rescission and other relevant information received or obtained by the Director, the Director may institute rulemaking proceedings in accordance with the Administrative Procedures Act 5 U.S.C. 551 *et seq.* and applicable regulations.

(c) *Denial of a modification or rescission.* If the Director (1) denies the request for modification or rescission in writing by notifying the petitioner that he does not intend to institute rulemaking proceedings as proposed and stating the reasons therefor, or (2) does not respond to a request for a

modification or rescission in accordance with paragraph (b) of this section or (3) notifies the petitioner in writing that the matter is under continuing consideration and that no decision can be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth therein, within 45 days of the date of the receipt thereof, or within such extended time as the Director may prescribe by written notice within that 45-day period, the request shall be considered denied for the purpose of review of such denial under § 2901.7.

§ 2901.6 Exceptions and exemptions.

(a) *Request for exception or exemption.* (1) Any person seeking an exception or exemption from the Essential Agricultural Uses and Requirements regulations in part 2900 shall file a formal written request with the Director. The request shall contain a full and complete statement of all relevant facts pertaining to the circumstance, act, or transaction that is the subject of the request and to the action sought. The request should state the special hardship, inequity or unfair distribution of burdens that will be prevented by making the exception or exemption. The Director shall publish a notice in the FEDERAL REGISTER advising the public that a request for an exception or exemption has been received and that written comments will be accepted with respect thereto if received within 20 days of the notice. The FEDERAL REGISTER notice will provide that copies of the request from which confidential information has been deleted in accordance with paragraph (a)(2) of this section may be obtained from the petitioner. The Petitioner shall be afforded an opportunity to respond to such submissions.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(b) *Decision and order.* Upon consideration of the request for an exception or exemption and other relevant information received or obtained during the proceedings, the Director shall issue an order granting or denying the request. The Director shall publish a notice in the FEDERAL REGISTER of the issuance of a decision and order on the request. The granting of a request for an exception or exemption shall be considered final agency action for purposes of judicial review under § 2901.8.

(c) *Denial of an exception or exemption.* A request for an exception or exemption shall be considered denied for purposes of review of such denial under § 2901.7 only if:

(1) The Director has notified the petitioner in writing that the request is denied under paragraph (b) of this section; or

(2) The Director does not respond to a request for an exception or exemption by (i) granting the request for an exception or exemption under paragraph (b) of this section or (ii) giving notice of when a decision will be made within 45 days of the receipt of the request, or with such extended time as the Director may prescribe by written notice within the 45-day period.

§ 2901.7 Review of denials.

(a) *Request for review.* (1) Any person aggrieved or adversely affected by a denial of a request for any interpretation under § 2901.4 may request a review of the denial by the Secretary, within 30 days from the date of the denial.

(2) Any person aggrieved or adversely affected by a denial of a request for a modification or rescission under § 2901.5, may request a review of the denial by the Secretary within 30 days from the date of the denial.

(3) Any person aggrieved or adversely affected by a denial of a request for an exception or an exemption under

§ 2901.6, may request a review of the denial by the Secretary within 30 days from the date of the denial.

(b) *Procedures.* Any request for review under § 2901.7(a) shall be in writing and shall set forth the specific ground upon which the request is based. There is no final agency action for purposes of judicial review under § 2901.8 until that request has been acted upon. If the request for review has not been acted upon within 30 days after it is received, the request shall be deemed to have been denied. That denial shall then constitute final agency action for the purpose of judicial review under § 2901.8.

§ 2901.8 Judicial review.

Any person aggrieved or adversely affected by a final agency action taken on a request for an adjustment under this section may obtain judicial review in accordance with section 506 of the Natural Gas Policy Act of 1978.

§ 2901.9 Effective date.

This rule shall become effective on October 29, 1979.

PART 2902 [RESERVED]

PART 2903—BIODIESEL FUEL EDUCATION PROGRAM

Subpart A—General Information

Sec.

2903.1 Applicability of regulations.
2903.2 Purpose of the program.
2903.3 Eligibility.
2903.4 Indirect costs.
2903.5 Matching requirements.

Subpart B—Program Description

2903.6 Project types.
2903.7 Project objectives.

Subpart C—Preparation of an Application

2903.8 Program application materials.
2903.9 Content of an application.
2903.10 Submission of an application.
2903.11 Acknowledgment of applications.

Subpart D—Application Review and Evaluation

2903.12 Application review.
2903.13 Evaluation criteria.
2903.14 Conflicts of interest and confidentiality.

Subpart E—Award Administration

2903.15 General.
2903.16 Organizational management information.
2903.17 Award document and notice of award.

Subpart F—Supplementary Information

2903.18 Access to review information.
2903.19 Use of funds; changes.
2903.20 Reporting requirements.
2903.21 Applicable Federal statutes and regulations.
2903.22 Confidential aspects of applications and awards.
2903.23 Definitions.

AUTHORITY: 7 U.S.C. 8104; 5 U.S.C. 301.

SOURCE: 68 FR 56139, Sept. 30, 2003, unless otherwise noted.

Subpart A—General Information

§ 2903.1 Applicability of regulations.

(a) The regulations of this part only apply to Biodiesel Fuel Education Program grants awarded under the provisions of section 9004 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8104) which authorizes the Secretary to award competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. Eligibility is limited to nonprofit organizations and institutions of higher education (as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs. The Secretary delegated this authority to the Chief Economist, who in turn delegated this authority to the Director of OEPNU.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 2903.2 Purpose of the program.

The Biodiesel Fuel Education Program seeks to familiarize public and

private vehicle fleet operators, other interested entities, and the public, with the benefits of biodiesel, a relatively new fuel option in the United States. It will also address concerns previously identified by fleet operators and other potential users of this alternative fuel, including the need to balance the positive environmental, social and human health impacts of biodiesel utilization with the increased per gallon cost to the user. It is the Program's goal to stimulate biodiesel demand and encourage the further development of a biodiesel industry in the United States.

§ 2903.3 Eligibility.

(a) Eligibility is limited to nonprofit organizations and institutions of higher education that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

(b) Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

§ 2903.4 Indirect costs.

(a) For the Biodiesel Fuel Education Program, applicants should use the current indirect cost rate negotiated with the cognizant Federal negotiating agency. Indirect costs may not exceed the negotiated rate. If no indirect cost rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested.

(b) A proposer may elect not to charge indirect costs and, instead, charge only direct costs to grant funds. Grantees electing this alternative will not be allowed to charge, as direct costs, indirect costs that otherwise would be in the grantee's indirect cost pool under the applicable Office of Management and Budget cost principles. Grantees who request no indirect costs will not be permitted to revise their budgets at a later date to charge indirect costs to grant funds.

§ 2903.5 Matching requirements.

There are no matching funds requirements for the Biodiesel Fuel Education Program and matching resources will not be factored into the review process as evaluation criteria.

Subpart B—Program Description

§ 2903.6 Project types.

OEPNU intends to award continuation grants to successful Biodiesel Fuel Education Program applicants. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued government support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded project(s).

§ 2903.7 Project objectives.

(a) Successful projects will develop practical indicators or milestones to measure their progress towards achieving the following objectives:

(1) Enhance current efforts to collect and disseminate biodiesel information;

(2) Coordinate with other biodiesel educational or promotional programs, and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPAct program;

(3) Create a nationwide networking system that delivers biodiesel information to targeted audiences, including users, distributors and other infrastructure-related personnel;

(4) Identify and document the benefits of biodiesel (e.g., lifecycle costing); and

(5) Gather data pertaining to information gaps and develop strategies to address the gaps.

(b) [Reserved]

Subpart C—Preparation of an Application

§ 2903.8 Program application materials.

OEPNU will publish periodic program announcements to notify potential applicants of the availability of funds for competitive continuation grants. The program announcement will provide information about obtaining program application materials.

§ 2903.9 Content of an application.

(a) Applications should be prepared following the guidelines and the instructions in the program announcement. At a minimum, applications shall include: a proposal cover page, project summary, project description, information about key personnel, documentation of collaborative arrangements, information about potential conflicts-of-interest, budget forms and a budget narrative, information about current and pending support, and assurance statements.

(b) Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion. Specific instructions regarding additional application content requirements and the ordering of application contents will be included in the program announcement. These will include instructions about paper size, margins, font type and size, line spacing, page numbering, the inclusion of illustrations, and electronic submission.

§ 2903.10 Submission of an application.

The program announcement will provide the deadline date for submitting an application, the number of copies of each application that must be submitted, and the address to which proposals must be submitted.

§ 2903.11 Acknowledgment of applications.

The receipt of all applications will be acknowledged. Applicants who do not receive an acknowledgment within 60 days of the submission deadline should contact the program contact indicated on the program announcement. Once the application has been assigned a proposal number, that number should be cited on all future correspondence.

Subpart D—Application Review and Evaluation

§ 2903.12 Application review.

(a) Reviewers will include government and non-government individuals. All reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors:

(1) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; and

(2) The need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields.

(b) In addition, when selecting non-government reviewers, the following factors will be considered:

(1) The need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs;

(2) The need to include as reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations;

(3) The need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and

(4) The need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(c) Authorized departmental officers will compile application reviews and recommend awards to OEPNU. OEPNU will make final award decisions.

§ 2903.13 Evaluation criteria.

(a) The following evaluation criteria will be used in reviewing applications submitted for the Biodiesel Fuel Education Program:

(1) Relevance of proposed project to current and future issues related to the production, use, distribution, fuel quality, and fuel properties of biodiesel, including:

(i) Demonstrated knowledge about markets, state initiatives, impacts on local economies, regulatory issues, standards, and technical issues;

(ii) Demonstrated knowledge about issues associated with developing a biodiesel infrastructure; and

(iii) Quality and extent of stakeholder involvement in planning and accomplishment of program objectives.

(2) Reasonableness of project proposal, including:

(i) Sufficiency of scope and strategies to provide a consistent message in keeping with existing standards and regulations;

(ii) Adequacy of Project Description, suitability and feasibility of methodology to develop and implement program;

(iii) Clarity of objectives, milestones, and indicators of progress;

(iv) Adequacy of plans for reporting, assessing and monitoring results over project's duration; and

(v) Demonstration of feasibility, and probability of success.

(3) Technical quality of proposed project, including:

(i) Suitability and qualifications of key project personnel;

(ii) Institutional experience and competence in providing alternative fuel education, including:

(A) Demonstrated knowledge about programs involved in alternative fuel research and education;

(B) Demonstrated knowledge about other fuels, fuel additives, engine performance, fuel quality and fuel emissions;

(C) Demonstrated knowledge about Federal, State and local programs aimed at encouraging alternative fuel use;

(D) Demonstrated ability in providing educational programs and developing technical programs; and

(E) Demonstrated ability to analyze technical information relevant to the biodiesel industry.

(iii) Adequacy of available or obtainable resources; and

(iv) Quality of plans to administer and maintain the project, including collaborative efforts, evaluation and monitoring efforts.

(b) [Reserved]

§ 2903.14 Conflicts of interest and confidentiality.

(a) During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Determinations of conflicts of interest will be based on the academic and administrative autonomy of an institution. The program announcement will specify the methodology for determining such autonomy.

(b) Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of reviewers will be made available in such a way that the reviewers cannot be identified with the review of any particular application.

Subpart E—Award Administration

§ 2903.15 General.

Within the limit of funds available for such purpose, the Authorized Departmental Officer (ADO) shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this part. The date specified by the ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by OEPNU under this program shall be expended solely for the purpose for which the funds are granted in accordance

with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the applicable Department assistance regulations (including part 3019 of this title).

§ 2903.16 Organizational management information.

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this program, if such information has not been provided previously. Copies of forms recommended for use in fulfilling these requirements will be provided as part of the preaward process.

§ 2903.17 Award document and notice of award.

(a) The award document will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom OEPNU has issued an award under this program;

(2) Title of project;

(3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;

(4) Identifying award number assigned by the Department;

(5) Project period;

(6) Total amount of Departmental financial assistance approved by OEPNU during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(10) Other information or provisions deemed necessary by OEPNU and the Authorized Departmental Officer to carry out the awarding activities or to accomplish the purpose of a particular award.

(b) [Reserved]

Subpart F—Supplementary Information

§ 2903.18 Access to review information.

Copies of reviews, not including the identity of reviewers, and a summary of the comments will be sent to the applicant PD after the review process has been completed.

§ 2903.19 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* Unless the terms and conditions of the award state otherwise, the awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of award funds.

(b) *Changes in project plans.* (1) The permissible changes by the awardee, PD(s), or other key project personnel in the approved project shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the awardee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the award.

(5) *Changes in project period.* The project period may be extended by

OEPNU without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of award.

(6) *Changes in approved budget.* Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or award.

§ 2903.20 Reporting requirements.

The award document will give instructions regarding the submission of progress reports, including the frequency and required contents of the reports.

§ 2903.21 Applicable Federal statutes and regulations.

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

(a) 7 CFR part 1, subpart A—USDA implementation of the Freedom of Information Act.

(b) 7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

(c) 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

(d) 2 CFR part 417, Nonprocurement Debarment and Suspension.

(e) 2 CFR part 418, New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

(f) 2 CFR part 200, subparts B—General Provisions, C—Pre-Federal Award Requirements and Contents of Federal Awards, and D—Post-Federal Award Requirements, as adopted by USDA through 2 CFR part 400.

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

(h) 2 CFR part 200, subpart F—Audit Requirements, as adopted by USDA through 2 CFR part 400. Title 29 U.S.C. 794 (sec. 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in federally assisted programs. Title 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[85 FR 31939, May 28, 2020]

§ 2903.22 Confidential aspects of applications and awards.

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 2903.23 Definitions.

For the purpose of this program, the following definitions are applicable:

Authorized departmental officer or *ADO* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative or *AOR* means the president or chief executive officer of the applicant

organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Biodiesel means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Department or *USDA* means the United States Department of Agriculture.

Education activity means an act or process that imparts knowledge or skills through formal or informal training and outreach.

Grant means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

Grantee means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

Institution of higher education, as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

OEPNU means the Office of Energy Policy and New Uses.

Peer review is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

Prior approval means written approval evidencing prior consent by an authorized departmental officer (as defined in this section).

Program means the Biodiesel Fuel Education Program.

Project means the particular activity within the scope of the program supported by a grant award.

Project director or *PD* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

PARTS 2904–2999 [RESERVED]

CHAPTER XXX—OFFICE OF THE CHIEF FINANCIAL OFFICER, DEPARTMENT OF AGRICULTURE

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PARTS 3000–3010 [RESERVED]

PART 3011—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

3011.1 General statement.
3011.2 Public inspection and copying.
3011.3 Indexes.
3011.4 Initial requests for records.
3011.5 Appeals.
3011.6 Fee schedule.

AUTHORITY: 5 U.S.C. 301 and 522; 7 CFR 1.3.

SOURCE: 54 FR 51869, Dec. 19, 1989, unless otherwise noted.

§ 3011.1 General statement.

This part is issued in accordance with 7 CFR 1.3 of the Department of Agriculture regulations governing the availability of records (7 CFR 1.1–1.23 and Appendix A) under the Freedom of Information Act (5 U.S.C. 552, as amended). These regulations supplement the Department's regulations by providing guidance for any person wishing to request records from the Office of Finance and Management (OFM).

§ 3011.2 Public inspection and copying.

(a) *Background.* 5 U.S.C. 552(a)(2) requires each agency to maintain and make available for public inspection and copying certain kinds of records.

(b) *Procedure.* To gain access to OFM records that are available for public inspection, contact the Freedom of Information Act Officer by writing to the address shown in § 3011.4(b) of this title.

§ 3011.3 Indexes.

5 U.S.C. 552(a)(2) also requires that each agency maintain and make available for public inspection and copying current indexes providing identifying information for the public with regard to any records which are made available for public inspection and copying. OFM does not maintain any materials within the scope of these requirements.

§ 3011.4 Initial requests for records.

(a) *Background.* The Freedom of Information Act Officer is authorized to:

(1) Grant or deny requests for OFM records,

(2) Make discretionary release of OFM records when the benefit to the public in releasing the document outweighs any harm likely to result from disclosure,

(3) Reduce or waive fees to be charged where determined to be appropriate.

(b) *Procedures.* This part provides the titles and mailing address of officials who are authorized to release records to the public. The normal working hours of these offices are 8:30 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records is permitted. Persons wishing to request records from the Office of Finance and Management may do so by submitting each initial written request for OFM records to the appropriate OFM official shown below:

(1) For records held at the Washington, DC Headquarters units, submit initial requests to the Freedom of Information Act Officer, Office of Finance and Management, USDA, 14th and Independence Ave., SW., Room 117–W, Administration Building, Washington, DC 20250–9000.

(2) For records held at the National Finance Center in New Orleans, Louisiana, submit initial requests to the Freedom of Information Act Officer, National Finance Center, OFM, USDA, 13800 Old Gentilly Road, Building 350, (P.O. Box 60,000, New Orleans, LA 70160), New Orleans, Louisiana 70129.

If the requester is unable to determine the official to whom the request should be addressed, it should be submitted to the Headquarters Freedom of Information Act Officer who will refer such requests to the appropriate officials.

§ 3011.5 Appeals.

Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.6(e) and 1.8, to the Director, Office of Finance and Management, USDA, Room 117–W, Administration Building, 14th and Independence Ave., Washington, DC 20250–9000.

§ 3011.6 Fee schedule.

Departmental regulations provide for a schedule of reasonable standard

charges for document search and duplication. See 7 CFR 1.2(b). Fees to be charged are set forth in 7 CFR part 1, subpart A, Appendix A.

PARTS 3053–3099 [RESERVED]

CHAPTER XXXI—OFFICE OF ENVIRONMENTAL QUALITY, DEPARTMENT OF AGRICULTURE

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PART 3100—CULTURAL AND ENVIRONMENTAL QUALITY

Subparts A–B [Reserved]

Subpart C—Enhancement, Protection, and Management of the Cultural Environment

Sec.
3100.40 Purpose.
3100.41 Authorities.
3100.42 Definitions.
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3100.46 Responsibilities of the Department of Agriculture.

Subparts A–B [Reserved]

Subpart C—Enhancement, Protection, and Management of the Cultural Environment

AUTHORITY: Sec. 106, National Historic Preservation Act, as amended (16 U.S.C. 470f); National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*); E.O. 11593, 36 FR 8921, May 13, 1971.

SOURCE: 44 FR 66181, Nov. 19, 1979, unless otherwise noted.

§ 3100.40 Purpose.

(a) This subpart establishes USDA policy regarding the enhancement, protection, and management of the cultural environment.

(b) This subpart establishes procedures for implementing Executive Order 11593, and regulations promulgated by the Advisory Council on Historic Preservation (ACHP) ''Protection of Historical and Cultural Properties'' in 36 CFR part 800 as required by § 800.10 of those regulations.

(c) Direction is provided to the agencies of USDA for protection of the cultural environment.

§ 3100.41 Authorities.

These regulations are based upon and implement the following laws, regulations, and Presidential directives:

(a) *Antiquities Act of 1906* (Pub. L. 59–209; 34 Stat. 225; 16 U.S.C. 431 *et seq.*) which provides for the protection of historic or prehistoric remains or any object of antiquity on Federal lands; establishes criminal sanctions for unauthorized destruction or appropriation of antiquities; and authorizes scientific investigation of antiquities on Federal lands, subject to permit and regulations. Paleontological resources also are considered to fall within the authority of this Act.

(b) *Historic Sites Act of 1935* (Pub. L. 74–292; 49 Stat. 666; 16 U.S.C. 461 *et seq.*) which authorizes the establishment of National Historic Sites and otherwise authorizes the preservation of properties of national historical or archeological significance; authorizes the designation of National Historic Landmarks; establishes criminal sanctions for violation of regulations pursuant to the Act; authorizes interagency, intergovernmental, and interdisciplinary efforts for the preservation of cultural resources; and other provisions.

(c) *Reservoir Salvage Act of 1960* (Pub. L. 86–521; 74 Stat. 220; 16 U.S.C. 469–469c.) which provides for the recovery and preservation of historical and archeological data, including relics and specimens, that might be lost or destroyed as a result of the construction of dams, reservoirs, and attendant facilities and activities.

(d) *The National Historic Preservation Act of 1966* as amended (16 U.S.C. 470), which establishes positive national policy for the preservation of the cultural environment, and sets forth a mandate for protection in section 106. The purpose of section 106 is to protect properties on or eligible for the National Register of Historic Places through review and comment by the ACHP of Federal undertakings that affect such properties. Properties are listed on the National Register or declared eligible for listing by the Secretary of the Interior. As developed through the ACHP's regulations, section 106 establishes a public interest process in which the Federal agency proposing an undertaking, the State Historic Preservation Officer, the ACHP, interested organizations and individuals participate. The process is designed to insure that properties, impacts on them, and effects to them are identified, and that alternatives to avoid or mitigate an adverse effect on property eligible for the National Register are adequately considered in the planning process.

(e) *The National Environmental Policy Act of 1969* (NEPA) (Pub. L. 91–190; 83

Stat. 852; 42 U.S.C. 4321 *et seq.*) which declares that it is the policy of the Federal Government to preserve important historic, cultural, and natural aspects of our national heritage. Compliance with NEPA requires consideration of all environmental concerns during project planning and execution.

(f) *Executive Order 11593, ''Protection and Enhancement of the Cultural Environment''*, which gives the Federal Government the responsibility for stewardship of our nation's heritage resources and charges Federal agencies with the task of inventorying historic and prehistoric sites on their lands. E.O. 11593 also charges agencies with the task of identifying and nominating all historic properties under their jurisdiction, and exercising caution to insure that they are not transferred, sold, demolished, or substantially altered.

(g) *Historical and Archeological Data Preservation Act of 1974.* (Pub. L. 93–291; 88 Stat. 174.) which amends the Reservoir Salvage Act of 1960 to extend its provisions beyond the construction of dams to any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program. In addition, the Act provides a mechanism for funding the protection of historical and archeological data.

(h) *Presidential memorandum of July 12, 1978, ''Environmental Quality and Water Resource Management''* which directs the ACHP to publish final regulations, implementing section 106 of the National Historic Preservation Act (NHPA), and further directs each agency with water and related land resources responsibilities to publish procedures implementing those regulations.

(i) *36 CFR part 800*, ''Protection of Historic and Cultural Properties'' which establishes procedures for the implementation of section 106 of the NHPA, and directs publication of agency implementing procedures.

(j) *Land use policy of the USDA (Secretary's Memorandum No. 1827 Revised, with Supplement)* which establishes a commitment by the Department to the preservation of farms, rural communities, and rural landscapes.

(k) *Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 611) and Executive Order 12072 (Federal Space Management).* The Act encourages adaptive use of historic buildings as administrative facilities for Federal agencies and activities; the Executive Order directs Federal agencies to locate administrative and other facilities in central business districts.

(l) *American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996)* which declares it to be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians.

§ 3100.42 Definitions.

All definitions are those which appear in 36 CFR part 800. In addition, the following apply in this rule:

Cultural resources (heritage resources) are the remains or records of districts, sites, structures, buildings, networks, neighborhoods, objects, and events from the past. They may be historic, prehistoric, archeological, or architectural in nature. Cultural resources are an irreplaceable and nonrenewable aspect of our national heritage.

Cultural environment is that portion of the environment which includes reminders of the rich historic and prehistoric past of our nation.

§ 3100.43 Policy.

(a) The nonrenewable cultural environment of our country constitutes a valuable and treasured portion of the national heritage of the American people. The Department of Agriculture is committed to the management—identification, protection, preservation, interpretation, evaluation and nomination—of our prehistoric and historic cultural resources for the benefit of all people of this and future generations.

(b) The Department supports the cultural resource goals expressed in Federal legislation. Executive orders, and regulations.

(c) The Department supports the preservation and protection of farms, rural landscapes, and rural communities.

(d) The Department is committed to consideration of the needs of American

Indians, Eskimo, Aleut, and Native Hawaiians in the practice of their traditional religions.

(e) The Department will aggressively implement these policies to meet goals for the positive management of the cultural environment.

§ 3100.44 Implementation.

(a) It is the intent of the Department to carry out its program of management of the cultural environment in the most effective and efficient manner possible. Implementation must consider natural resource utilization, must exemplify good government, and must constitute a noninflationary approach which makes the best use of tax dollars.

(b) The commitment to cultural resource protection is vital. That commitment will be balanced with the multiple departmental goals of food and fiber production, environmental protection, natural resource and energy conservation, and rural development. It is essential that all of these be managed to reduce conflicts between programs. Positive management of the cultural environment can contribute to achieving better land use, protection of rural communities and farm lands, conservation of energy, and more efficient use of resources.

(c) In reaching decisions, the long-term needs of society and the irreversible nature of an action must be considered. The Department must act to preserve future options; loss of important cultural resources must be avoided except in the face of overriding national interest where there are no reasonable alternatives.

(d) To assure the protection of Native American religious practices, traditional religious leaders and other native leaders (or their representatives) should be consulted about potential conflict areas in the management of the cultural environment and the means to reduce or eliminate such conflicts.

§ 3100.45 Direction to agencies.

(a) Each agency of the Department shall consult with OEQ to determine whether its programs and activities may affect the cultural environment. Then, if needed, the agency, in consultation with the OEQ, shall develop its own specific procedures for implementing section 106 of the National Historic Preservation Act, Executive Order 11593, the regulations of the ACHP (36 CFR part 800), the American Indian Religious Freedom Act of 1978 and other relevant legislation and regulations in accordance with the agency's programs, mission and authorities. Such implementing procedures shall be published as proposed and final procedures in the FEDERAL REGISTER, and must be consistent with the requirements of 36 CFR part 800 and this subpart. Where applicable, each agency's procedures must contain mechanisms to insure:

(1) Compliance with section 106 of NHPA and mitigation of adverse effects to cultural properties on or eligible for the National Register of Historic Places;

(2) Clear definition of the kind and variety of sites and properties which should be managed;

(3) Development of a long-term program of management of the cultural environment on lands administered by USDA as well as direction for project-specific protection;

(4) Identification of all properties listed on or eligible for listing in the National Register that may be affected directly or indirectly by a proposed activity;

(5) Location, identification and nomination to the Register of all sites, buildings, objects, districts, neighborhoods, and networks under its management which appear to qualify (in compliance with E.O. 11593);

(6) The exercise of caution to assure that properties managed by USDA which may qualify for nomination are not transferred, sold, demolished, or substantially altered;

(7) Early consultation with, and involvement of, the State Historic Preservation Officer(s), the ACHP, Native American traditional religious leaders and appropriate tribal leaders, and others with appropriate interests or expertise;

(8) Early notification to insure substantive and meaningful involvement by the public in the agency's decision-making process as it relates to the cultural environment;

(9) Identification and consideration of alternatives to a proposed undertaking that would mitigate or minimize adverse effects to a property identified under paragraph (a)(4) of this section;

(10) Funding of mitigation measures where required to minimize the potential for adverse effects on the cultural environment. Funds for mitigation shall be available and shall be spent when needed during the life of the project to mitigate the expected loss; and

(11) Development of plans to provide for the management, protection, maintenance and/or restoration of Register sites under its management.

(b) Each agency of the Department which conducts programs or activities that may have an effect on the cultural environment shall recruit, place, develop, or otherwise have available, professional expertise in anthropology, archeology, history, historic preservation, historic architecture, and/or cultural resource management (depending upon specific need). Such arrangements may include internal hiring, Intergovernmental Personnel Act assignments, memoranda of agreement with other agencies or Departments, or other mechanisms which insure a professionally directed program. Agencies should use Department of the Interior professional standards (36 CFR 61.5) as guidelines to insure Departmentwide competence and consistency.

(c) Compliance with cultural resource legislation is the responsibility of each individual agency. Consideration of cultural resource values must begin during the earliest planning stages of any undertaking.

(d) Agency heads shall insure that cultural resource management activities meet professional standards as promulgated by the Department of the Interior (e.g., 36 CFR parts 60, 63, 66, 1208).

(e) Cultural resource review requirements and compliance with section 106 of NHPA and Executive Order 11593 shall be integrated and run concurrently, rather than consecutively, with the other environmental considerations under NEPA regulations. As such, direct and indirect impacts on cultural resources must be addressed in the environmental assessment for every agency undertaking. In meeting these requirements, agencies shall be guided by regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508) and Department of Agriculture regulations (7 CFR part 3100, subpart B).

(f) Each agency shall work closely with the appropriate State Historic Preservation Officer(s) in their preparation of State plans, determination of inventory needs, and collection of data relevant to general plans or specific undertakings in carrying out mutual cultural resource responsibilities.

(g) Each agency shall, to the maximum extent possible, use existing historic structures for administrative purposes in compliance with Public Buildings Cooperative Use Act of 1976 and Executive Order 12072, ''Federal Space Management''.

(h) Each agency should consult with Native American traditional religious leaders or their representatives and other native leaders in the development and implementation of cultural resource programs which may affect their religious customs and practices.

§ 3100.46 Responsibilities of the Department of Agriculture.

(a) Within the Department, the responsibility for the protection of the cultural environment is assigned to the Office of Environmental Quality (OEQ). The Office is responsible for reviewing the development and implementation of agency procedures and insuring Departmental commitment to cultural resource goals.

(b) The Director of the OEQ is the Secretary's Designee to the ACHP.

(c) In order to carry out cultural resource responsibilities, there will be professional expertise within the OEQ to advise agencies, aid the Department in meeting its cultural resource management goals, and to insure that all Departmental and agency undertakings comply with applicable cultural resource protection legislation and regulations.

(d) The OEQ will be involved in individual compliance cases only where resolution cannot be reached at the agency level. Prior to the decision to refer a matter to the full Council of the

ACHP, the OEQ will review the case and make recommendations to the Secretary regarding the position of the Department. The agency also will consult with the OEQ before reaching a final decision in response to the Council's comments. Copies of correspondence relevant to compliance with Section 106 shall be made available to OEQ.

PARTS 3101–3199 [RESERVED]

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT, DEPARTMENT OF AGRICULTURE

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PART 3200—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE ACQUISITION AND TRANSFER OF EXCESS PERSONAL PROPERTY

Sec.
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3200.10 Disposal.
3200.11 Liabilities and losses.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 2206a.

SOURCE: 63 FR 57234, Oct. 27, 1998, unless otherwise noted.

§ 3200.1 Purpose.

This Part sets forth the procedures to be utilized by Department of Agriculture (USDA) in the acquisition and transfer of excess property to the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions in support of research, educational, technical, and scientific activities or for related programs as authorized by 7 U.S.C. 2206a. Title to the personal property shall pass to the institution.

§ 3200.2 Eligibility.

Institutions that are eligible to receive Federal excess personal property pursuant to the provisions of this part are the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions conducting research, educational, technical, and scientific activities or related programs.

§ 3200.3 Definitions.

(a) *1890 Land grant institutions*—any college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et. seq.), including Tuskegee University.

(b) *1994 Land grant institutions*—any of the tribal colleges or universities as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

(c) *Hispanic-serving institutions*—institutions of higher education as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

(d) *Property management officer*—is an authorized USDA or institution official responsible for property management.

(e) *Screener*—is an individual designated by an eligible institution and authorized by the General Services Administration (GSA) to visit property sites for the purpose of inspecting personal property intended for use by the institution.

(f) *Excess personal property*—is any personal property under the control of a Federal agency that is no longer needed.

(g) *Cannibalization*—is the dismantling of equipment for parts to repair or enhance other equipment.

§ 3200.4 Procedures.

(a) To receive information concerning the availability of Federal excess personal property, an eligible institution's property management officer may contact their regional GSA, Area Utilization Officer. For information on USDA excess personal property, visit the USDA Web site at *http://www.nfc.usda.gov/propexcs*. USDA excess property will first be screened by USDA agencies through the Departmental Excess Personal Property Coordinator (DEPPC) using the Departmental Property Management Information System.

(b) Excess property selected by screeners of eligible institutions should be inspected whenever possible, or the holding agency should be contacted to verify the condition of the items, because interpretation of condition codes varies among Federal agencies.

(c) If the condition of the item is acceptable, the institution should ''freeze'' (reserve) items by calling the appropriate GSA office or USDA Departmental Excess Personal Property Coordinator (DEPPC). Since GSA may have several ''freezes'' on a piece of equipment, it is critical that the paperwork be submitted as soon as possible. Further, while transfers of excess personal property normally will be approved by GSA on a first-come-first-serve basis, consideration will be given

to such factors as national defense requirements, emergency needs, preclusion of new procurement, energy conservation, equitable distribution, and retention of title in the Government.

(d) Eligible institutions may submit property requests by mail or fax on a Standard Form 122, ''Transfer Order Excess Personal Property''.

(e) The SF–122 should be signed by the eligible institution's property management officer or authorized designee.

(1) The following information should also be provided:

(i) Date prepared.

(ii) GSA/DEPPC address.

(iii) Ordering Agency and address.

(iv) Holding Agency and address.

(v) Name and address of Institution.

(vi) Location of property.

(vii) Shipping instruction (including institution contact person and phone number).

(viii) Complete description of property including original acquisition cost, serial number, condition code, and quantity.

(2) This statement needs to be added following the property description:

''The property requested hereon is certified to be used in support of research, educational, technical, and scientific activities or for related programs. This transfer is requested pursuant to the provisions of Section 923 Pub. L. 104–127 (7 U.S.C. 2206a). Also, in accordance with these provisions USDA authorizes transfer of title of this property to the college/university/institution.''

(f) The SF–122 should be forwarded to USDA for approval and signature by an authorized USDA official. As confirmation of approval, the eligible institution's property management officer will receive a stamped copy of the SF–122. If the request is disapproved, it will be returned to the property management officer of the eligible institution with an appropriate explanation. All USDA approved SF–122's will be forwarded to DEPPC or the appropriate GSA office for final approval.

(g) Once the excess personal property is physically received, the institution is required to immediately return a copy of the SF–122 to USDA indicating receipt of requested items. Cancellations should also be reported to USDA.

NOTE: USDA shall send an informational copy of all SF–122's transactions to GSA.

[63 FR 57234, Oct. 27, 1998, as amended at 68 FR 75107, Dec. 30, 2003]

§ 3200.5 Dollar limitation.

There is no dollar limitation on excess personal property obtained under these procedures.

§ 3200.6 Restrictions.

(a) Property in the following Federal Supply Groups are prohibited from transfer.

INELIGIBLE FEDERAL SUPPLY CODE GROUPS

FSC Group	Name
10	Weapons.
11	Nuclear ordinance.
13	Ammunition and explosives.
14	Guided missiles.
18	Space vehicles.

(b) The property in the FSC's listed below are discouraged from transfer and not approved on a routine basis. However, Institutions may request items in these FSC groups, but all requests will be referred to the Director, Office of Procurement and Property Management for consideration and approval:

FSC Group	Name
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing and ground handling equipment.
20	Ship and marine equipment.

(c) Excess personal property may be transferred for the purpose of cannibalization, provided the eligible institution submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater benefit than utilization of the item in its existing form.

(d) Use of the procedures in this part for the purpose of stockpiling of excess personal property for future cannibalization is prohibited. Transfer requests for the purpose of cannibalization will be considered, but are normally subordinate to requests for complete items.

[63 FR 57234, Oct. 27, 1998, as amended at 68 FR 75107, Dec. 30, 2003]

§ 3200.7 Title.

Title to excess personal property obtained under Part 3200 will automatically pass to the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions once USDA receives the SF–122 indicating that the institution has received the property. Note: When competing Federal claims are made for particular items of excess personal property held by agencies other than USDA, with or without payment of reimbursement, GSA will give preference to the Federal agency that will retain title in the Government.

§ 3200.8 Costs.

Excess personal property obtained under this part is provided free of charge. However, the institution must pay all costs associated with packaging and transportation. The institution should specify the method of shipment on the SF–122.

§ 3200.9 Accountability and record keeping.

USDA requires that Federal excess personal property received by an eligible institution pursuant to this part shall be placed into use for a research, educational, technical, or scientific activity, or for a related purpose, within 1 year of receipt of the property, and used for such purpose for at least 1 year thereafter. The institution's property management officer must establish and maintain accountable records identifying the property's location, description, utilization and value. To ensure that the excess personal property is being used for its intended purpose under this part, compliance reviews will be conducted by an authorized representative of USDA. The review will include site visit inspections of the property and the accountability and record keeping systems.

§ 3200.10 Disposal.

Once the requirements in § 3200.9 are met for retention and use of property by the Institution and title is transferred, Federal excess personal property (FEPP) no longer needed by an Institution will be disposed of in accordance with the Institution's disposal practices. Regardless of ownership, FEPP must never be disposed of in any manner which is detrimental or dangerous to public health or safety. Also, any costs incurred during the disposal process are the responsibility of the Institution.

[68 FR 75108, Dec. 30, 2003]

§ 3200.11 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property transferred under this part.

PART 3203—GUIDELINES FOR THE TRANSFER OF EXCESS COMPUTERS OR OTHER TECHNICAL EQUIPMENT PURSUANT TO SECTION 14220 OF THE 2008 FARM BILL

Sec.

3203.1 Purpose.
3203.2 Eligibility.
3203.3 Definitions.
3203.4 Procedures.
3203.5 Dollar limitation.
3203.6 Restrictions.
3203.7 Title.
3203.8 Costs.
3203.9 Accountability and recordkeeping.
3203.10 Disposal.
3203.11 Liabilities and losses.

AUTHORITY: 7 U.S.C. 2206b.

SOURCE: 77 FR 26661, May 7, 2012, unless otherwise noted.

§ 3203.1 Purpose.

This part sets forth the procedures to be utilized by USDA when transferring excess USDA computers or other technical equipment to an organization for the purposes of distribution to a city, town, or local government entity in a rural area as authorized by 7 U.S.C. 2206b.

§ 3203.2 Eligibility.

To be eligible under this part:

(a) A city, town, or local government entity must be located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A).

(b) A designated organization must:

(1) Have the documented capability to refurbish and distribute excess computers or other technical equipment;

(2) Serve the interest of cities, towns, or local government entities in rural areas; and

(3) Have been designated by an official of a city, town, or local government entity in a rural area to receive excess computers or other technical equipment under this part.

§ 3203.3 Definitions.

Cannibalization means to remove serviceable parts from one item of equipment in order to install them on another item of equipment in order to repair or enhance its operability.

City, town, or local government entity in a rural area as defined in 7 U.S.C. 1991(a)(13)(A) means any area other than:

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

(2) Any urbanized area contiguous and adjacent to such a city or town described in paragraph (1) of this definition.

Computers or other technical equipment means central processing units, laptops, desktops, computer mouses, keyboards, monitors, related peripheral tools (e.g., printers, modems, routers, servers, multimedia projectors, multifunctional devices, external hard drives) and fax machines. This term may also include computer software where the transfer of a license is permitted.

Designated organization means an organization that has been selected by an official of a city, town, or local government entity in a rural area to provide refurbishing services on donated computer and technical equipment.

Excess means any property under the control of a USDA agency that is no longer required for that agency's or another USDA agency's needs, as determined by the agency head or designee.

Property Management Officer (PMO) is an eligible recipient's designated point of contact, responsible for adherence to procedures described in this part.

Recipient means a city, town, or local government entity located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A) that may receive excess computers or other technical equipment under this part.

Refurbish means to make 'like new' by the process of major maintenance or minor repair of an item, either aesthetically or mechanically.

§ 3203.4 Procedures.

(a) Each agency head will designate, in writing, an authorized official to approve transfers of excess computers or other technical equipment under this part consistent with the Department's policies on personal property management.

(b) Excess computers or other technical equipment must first be internally screened to ensure it is not needed elsewhere in the Department.

(c) To receive information concerning the availability of USDA excess computers or other technical equipment, an eligible recipient's PMO should contact any USDA office near to its location.

(d) The USDA employee responsible for personal property, at the office contacted, will review the request for eligibility of the recipient and the availability of excess computers or other technical equipment. The USDA employee will inform the requestor of the outcome of the review (e.g. eligibility, the availability of excess computers or other technical equipment).

(e) Eligible recipients will express their interest in receiving property under this part by submitting a request, on letterhead paper (electronic copy is acceptable), to a USDA authorized official. All requests must originate from, and be signed by, a representative of an eligible recipient city, town, or local government entity. Requests must include:

(1) Type of excess computers or other technical equipment requested (should include specifications);

(2) Justification for eligibility (see § 3203.2);

(3) Contact information of the requestor;

(4) Logistical information such as when and how the property will be picked up; and

(5) Information on the recipient's designated organization (company name, contact person and phone number) that is designated to receive and refurbish the property for the eligible recipient along with a copy of the

agreement between the recipient and its designated organization.

(f) Excess computers or other technical equipment should be inspected before the property is transferred or the USDA agency should be contacted to verify the condition of the property.

(g) If the condition of the property is acceptable, the recipient or its designated organization will coordinate with the USDA contact for transfer of the property. Since the USDA agency office may have several requests for property, it is critical that the recipient or its designated organization contact USDA as soon as possible. Property will usually be allocated on a first-come, first-served basis, taking into account fair and equitable distribution of excess computers or other technical equipment to all eligible recipients.

(h) Transfers will be accomplished using the appropriate USDA property transfer form. The transfer form must contain the following statement: ''Property listed on this form is being transferred pursuant to the provisions in 7 CFR Part 3203.'' The form must be signed by an authorized official of the USDA agency and an official of the recipient organization.

(i) A copy of the request that transferred the property must be attached to the transfer order and kept in the USDA agency's files.

(j) When property is transferred to a designated organization, a copy of the completed transfer document will be sent to the eligible recipient government entity for its records. Eligible recipients are responsible for following up with the designated organization they have designated for the final receipt of the property.

(k) In cases where an agency receives competing requests for excess computers or other technical equipment, to the extent permitted by law, the agency shall give full consideration to such factors as national defense requirements, emergency needs, energy conservation, preclusion of new procurement, fair and equitable distribution, transportation costs, and retention of title in the Government.

(l) Prior to transferring any property pursuant to this Act, the transferring agency must remove data from the excess computers or other technical equipment (memory or any kind of data storage device) according to accepted sanitization procedures. To the maximum extent practicable, the transferring agency must remove data using a means that does not remove, disable, destroy, or otherwise render unusable the excess computers or other technical equipment or components. It is imperative that agencies take the necessary steps to ensure that no personal computer, server, external storage device, or related electronic component is transferred that might contain sensitive or confidential information. See Departmental Manual 3575–001, Security Controls in the System Life Cycle/System Development Life Cycle, for additional guidance.

§ 3203.5 Dollar limitation.

There is no dollar limitation on excess computers or other technical equipment obtained under this part.

§ 3203.6 Restrictions.

(a) Only an authorized USDA official may approve the transfer of excess computers or other technical equipment under this part.

(b) Excess computers or other technical equipment may be transferred for the purpose of cannibalization, provided that the requestor submits a statement clearly indicating that cannibalization of the requested property will have greater benefit than utilization of the item in its existing form. Cannibalization is a secondary use of equipment and, therefore, these requests are considered subordinate to requests for primary use.

(c) Designated organizations will only receive property for cannibalization when it has been specifically requested by the recipient and the cannibalized parts must only be used in computers or other technical equipment destined for eligible recipients.

§ 3203.7 Title.

Title of ownership to excess computers or other technical equipment transferred under this part shall automatically pass to the recipient once the transferring agency and recipient or designated organization sign the

transfer form indicating that the designated organization has received the property.

§ 3203.8 Costs.

The designated organization must pay any costs associated with packaging and transportation of the property unless it has made other arrangements. The designated organization must remove property from the USDA agency's premises within 15 calendar days after being notified that the property is available for pickup, unless otherwise coordinated with the USDA agency. If the recipient decides prior to picking up or removing the property that it no longer wants the property, it must notify the USDA agency that approved the transfer request that the property is no longer needed.

§ 3203.9 Accountability and recordkeeping.

(a) USDA requires all excess computers or other technical equipment received by an eligible recipient pursuant to this part be placed into use within one year of receipt of the property and used for at least one year thereafter. The recipient's PMO must maintain accountable records for such property during this time period.

(b) GSA requires that all excess personal property given to non-federal recipients be reported each fiscal year. USDA agencies that transfer property under this part must report the transfers in their annual reports to OPPM and include both the recipient and organization names. OPPM will review the reports for accuracy, as well as fair and equitable distribution of the excess computers or other technical equipment, before submitting to GSA.

§ 3203.10 Disposal.

When property received under this part is no longer needed by the recipient, it must be disposed of in an environmentally sound manner that is not detrimental or dangerous to public health or safety and in accordance with all Federal, State and local laws.

§ 3203.11 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess computers or other technical equipment transferred under this part. The recipient/designated organization is advised to insure or otherwise protect itself and others as appropriate.

PARTS 3204–3299 [RESERVED]

CHAPTER XXXIII—OFFICE OF TRANSPORTATION, DEPARTMENT OF AGRICULTURE

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PART 3300—AGREEMENT ON THE INTERNATIONAL CARRIAGE OF PERISHABLE FOODSTUFFS AND ON THE SPECIAL EQUIPMENT TO BE USED FOR SUCH CARRIAGE (ATP); INSPECTION, TESTING, AND CERTIFICATION OF SPECIAL EQUIPMENT

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3300.88 Fees for U.S. ATP certificates.
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3300.94 Appeals.

AUTHORITY: Sec. 4, Pub. L. 97–325, International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4403).

SOURCE: 51 FR 33879, Sept. 24, 1986, unless otherwise noted.

Subpart A—Introduction

§ 3300.1 Scope of authority and purpose.

The International Carriage of Perishable Foodstuffs Act assigns to the Secretary of Agriculture the responsibility for implementation of the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP). The purpose of this rule is to establish procedures for the inspection, testing, and certification of insulated, refrigerated, mechanically refrigerated, and heated transport equipment in accordance with the Act and the standards specified in the Agreement. In the process, the intent is to utilize existing industry organizations and facilities for testing and inspection of equipment. The Secretary is the sole authority to issue certificates of compliance.

§ 3300.4 Definitions.

Administrator means the Administrator, Office of Transportation, U.S. Department of Agriculture, whose address is: 1405 Auditors Building, 201 14th Street, SW., Washington, DC 20250.

ATP means the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP), and the annexes and appendices thereto, done at Geneva, September 1, 1970, under the auspices of the Economic Commission for Europe, and any subsequent amendments thereto.[1]

ATP manager means the person designated by the Administrator to manage the program established by this rule, whose address is: ATP Manager, Office of Transportation, U.S Department of Agriculture, 1405 Auditors Building, 201 14th Street, SW., Washington, DC 20250.

Contracting party means a country which is signatory to the ATP.

Domestic owner means an organization incorporated or chartered under the laws of, and with principal office in, the United States, and to which one of the following applies:

(a) The organization owns and operates the equipment directly.

(b) The organization owns and operates the equipment through a wholly owned subsidiary in a foreign country.

(c) The organization is a lessee or bailee of the equipment, and a written lease or bailment provides that the organization is responsible for any inspection, testing, and certification of the equipment with respect to the ATP rule.

Equipment means the special transport equipment that meets the definitions and standards set forth in ATP, Annex 1, including, but not limited to, railcars, trucks, trailers, semitrailers, and intermodal freight containers that have an insulated body only, or an insulated body equipped with a refrigerating, mechanically refrigerating, or heating appliance.

Equipment manufacturer means an organization which producers or assembles the complete unit of equipment, that is, the insulated body with the thermal appliance installed.

Foreign owner means an organization registered under the laws of, or with principal office in, a country outside the United States, and which owns or operates the equipment.

Foreign-ATP certificate means a certificate issued by a foreign country which is a contracting party to the ATP, attesting that the equipment listed in the certificate complies with pertinent standards in the ATP.

Identical mechanical refrigerating appliance means an appliance which is of the same model number and design as the reference mechanical refrigerating appliance.

Insulated body means the six-sided structural component of equipment, consisting of insulated doors, sidewalls, roof, floor, and endwall, inside which perishable foodstuffs are carried.

International carriage means transportation of perishable foodstuffs if such foodstuffs are loaded in equipment or the equipment containing them is loaded onto a rail or road vehicle, in the territory of any country and such foodstuffs are, or the equipment containing them is, unloaded in the territory of another country that is a contracting party, where such transportation is by:

(a) Rail,

(b) Road,

(c) Any combination of rail and road, or

(d) Any sea crossing of less than one hundred and fifty kilometers, if preceded or followed by one or more land journeys as referred to in clauses (a), (b), and (c) of this definition, and the perishable foodstuffs are shipped in the same equipment used for such land journeys without transloading of such foodstuffs.

In the case of any transportation that involves one or more sea crossings other than as specified in clause (d) of this definition, each land journey shall be considered separately.

New equipment means equipment produced or assembled on or after the effective date of this rule.

Perishable foodstuffs means the quick deep-frozen and frozen food products listed in Annex 2, and the chilled food products listed in Annex 3 to the ATP.

Reference equipment means a unit of equipment which has passed a test in an approved testing station, and can thereby serve as a basis for certification of related serially-produced equipment.

[1] A copy of the agreement can be obtained by request to the ATP Manager, Office of Transportation, U.S. Department of Agriculture, 1405 Auditors Building, 201 14th Street, SW., Washington, DC 20250.

Reference insulated body means an insulated body which has passed a test in an approved testing station for measurement of the K-coefficient of the body, and can thereby serve as the basis for approval of serially-produced bodies in the case in which the body and the mechanical refrigerating appliance of the equipment are tested separately.

Reference mechanical refrigerating appliance means an appliance which has passed a test in an approved testing laboratory, and can thereby serve as the basis for approval of identical mechanical refrigerating appliances in the case in which the appliance and the insulated body of the equipment are tested separately.

Serially-produced bodies means insulated bodies which meet the definition in ATP, Annex 1 Appendix 1, paragraph 2(c)(i).

Serially-produced equipment means equipment of a specific type (container, semi-trailer, trailer, truck, or container), which meets the definition in ATP, Annex 1, Appendix 1, paragraphs 2(c), (i), (ii), (iii), and (iv).

Thermal appliance means the refrigerating, mechanical refrigerating, or heating appliance which is installed in the insulated body of the equipment.

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

U.S. ATP certificate means a certificate issued by the U.S. Department of Agriculture, attesting that the equipment listed in the certificate complies with pertinent standards in the ATP.

U.S. ATP testing laboratory means a facility in the United States which has been approved by the Administrator to conduct tests of mechanical refrigerating appliances.

U.S. ATP testing station means a facility in the United States which has been approved by the Administrator to conduct tests of equipment.

Subpart B—Procedures for Testing of Equipment

§ 3300.7 General.

Testing of equipment according to the ATP is basically done in two phases:

(a) Measurement of the insulating capacity, that is, the K-coefficient, of the insulated body.

(b) Determination of the efficiency of the thermal appliance as installed in the insulated body. In the case of mechanically refrigerated equipment, the mechanical refrigerating appliance may be tested separate from the body.

§ 3300.10 Measurement of the K-coefficient of an insulated body.

The K-coefficient shall be measured according to the procedures in ATP, Annex 1, Appendix 2, paragraphs 1–28, and the following shall apply:

(a) The internal heating method shall be used.

(b) In ATP, Annex 1, Appendix 2, paragraph 8, last line, ''about + 20 °C for the mean temperature of the walls of the body shall be interpreted to mean between +19 °C (+66 °F) and 21 °C (+70 °F).

(c) A report of each test shall be completed on a form corresponding to the pertinent test report model prescribed in ATP, Annex 1, Appendix 2. Report forms may be obtained by a request to the ATP manager.

§ 3300.13 Determination of the efficiency of the thermal appliances as installed in the insulated body.

In determining the efficiency of a thermal appliance with respect to maintaining a prescribed temperature inside the body, the procedures in ATP, Annex 1, Appendix 2, paragraphs 31–40 and 43–47 shall be used. A report of each test shall be completed on a form corresponding to the pertinent test report model prescribed in ATP, Annex 1, Appendix 2. Report forms may be obtained by a request to the ATP manager.

Subpart C—Approval of Testing Stations

§ 3300.16 General.

Any public or private organization incorporated or chartered under the laws of, and with principal office in, the United States may apply to have one or more of its facilities in the United States designated as a U.S. ATP testing station.

§ 3300.19 Application for approval.

An application by an officer of the organization shall be submitted to the Administrator for each facility for which approval is sought. Copies of the Form, Application for Approval as a U.S. ATP Testing Station, may be obtained by a request to the ATP manager. The following information must be supplied in the application:

(a) A statement that the organization is incorporated or chartered under the laws of, and that it has its principal office in, the United States, including the name, address, and telephone number of the principal office.

(b) The address and telephone number of the testing station, and name and title of person in charge of the station.

(c) A summary of experience at the facility which would indicate the capability to conduct tests of equipment according to Subpart B of this rule.

(d) A general description of the station, including drawings on letter size (8 ½ × 11 inches) paper to show the floor plan and cross-sections of the test chamber, basic dimensions, location of heat exchangers and instruments, and any other pertinent information.

(e) An indication of which of the following types of equipment, as defined in ATP, Annex 1, that the station is capable of testing: intermodal freight containers, semi-trailers, trailers, railcars, and trucks.

(f) A statement that the ATP manager or other representative of the Administrator may, before a decision is made concerning the application, observe a test at the station of a Class ''C'' mechanically refrigerated container or semi-trailer, with Class ''C'' being defined as in ATP, Annex 1, paragraph 3.

(g) A statement that the station will be open to public use, that is, to manufacturers and owners of equipment which may apply to have equipment tested.

(h) A statement that the fees to be charged by the organization for testing will be reasonable with respect to costs involved, and that such fees will be payable directly to the organization by those who seek testing of their equipment.

(i) A statement that the station will maintain records of basic data developed in each test conducted under this rule, such records to be available for review by the ATP manager or other representative of the Administrator upon request. The record for each test shall be maintained for a period of three years.

(j) A statement that the organization will advise the ATP manager as soon as practicable of its intent to conduct a test under this rule and that it will, as soon as possible, advise when a firm test date has been set so that the ATP manager or other representative of the Administrator may observe the test.

(k) A statement that the organization will send to the ATP manager a copy of each test report for equipment tested at the station according to this rule, within 30 days after completion of the test.

(l) A statement that, should any significant change occur in the facility with respect to structure or test equipment as a result of redesign or other cause during the period of approval, the organization will so advise the ATP manager within 30 days after such change.

(m) Any other pertinent information.

§ 3300.22 Response to application for approval.

The Administrator will, within 30 days of receipt of the application and any relevant information required, advise the applicant whether or not the facility is approved as a testing station. Approval is for a 5-year period.

§ 3300.25 Application for renewal of approval.

If an organization wishes to have an approval renewed at the end of a 5-year

period, it shall submit a request for renewal to the Administrator 90 days before expiration of the existing approval. The request for renewal shall contain the same type of information as required in the original application, that is, the information called for in § 3300.19 of subpart C.

§ 3300.28 Response to application for renewal of approval.

The Administrator will, within 30 days of receipt of application and any relevant information required, advise the applicant whether or not approval is renewed. A renewal is good for 5 years.

§ 3300.31 Termination of approval.

An approved testing station may at any time withdraw as an approved testing station by written notice to the Administrator. Similarly, the Administrator may suspend or terminate for cause the approved status of a testing station by written notice to the organization, setting forth the reasons for such action. Examples of causes for suspension or termination of approval of a testing station would be a change in equipment or operations at the station which would render the station incapable of performing tests according to the standards in the ATP, or noncompliance of the station with pertinent portions of this rule.

Subpart D—Procedures for Separate Testing of Mechanical Refrigerating Appliances

§ 3300.34 General.

ATP, Annex 1, Appendix 2, paragraph 41, provides that approval of mechanically refrigerated equipment may be done on the basis of separate testing of the mechanical refrigerating appliance.

§ 3300.37 Testing of a mechanical refrigerating appliance.

For separate testing of a mechanical refrigerating appliance, the following shall pertain:

(a) The calibrated-box method shall be used, as set forth in ARI Standard 1110, Standard for Mechanical Refrigeration Units, of the Air-Conditioning and Refrigeration Institute.

(b) The appliance shall be rated according to the class, or classes, of service for which the appliance is intended, with classes being defined as in ATP, Annex 1, paragraph 3.

(c) A report of each test shall be completed on a form corresponding to the pertinent test report model prescribed in ATP, Annex 1, Appendix 2. Report forms may be obtained by a request to the ATP manager.

Subpart E—Approval of Testing Laboratories

§ 3300.40 General.

Any public or private organization incorporated or chartered under the laws of, and with principal office in, the United States may apply to have one or more of its facilities in the United States designated as a U.S. ATP testing laboratory.

§ 3300.43 Application for approval.

An application by an officer of the organization shall be submitted to the Administrator for each facility for which approval is sought. Copies of the Form, Application for Approval as a U.S. ATP Testing Laboratory, may be obtained by a request to the ATP manager. The following information must be supplied in the application:

(a) A statement that the organization is incorporated or chartered under the laws of, and that it has its principal office in, the United States, including the address and telephone number of the principal office.

(b) The address and telephone number of the testing laboratory, and name and title of person in charge of the laboratory.

(c) A summary of the experience at the facility which would indicate a capability to conduct tests of mechanical refrigerating appliances according to subpart D of this rule.

(d) A general description of the laboratory, including drawings on letter size (8½ × 11 inches) paper to show the floor plan and cross-section of the test chamber, basic dimensions, location of heat exchangers and instruments, and any other pertinent information.

(e) A statement that the ATP manager or other representative of the Administrator may, before a decision is

made concerning the application, observe a test at the laboratory of a mechanical refrigerating appliance for a Class ''C'' mechanically refrigerated container or trailer, with Class ''C'' as defined in ATP, Annex 1, paragraph 3.

(f) A statement that the laboratory will maintain records of basic data developed in each test conducted under this rule, such records to be available for review by the ATP manager or other representative of the Administrator, upon request. The record for each test shall be maintained for a period of three years.

(g) A statement that the organization will advise the ATP manager as soon as practicable of its intent to conduct a test under this rule and that it will, as soon as possible, advise when a firm test has been set so that the ATP manager or other representative of the Administrator may observe the test.

(h) A statement that the organization will send to the ATP manager a copy of each test report for an appliance tested at the laboratory according to this rule, within 30 days after completion of the test.

(i) A statement that, should any significant change occur in the facility with respect to structure or test equipment as a result of redesign or other cause during the period of approval, the organization will so advise the ATP manager within 30 days after such change.

(j) Any other pertinent information.

§ 3300.46 Response to application for approval.

The Administrator will, within 30 days of receipt of an application and any relevant information required, advise the applicant whether or not the facility is approved as a testing laboratory. Approval is for a 5-year period from date of approval.

§ 3300.49 Application for renewal of approval.

If an organization wishes to have an approval renewed at the end of a 5-year period, it shall submit a request for renewal to the Administrator 90 days before expiration of the existing approval. The request for renewal shall contain the same type of information as required in the original application, that is, the information called for in § 3300.43 of subpart E.

§ 3300.52 Response to application for renewal of approval.

The Administrator will, within 30 days of receipt of application and any relevant information required, advise the applicant whether or not approval is renewed. A renewal extends the period of approval for 5 years.

§ 3300.55 Termination of approval.

An approved testing laboratory may at any time withdraw as an approved testing laboratory by written notice to the Administrator. Similarly, the Administrator may suspend or terminate for cause the approved status of a testing laboratory by written notice to the organization, setting forth the reasons for such action. Examples of causes for suspension or termination of approval would be a change in equipment or operations at the laboratory which would render it incapable of performing tests according to the standards in the ATP, or noncompliance of the laboratory with pertinent portions of this rule.

Subpart F—Certification of New Equipment

§ 3300.58 General.

The following shall apply for certification of new equipment:

(a) Domestic owners are eligible to receive U.S. ATP certificates for equipment produced or assembled in the United States or in a foreign country.

(b) Foreign owners are eligible to receive U.S. ATP certificates only for equipment produced or assembled in the United States.

(c) For equipment manufactured (*i.e.*, produced or assembled) in the United States:

(1) When the complete unit of equipment is tested, the test shall be performed in a U.S. ATP testing station.

(2) When the mechanical refrigerating appliance and the insulated body are tested separately, such tests shall be performed in approved testing facilities in the United States or in test facilities located in, and approved by, a foreign country which is a Contracting Party.

(d) For equipment manufactured in a foreign country which is a Contracting Party, a domestic owner may receive a U.S. ATP certiticate in exchange for the Foreign-ATP certificate issued by the country of manufacture.

(e) For equipment manufactured in a foreign country which is not a Contracting Party, tests shall be performed in approved testing facilities in the United States or in facilities located in and approved by a foreign country which is a Contracting Party.

(f) In accordance with ATP, Annex 1, Appendix 1, paragraphs 2(a) and (d), the validity of a test report for a reference equipment shall expire at the end of a period of 3 years or at the end of the manufacture of 1,000 units of serially-produced equipment, whichever occurs first.

(g) The validity of a test report for a reference mechanical refrigerating appliance shall expire at the end of a period of three years, or at the end of the manufacture of 1,000 identical mechanical refrigerating appliances, whichever occurs first.

(h) The validity of a test report for a reference insulated body shall expire at the end of a period of three years, or at the end of the manufacture of 1,000 serially-produced bodies, whichever occurs first.

(i) Serially-produced equipment shall be produced or assembled by the same manufacturer and at the same manufacturing plant as the reference equipment.

(j) Identical mechanical refrigerating appliances shall be manufactured by the same manufacturer and at the same manufacturing plant as the reference mechanical refrigerating appliance.

(k) Serially-produced bodies shall be manufactured by the same manufacturer and at the same manufacturing plant as the reference insulated body.

(l) Equipment manufacturers shall notify the ATP manager 30 days before start of manufacture so that the ATP manager or other representative of the Administrator may observe the manufacturing operation.

(m) Owners who receive a U.S. ATP certificate have the responsibility to manitain the equipment in good repair and operating condition with the understanding that the certificate is valid only so long as:

(1) The insulated body and the thermal appliance are maintained in good condition;

(2) No material alteration is made to the thermal appliance which decreases its refrigerating capacity, and;

(3) If the thermal appliance is replaced, it is replaced by an appliance of equal or greater refrigerating capacity.

§ 3300.61 Testing and verification requirements.

In accordance with ATP, Annex 1, Appendix 1, paragraphs 1, 1(a), 2(a), 2(b), 2(c) and 3, and Appendix 2, paragraph 41, certification of new equipment is based upon the following:

(a) For a unit of equipment, a test of the equipment in an approved testing station.

(b) For serially-produced equipment:

(1) A test of one unit of equipment in an approved testing station, such unit to serve as the reference equipment.

(2) Verification that production of other units of equipment is in conformity with the reference equipment.

(c) For mechanically refrigerated equipment, certification may be based upon a separate test of the mechanical refrigerating appliance and a separate test of the insulated body.

§ 3300.64 Application for certificate for new equipment produced or assembled in the United States or in a foreign country which is not a contracting party to the ATP.

Application for certification shall be submitted to the ATP manager by an officer in the organization of the owner of the equipment. In the case of equipment manufactured in the United States, application may be made by an officer in the organization of the equipment manufacturer, acting on behalf of the owner. Copies of the Form, Application for U.S. ATP Certificate for New Equipment Produced or Assembled in the United States or in a Foreign Country Which is not a Contracting Party to the ATP, may be obtained by a request to the ATP manager. The following information must be supplied in the application:

(a) A statement whether the owner is a domestic owner or a foreign owner, with the name, address and telephone

number of its principal office, and the name and title of person to contact.

(b) If the operator of the equipment is different from the owner, the name and address of the operator.

(c) Type of equipment (intermodal freight container, semi-trailer, trailer, railcar, or truck).

(d) Total number of units of equipment.

(e) Definition and distinguishing mark of the equipment for which certification is sought, referring to ATP, Annex 1, paragraph 3 and Appendix 4.

(f) Name, address, and telephone number of the principal office of the equipment manufacturer, and name and title of the person to contact.

(g) Name and address of the plant at which the equipment was manufactured.

(h) In the case of a unit of equipment (*i.e.*, the insulated body with its mechanical refrigerating appliance installed) that has been tested to serve as the reference equipment for serially-produced equipment:

(1) The original or certified true copy of the test report for the reference equipment.

(2) For the serially-produced equipment:

(i) The manufacturer's make and model number for the equipment, including a brief description of the equipment and enclosure of any brochure on the equipment which might be available.

(ii) The basis upon which the equipment meets the definition of serially-produced equipment, with respect to the reference equipment.

(iii) A statement that the equipment was manufactured at the same plant at which the reference equipment was manufactured.

(iv) A statement that production of the equipment was in conformity with the reference equipment.

(i) In the case where the mechanical refrigerating appliance and the insulated body have been tested separately:

(1) For the reference mechanical refrigerating appliance:

(i) The original or certified true copy of the test report.

(ii) From the test report, the effective refrigerating capacity, W, in watts, of the appliance at an outside temperature of + 30 °C and the inside temperature (*see* ATP, Annex 1, paragraph 3 and Appendix 4) for the class of equipment for which certification is sought. ''W'' must be equal to, or greater than, the increased heat transfer rate, H_i, for the reference insulated body. See paragraph (3)(iii) below.

(2) For the identical mechanical refrigerating appliances:

(i) Name and address of the plant at which the identical appliances and reference appliance were manufactured.

(ii) The manufacturer's make, model number, and a brief description of the appliances with enclosure of any brochure on the appliances which might be available.

(iii) A statement that the appliances meet the definition of identical mechanical refrigerating appliances.

(3) For the reference insulated body:

(i) The original or certified true copy of the test report.

(ii) The total heat transfer rate of the body, $H_t = S \times K \times \Delta T$, in watts, where: ''S'' is the mean surface area of the body, from the test report; ''K'' is the heat transfer coefficient of the body, from the test report; and, ''Δ T'' is the difference in degrees Kelvin between an outside temperature of + 30 °C and the inside temperature for the class of equipment for which certification is sought.

(iii) The increased beat transfer rate, H_i, obtained by multiplying the total heat transfer rate H_t, by the factor of 1.75.

(4) For the serially-produced insulated bodies:

(i) Name and address of the plant at which the serially-produced bodies and reference body were manufactured.

(ii) The manufacturer's make, model number, and a brief description of the bodies, with any brochure on the bodies which might be available.

(iii) The basis upon which the bodies meet the definition of serially-produced bodies, with respect to the reference insulated body.

(iv) A statement that production of the bodies was in conformity with the reference insulated body.

(j) Information on the equipment after manufacture:

(1) A statement that each mechanical refrigerating appliance, after it was installed in the body, was operated and thoroughly checked and that each appliance functioned properly.

(2) A statement that each body and each appliance has affixed to it a manufacturer's plate or other means of identification which shows the items of information required by ATP, Annex 1, paragraph 6.

(3) A statement that each unit of equipment, before it is put into service, will have affixed to it a certification plate and distinguishing mark as specified in ATP, Annex 1, Appendix 1, paragraphs 4 and 5, and Appendixes 3 and 4.

(4) A list showing, for each unit of equipment, the serial number of the body and the corresponding owner's equipment identification number.

§ 3300.67 Application for certificate for new equipment produced or assembled in a foreign country which is a contracting party to the ATP.

An application for certification of equipment shall be submitted to the ATP manager by an officer in the organization of the owner of the equipment. Copies of the Form, Application for U.S. ATP Certificate for New Equipment Produced or Assembled in a Foreign Country Which is a Contracting Party, may be obtained by a request to the ATP manager. The following information must be submitted in the application:

(a) A statement that the owner is a domestic owner, with the name, address and telephone number of its principal office, and the name and title of the person to contact.

(b) If the operator of the equipment is different from the owner, the name and address of the operator.

(c) The type of equipment (intermodal freight container, trailer, semitrailer, railcar, or truck.)

(d) Total number of units of equipment.

(e) Definition of the equipment for which certification is sought, referring to ATP, Annex 1, paragraph 3, and Appendix 4.

(f) Name, address, and telephone number of the manufacturer of the equipment, and the name and title of the person to contact.

(g) The manufacturer's make and model number for the equipment, including a brief description of the equipment and any brochure on the equipment which might be available.

(h) The original or certified true copy of the test report for the reference equipment.

(i) The original or certified true copy of the Foreign-ATP certificate issued for the equipment.

(j) A statement that each unit of equipment, before it is put into service, will have affixed to it a certification plate and distinguishing mark as specified in ATP, Annex 1, Appendix 1, paragraphs 4 and 5, and Appendixes 3 and 4.

(k) A list showing, for each unit of equipment, the serial number of the body and the corresponding owner's equipment identification number.

§ 3300.70 Issuance of certificate.

The ATP manager will evaluate the documents received and, for equipment deemed qualified, will issue a U.S. ATP certificate to the applicant within 30 days of the receipt of an application and any relevant information required. The certificate will be in the format prescribed in ATP, Annex 1, Appendix 3. For equipment deemed not qualified, the applicant will be advised of the reasons for non-qualification within 30 days of the receipt of an application and any relevant information required.

§ 3300.73 Period of validity of certificates.

In accordance with ATP, Annex 1, Appendix 1, paragraphs 1(a) and 1(b), certificates issued for new equipment are valid for a period of 6 years from date of issue.

Subpart G—Certification of Equipment in Service

§ 3300.76 General.

Only domestic owners are eligible to receive U.S. ATP certificates for equipment in service, with certification based upon the following:

(a) For equipment which has not previously been certified:

(1) For each unit of equipment, a test in a U.S. ATP testing station or in a testing station located in and approved by a country which is a Contracting

Party, to measure the K-coefficient of the insulated body and the efficiency of the thermal appliance in accordance with § 3300.10 and § 3300.13 of this rule.

(2) If the equipment consists of serially-produced equipment manufactured by a particular equipment manufacturer, and belonging to one owner, certification may be based upon the following:

(i) A test of 1 percent of the units of equipment as prescribed in preceding paragraph (a)(1) of this section, the units tested to serve as reference equipment.

(ii) An inspection of each unit of equipment, using the procedures set forth in ATP, Annex 1, Appendix 2, paragraphs 29 and 49. The inspections shall be performed by one of the following, at the choice of the owner:

(A) Persons in the owner's organization whom the owner deems qualified to perform inspections, or;

(B) By an independent inspection agency which the owner deems competent to perform inspections. Fees charged by such inspection agency shall be payable directly to the agency by the owner.

(iii) A report of each inspection shall be completed on a form corresponding to the pertinent test report model in ATP, Annex 1, Appendix 2. Report forms may be obtained by a request to the ATP manager.

(b) For renewal of a U.S. ATP certificate which is nearing its expiration date, any of the following three procedures:

(1) For each unit of equipment, a test as prescribed in preceding paragraph (a)(1) of this section, or;

(2) If the equipment is serially-produced by a particular manufacturer and belongs to one owner, test and inspection of the equipment according to the procedures prescribed in preceding paragraphs (a)(2)(i), (ii), and (iii) of this section, or;

(3) An inspection of each unit of equipment as prescribed in paragraphs (a)(2)(ii) and (iii) of this section.

(c) For equipment which is currently certified according to a U.S. ATP certificate, and which has been transferred from one domestic owner to another, the new owner may obtain a U.S. ATP certificate by submitting the original or certified true copy of the certificate issued to the previous owner, and by performing an inspection and submitting an inspection report for each unit of equipment.

(d) For equipment which is currently certified according to a Foreign-ATP certificate, and which has been transferred from a foreign owner to a domestic owner, the domestic owner may obtain a U.S. ATP certificate by submitting the original or certified true copy of the test report for the reference equipment and the original or certified true copy of the foreign certificate, and by performing an inspection and submitting an inspection report for each unit of equipment.

(e) Owners who receive a U.S. ATP certificate have the responsibility to maintain equipment in good repair and operating condition with the understanding that the certificate is valid only so long as:

(1) The insulated body and the thermal appliance are maintained in good condition;

(2) No material alteration is made to the thermal appliance which decreases its refrigeration capacity, and;

(3) If the thermal appliance is replaced, it is replaced by an appliance of equal or greater refrigerating capacity.

§ 3300.79 Application for certificate.

An application shall be submitted to the ATP manager by an officer in the organization of the owner of the equipment. Copies of the Form, Application for U.S. ATP Certificate for Equipment in Service, may be obtained by a request to the ATP manager. The following information is requested in the application:

(a) A statement that the owner is a domestic owner, with the name, address, and telephone number of its principal office, and name and title of person to contact.

(b) If the operator of the equipment is different from the owner, the name and address of the operator.

(c) The type of equipment (intermodal freight container, trailer, semitrailer, railcar, or truck).

(d) The total number of units of equipment.

(e) The definition of the equipment for which certification is sought, referring to ATP, Annex 1, paragraph 3 and Appendix 4.

(f) For equipment which has not been previously certified, one of the following:

(1) For each unit of equipment, the original or certified true copy of the test report, or;

(2) If the equipment is serially-produced by one manufacturer:

(i) Name of manufacturer.

(ii) The original or certified true copy of the test report(s) of 1 percent of the equipment which was tested to serve as reference equipment.

(iii) A report of inspection for each unit of equipment.

(g) For renewal of a U.S. ATP Certificate which is nearing its expiration date:

(1) The original or certified true copy of that certificate, and;

(2) One of the following, (i) (ii), or (iii):

(i) For each unit of equipment, the original or certified true copy of the test report.

(ii) If the equipment is serially-produced by one manufacturer:

(A) Name of manufacturer.

(B) The original or certified true copy of the test report(s) of 1 percent of the equipment which was tested to serve as reference equipment.

(C) A report of inspection from each unit of equipment.

(iii) A report of inspection for each unit of equipment.

(h) For equipment which is currently certified according to a U.S. ATP certificate, and which has been transferred from one domestic owner to another:

(1) The original or certified true copy of that certificate.

(2) A report of inspection for each unit of equipment.

(i) For equipment which is currently certified according to a Foreign-ATP certificate, and which has been transferred from a foreign owner to a domestic owner:

(1) The original or certified true copy of the test report for the reference equipment.

(2) The original or certified true copy of the Foreign-ATP certificate.

(3) A report of inspection for each unit of equipment.

(j) A statement that each unit of equipment has, or will have, affixed to it a certification plate and distinguishing mark as prescribed in ATP, Annex 1, Appendix 1, paragraphs 4 and 5, and Appendices 3 and 4.

(k) A list showing, for each unit of equipment, the serial number of the body and the corresponding owner's equipment identification number.

§ 3300.82 Issuance of certificate.

The ATP manager will evaluate documents received and, for equipment deemed qualified, will issue a U.S. ATP certificate to the applicant within 30 days of receipt of the application and any relevant information required. The certificate will be in the format prescribed in ATP, Annex 1, Appendix 3. For equipment deemed not qualified, the applicant will be advised of reasons for non-qualification within 30 days of receipt of an application and any relevant information required.

§ 3300.85 Period of validity of certificates.

In accordance with ATP, Annex 1, Appendix 1, paragraphs 1(b), and Appendix 2, paragraphs 29(c) and 49(b) and (d), considered in combination, certificates will be valid for periods as follows:

(a) For equipment which passes a test, 6 years.

(b) For serially-produced equipment of which 1 percent have passed a test, and all units have been inspected and passed such inspection, 6 years.

(c) For renewal of a U.S. ATP certificate which is nearing its expiration date, where the equipment has passed an inspection but has not been tested, 3 years.

(d) For equipment currently certified according to a U.S. ATP certificate, where the equipment has been transferred from one domestic owner to another and the equipment has passed an inspection, 3 years or the date of expiration of the current U.S. ATP certificate, whichever gives the later expiration date on the new U.S. ATP certificate.

(e) For equipment currently certified according to a Foreign-ATP certificate, where the equipment has been transferred from a foreign owner to a domestic owner and the equipment has passed an inspection, 3 years or the date of expiration of the foreign certificate, whichever gives the later expiration date on the newly issued U.S. ATP certificate.

Subpart H—Other Provisions

§ 3300.88 Fees for U.S. ATP certificates.

The fee schedule for issuance of U.S. ATP certificates by the U.S. Department of Agriculture will be calculated according to the criteria in Circular A–25[2], issued by the Office of Management and Budget. Fees may be revised as required on an annual basis.

[2] A copy of Circular A–25 can be obtained by a request to the Office of Management and Budget (OMB), 17th Street and Pennsylvania Avenue, NW., Washington, DC 20503.

§ 3300.91 List of approved testing stations, approved testing laboratories, and fees for certificates.

A current list of U.S. ATP testing stations, U.S. ATP testing laboratories, and fees for issuance of U.S. ATP certificates may be obtained by request to the ATP manager.

§ 3300.94 Appeals.

Any organization aggrieved by an action in connection with this rule may obtain a review of such action by submitting pertinent information by letter to the Administrator. The decision of the Administrator is the final agency action.

PARTS 3301–3399 [RESERVED]

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PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

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AUTHORITY: 7 U.S.C. 450i(c).

SOURCE: 56 FR 58147, Nov 15, 1991, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3400 appear at 76 FR 4806, Jan. 27, 2011.

Subpart A—General

§ 3400.1 Applicability of regulations.

(a) The regulations of this part apply to special research grants awarded under the authority of subsection (c) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i (c)), to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States. Subparts A and B, excepting this section, apply only to special research grants awarded under subsection (c)(1)(A). Subpart C, Peer and Merit Review Arranged by Grantees, and Subpart D, Annual Reports, apply to all grants awarded under subsection (c).

(b) Each year the Director of NIFA shall determine and announce through publication of a Notice in such publications as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, research program areas for which proposals will be solicited competitively, to the extent that funds are available.

(c) The regulations of this part do not apply to research, extension or education grants awarded by the Department of Agriculture under any other authority.

[64 FR 34103, June 24, 1999]

§ 3400.2 Definitions.

As used in this part:

(a) *Director* means the Director of the National Institute of Food and Agriculture (NIFA) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) *Department* means the Department of Agriculture.

(c) *Principal investigator* means a single individual designated by the grantee in the grant application and approved by the Director who is responsible for the scientific and technical direction of the project.

(d) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(e) *Research project grant* means the award by the Director of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the annual solicitation of applications.

(f) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(g) *Project period* means the total length of time that is approved by the Director for conducting the research project as outlined in an approved grant application.

(h) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) *Awarding official* means the Director and any other officer or employee of the Department to whom the authority to issue or modify research project grant instruments has been delegated.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of grant applications in those fields.

(k) *Ad hoc reviewers* means experts or consultants qualified by training and experience in particular scientific or technical fields to render special expert advice, whose written evaluations of grant applications are designed to complement the expertise of the peer review group, in accordance with the provisions of this part, on the scientific or technical merit of grant applications in those fields.

(l) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) *Methodology* means the project approach to be followed and the resources needed to carry out the project.

[56 FR 58147, Nov. 15, 1991, as amended at 76 FR 4806, Jan. 27, 2011]

§ 3400.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any State agricultural experiment station, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals, shall be eligible to apply for and to receive a special research project grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal Government;

(4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project grant under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

§ 3400.4 How to apply for a grant.

(a) A request for proposals will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation, as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare special research grant proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research program areas which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

(4) Number of copies to be submitted;

(5) Forms required to be used when submitting proposals; and

(6) Special requirements.

(b) *Grant Application Kit.* A Grant Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* Unless otherwise stated in the specific program solicitation, the following applies:

(1) *Grant Application.* All research grant proposals submitted by eligible applicants should contain a Grant Application form, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Title of Project.* The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(3) *Objectives.* Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(4) *Procedures.* The procedures or methodology to be applied to the proposed research plan should be explicitly stated. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;

(iv) Means by which data will be analyzed or interpreted;

(v) Pitfalls which might be encountered; and

(vi) Limitations to proposed procedures.

(5) *Justification.* This section should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem.

(ii) The importance of starting the work during the current fiscal year, and

(iii) Reasons for having the work performed by the proposing organization.

(6) *Literature review.* A summary of pertinent publications with emphasis on their relationship to the research should be provided and should include all important and recent publications. The citations should be accurate, complete, written in acceptable journal format, and be appended to the proposal.

(7) *Current research.* The relevancy of the proposed research to ongoing and, as yet, unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment.* All facilities, including laboratories, which are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or not directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be fully explained, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be fully explained and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvement must state

which proposer is to receive any resulting grant award, since only one eligible applicant, as provided in §3400.3 of this part, may be the recipient of a research project grant under one proposal.

(10) *Research timetable.* The applicant should outline all important research phases as a function of time, year by year.

(11) *Personnel support.* All personnel who will be involved in the research effort must be clearly identified. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of *all* key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publications listings; and

(iii) A chronological listing of the most representative publications during the past five years shall be provided for each professional project member for whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Grant Application Kit identified under §3400.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. No funds will be awarded for the renovation or refurbishment of research spaces; purchases or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility. All research project grants awarded under this part shall be issued without regard to matching funds or cost sharing.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. It is expected that a significant number of special research grant proposals will involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Grant Application Kit, identified above in §3400.4(b), contains forms which are suitable for such certification of compliance.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Grant Application Kit, identified above in §3400.4(b), contains forms which are suitable for such certification.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Special Research Grants Program funds rests with the

performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et. seq.*) and the regulation promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable of such certification.

(14) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the Director or experts or consultants engaged by the Director for this purpose. The Grant Application Kit, identified above in § 3400.4(b), contains a form which is suitable for listing current and pending support.

(15) *Additions to project description.* Each project description is expected by the Director, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in the annual solicitation of proposals as indicated in § 3400.4(a)(4). Each set of such materials must be identified with the title of the research project as it appears in the Grant Application and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(16) *Organizational management information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a research project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the agency specified in this part once a research project grant has been recommended for funding.

[56 FR 58147, Nov 15, 1991, as amended at 80 FR 81738, Dec. 31, 2015]

§ 3400.5 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants in accordance with eligible research problem or program areas and deadlines established in the applicable request for proposals shall be evaluated by the Director through such officers, employees, and others as the Director determines are uniquely qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Director shall solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the research program areas covered by the applications received and whose general roles are defined in §§ 3400.2(j) and 3400.2(k). Specific evaluations will be based upon the criteria established in subpart B § 3400.15, unless NIFA determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of such evaluations is to provide information upon which the Director can make

informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition*. On the basis of the Director's evaluation of an application in accordance with paragraph (a) of this section, the Director will

(1) Approve support using currently available funds,

(2) Defer support due to lack of funds or a need for further evaluations, or

(3) Disapprove support for the proposed project in whole or in part.

With respect to approved projects, the Director will determine the project period (subject to extension as provided in §3400.7(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§3400.6 Grant awards.

(a) *General*. Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Director as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and 2 CFR part 20 (part 3015 of this title).

(b) *Grant award document and notice of grant award*—(1) *Grant award document*. The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Director has awarded a special research project grant under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Director during the project period;

(vii) Legal authority(ies) under which the research project grant is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project grant award; and

(ix) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(2) *Notice of grant award*. The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Categories of grant instruments*. The major categories of grant instruments shall be as follows:

(1) *Standard grant*. This is a grant instrument by which the Department agrees to support a specified level of research effort for a predetermined project period without the announced intention of providing additional support at a future date. This type of research project grant is approved on the basis of peer review and recommendation and is funded for the entire project period at the time of award.

(2) *Renewal grant*. This is a document by which the Department agrees to provide additional funding under a standard grant as specified in paragraph (c)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a

renewal application is submitted, it should include a summary of progress to date under the previous grant instrument. Such a renewal shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Continuation grant.* This is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal Government and the public. It involves a long-term research project that is considered by peer reviewers and Departmental officers to have an unusually high degree of scientific merit, the results of which are expected to have a significant impact on the food and agricultural sciences, and it supports the efforts of experienced scientists with records of outstanding research accomplishments. This kind of document will normally be awarded for an initial one-year period and any subsequent continuation research project grants will also be awarded in one-year increments. The award of a continuation research project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. A grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Such requests must include: an interim progress report detailing all work performed to date; a Grant Application; a proposed budget for the ensuing period, including an estimate of funds anticipated to remain unobligated at the end of the current budget period; and current information regarding other extramural support for senior personnel. Decisions regarding continued support and the actual funding levels of such support in future years will usually be made administratively after consideration of such factors as the grantee's progress and management practices and within the context of available funds. Since initial peer reviews were based upon the full term and scope of the original special research grant application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

(4) *Supplemental grant.* This is an instrument by which the Department agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed the statutory time limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification of need to warrant such action. A request of this nature normally does not require additional peer review.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any research project grant shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

[56 FR 58147, Nov. 15, 1991, as amended at 79 FR 75997, Dec. 26, 2014]

§ 3400.7 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not delegate or transfer in whole or in part, to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee,

principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the grantee or the principal investigator(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Director for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes, except as may be allowed in the terms and conditions of the grant award.

(c) *Changes in project period.* The project period determined pursuant to §3400.5(b) may be extended by the Director without additional financial support for such additional period(s) as the Director determines may be necessary to complete or fulfill the purposes of an approved project. Any extension, when combined with the originally approved or amended project period shall not exceed three (3) years (the limitation established by statute) and shall be further conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

[56 FR 58147, Nov. 15, 1991, as amended at 64 FR 34103, June 24, 1999]

§3400.8 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment and Suspension.

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted

programs (implementing regulations are contained in 37 CFR part 401).

[79 FR 75997, Dec. 19, 2014]

§ 3400.9 Other conditions.

The Director may, with respect to any research project grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Director's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Grant Applications

§ 3400.10 Establishment and operation of peer review groups.

Subject to § 3400.5, the Director will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3400.14.

§ 3400.11 Composition of peer review groups.

(a) Peer review group members will be selected based upon their training and experience in relevant scientific or technical fields, taking into account the following factors:

(1) The level of formal scientific or technical education by the individual;

(2) The extent to which the individual has engaged in relevant research, the capacities in which the individual has done so (e.g., principal investigator, assistant), and the quality of such research;

(3) Professional recognition as reflected by awards and other honors received from scientific and professional organizations outside of the Department;

(4) The need of the group to include within its membership experts from various areas of specialization within relevant scientific or technical fields;

(5) The need of the group to include within its membership experts from a variety of organizational types (e.g., universities, industry, private consultant(s)) and geographic locations; and

(6) The need of the group to maintain a balanced membership, e.g., minority and female representation and an equitable age distribution.

(b) [Reserved]

§ 3400.12 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in Title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (part O of this title), and Executive Order 11222, as amended.

§ 3400.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and implementing Departmental regulations (part 1 of this title).

§ 3400.14 Proposal review.

(a) All research grant applications will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to research program area). Proposals which do not fall within the guidelines as stated in the annual request for proposals will be eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount for a particular program area as announced in the request for proposals may be considered as lying outside the guidelines.

(b) All applications will be carefully reviewed by the Director, qualified officers or employees of the Department, the respective peer review group, and *ad hoc* reviewers, as required. Written comments will be solicited from *ad hoc* reviewers when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the applicable request for proposals.

(c) No awarding official will make a research project grant based upon an application covered by this part unless the application has been reviewed by a

peer review group and/or *ad hoc* reviewers in accordance with the provisions of this part and said reviewers have made recommendations concerning the scientific merit of such application.

(d) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding official.

§ 3400.15 Review criteria.

(a) Subject to the varying conditions and needs of States, Federal funded agricultural research supported under these provisions shall be designed to, among other things, accomplish one or more of the following purposes:

(1) Continue to satisfy human food and fiber needs;

(2) Enhance the long-term viability and competitiveness of the food production and agricultural system of the United States within the global economy;

(3) Expand economic opportunities in rural America and enhance the quality of life for farmers, rural citizens, and society as a whole;

(4) Improve the productivity of the American agricultural system and develop new agricultural crops and new uses for agricultural commodities;

(5) Develop information and systems to enhance the environment and the natural resource base upon which a sustainable agricultural economy depends; or

(6) Enhance human health.

In carrying out its review under § 3400.14, the peer review group will use the following form upon which the evaluation criteria to be used are enumerated, unless pursuant to § 3400.5(a), different evaluation criteria are specified in the annual solicitation of proposals for a particular program.

Peer Panel Scoring Form

Proposal Identification No. _____

Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines? _____ Yes _____ No. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal	.....	10		
2. Scientific and technical quality of the approach	.....	10		
3. Relevance and importance of proposed research to solution of specific areas of inquiry	.....	6		
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment	.....	5	.....	.....

Score _____

Summary Comments _____

(b) Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer review panel for each criterion utilizing a scale of 1 through 10. A score of one (1) will be considered low and a score of ten (10) will be considered high for each selection criterion. A weighted factor is used for each criterion.

Subpart C—Peer and Merit Review Arranged by Grantees

SOURCE: 64 FR 34104, June 24, 1999, unless otherwise noted.

§ 3400.20 Grantee review prior to award.

(a) *Review requirement.* Prior to the award of a standard or continuation grant by NIFA, any proposed project shall have undergone a review arranged by the grantee as specified in this subpart. For research projects, such review must be a scientific peer review conducted in accordance with § 3400.21. For education and extension projects, such review must be a merit review conducted in accordance with § 3400.22.

(b) *Credible and independent.* Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is

appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

(c) *Notice of completion and retention of records.* A notice of completion of review shall be conveyed in writing to NIFA either as part of the submitted proposal or prior to the issuance of an award, at the option of NIFA. The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to NIFA; however, proper documentation of the review process and results should be retained by the applicant.

(d) *Renewal and supplemental grants.* Review by the grantee is not automatically required for renewal or supplemental grants as defined in §3400.6. A subsequent grant award will require a new review if, according to NIFA, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

§3400.21 Scientific peer review for research activities.

Scientific peer review is an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principals, collaborators or others involved in the preparation of the application under review.

§3400.22 Merit review for education and extension activities.

Merit review is an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed. The merit review shall be performed by peers and other individuals with expertise appropriate to evaluate the proposed project. Merit reviewers may not include principals, collaborators or others involved in the preparation of the application under review.

Subpart D—Annual Reports

§3400.23 Annual reports.

(a) *Reporting requirement.* The recipient shall submit an annual report describing the results of the research, extension, or education activity and the merit of the results.

(b) *Report type and content.* Unless otherwise stipulated, grant recipients will have met the reporting requirement under this subpart by complying with the reporting requirements as set forth in the terms and conditions of the grant at the time of award.

[64 FR 34104, June 24, 1999]

PART 3401—RANGELAND RESEARCH GRANTS PROGRAM

Subpart A—General

Sec.

3401.1 Applicability of regulations of this part.
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Subpart B—Scientific Peer Review of Research Applications for Funding

3401.12 Establishment and operation of peer review groups.
3401.13 Composition of peer review groups.
3401.14 Conflicts of interest.
3401.15 Availability of information.
3401.16 Proposal review.
3401.17 Review criteria.

AUTHORITY: Section 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316).

SOURCE: 61 FR 27753, May 31, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3401 appear at 76 FR 4806, Jan. 27, 2011.

Subpart A—General

§ 3401.1 Applicability of regulations of this part.

(a) The regulations of this part apply to rangeland research grants awarded under the authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333) to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary, to carry out rangeland research. The Director of the National Institute of Food and Agriculture (NIFA) shall determine and announce, through publication each year of a Notice in the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the catalog of Federal Domestic Assistance or any other appropriate means, research program areas for which proposals will be solicited, to the extent that funds are available.

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3401.2 Definitions.

As used in this part:

(a) *Director* means the Director of NIFA and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) *Department* means the Department of Agriculture.

(c) *Principal investigator* means a single individual designated by the grantee in the application for funding and approved by the Director who is responsible for the scientific and technical direction of the project.

(d) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(e) *Research project grant* means the award by the Director of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the annual solicitation of applications.

(f) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(g) *Project period* means the total length of time that is approved by the Director for conducting the research project as outlined in an approved application for funding.

(h) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) *Awarding official* means the Director and any other officer or employee of the Department to whom the authority to issue or modify research project grant instruments has been delegated.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training or experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of applications for funding in those fields.

(k) *Ad hoc reviewers* means experts or consultants qualified by training or experience in particular scientific or technical fields to render special expert advice, whose written evaluations of applications for funding are designed to complement the expertise of the peer review group, in accordance with the provisions of this part, on the scientific or technical merit of applications for Funding in those fields.

(l) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) *Methodology* means the project approach to be followed and the resources needed to carry out the project.

§ 3401.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any land-grant college and university, State agricultural experiment station, and college, university,

and Federal laboratory having a demonstrable capacity in rangeland research, as determined by the Secretary, shall be eligible to apply for and to receive a project grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal government;

(4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project grant under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

§ 3401.4 Matching funds requirement.

In accordance with section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding.

§ 3401.5 Indirect costs and tuition remission costs.

Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or tuition remission costs. Since indirect costs and tuition remission costs, except in the case of Federal laboratories, are not allowable costs for purposes of this program, such costs may not be used to satisfy the matching requirement set forth in § 3401.4.

§ 3401.6 How to apply for a grant.

(a) *General.* After consultation with the Rangeland Research Advisory Board, established pursuant to section 1482 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3335), a request for proposals will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation, as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare rangeland research grant proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research program areas which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

(4) Number of copies to be submitted;

(5) Forms required to be used when submitting proposals; and

(6) Special requirements.

(b) *Application kit.* An Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* Unless otherwise stated in the specific program solicitation, the following format applies:

(1) *Application for funding.* All research grant proposals submitted by eligible applicants should contain an Application for Funding form, which must

be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Title of project.* The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(3) *Objectives.* Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(4) *Procedures.* The procedures of methodology to be applied to the proposed research plan should be stated explicitly. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;

(iv) Means by which data will be analyzed or interpreted;

(v) Pitfalls which might be encountered; and

(vi) Limitations to proposed procedures.

(5) *Justification.* This section of the grant proposal should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem;

(ii) The importance of starting the work during the current fiscal year; and

(iii) Reasons for having the work performed by the proposing organization.

(6) *Literature review.* A summary of pertinent publications with emphasis on their relationship to the research should be provided and should include all important and recent publications. The citations should be accurate, complete, written in acceptable journal format, and be appended to the proposal.

(7) *Current research.* The relevancy of the proposed research to ongoing and, as yet, unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment.* All facilities, including laboratories, that are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or nor directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be explained fully, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be explained fully and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvements must state which applicant is to receive any resulting grant award, since only one eligible applicant, as provided in §3401.3 may be the recipient of a research project grant under one proposal.

(10) *Research timetable.* The applicant should outline all important research phases as a function of time, year by year.

(11) *Personnel support.* All personnel who will be involved in the research effort must be identified clearly. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of *all* key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publication listings; and

(iii) A chronological listing of the most representative publications during the past five years shall be provided for each professional project member of whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Application Kit identified under § 3401.6(b) and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. As stated in § 3401.4 each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. As stated in § 3401.5, indirect costs and tuition remission costs are not allowable costs for purposes of this program and , thus, may not be used to satisfy the matching requirement set forth in § 3401.4.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. It is expected that a significant number of rangeland grant proposals will involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines establishing by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification of compliance. In the event a project involving recombinant DNA and RNA molecules results in a grant award, the Institutional Biosafety Committee must approve the research before NIFA funds will be released.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification. In the event a project involving human subjects results in a grant award, funds will be released only after the Institutional Committee has approved the project.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Rangeland Research Grant Program funds rests with the performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*)

and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Application Kit, identified above in §3401.6(b), contains a form which is suitable for such certification. In the event a project involving the use of living vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(14) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the Director or experts or consultants engaged by the Director for this purpose. The Application Kit, identified above in §3401.6(b), contains a form which is suitable for listing current and pending support.

(15) *Additions to project description.* Each project description is expected by the Director, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in the annual solicitation of proposals as indicated in §3401.6(a)(4). Each set of such materials must be identified with the title of the research project as it appears in the Application for Funding and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(16) *National Environmental Policy Act.* As outlined in NIFA's implementing regulations of the National Environmental Policy Act of 1969 (NEPA) at 7 CFR part 3407, environmental data or documentation for the proposed project is to be provided to NIFA in order to assist NIFA in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR part 3407. In this regard, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one or more of the exclusions, and should indicate if it does so on the National Environmental Policy Act Exclusions Form (Form NIFA—1234) provided in the Application Kit. Even though the applicant considers that a proposed project may fall within a categorical exclusion, NIFA may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

(17) *Organizational management information.* Specific management information relating to an applicant shall be submitted on an *one-time basis prior to the award of a research project grant* identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the agency specified in this part once a research project grant has been recommended for funding.

§ 3401.7 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants in accordance with eligible research problem or program areas and deadlines established in the applicable request for proposals shall be evaluated by the Director through such officers, employees, and others as the Director determines are particularly qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Director may solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the research program areas covered by the applications received. Specific evaluations will be based upon the criteria established in subpart B of this part, §3401.17, unless NIFA determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of such evaluations is to provide information upon which the Director can make informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Director's evaluation of an application in accordance with paragraph (a) of this section, the Director will approve using currently available funds, defer support due to lack of funds or a need for further evaluations, or disapprove support for the proposed project in whole or in part. With respect to approved projects, the Director will determine the project period (subject to extension as provided in §3401.9(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3401.8 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Director as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and 2 CFR part 200 (parts 3015 and 3019 of this title).

(b) *Grant award document and notice of grant award*—(1) *Grant award documents.* The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Director has awarded a rangeland research project grant under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Director during the project period;

(vii) Legal authority(ies) under which the research project grant is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project grant award; and

(ix) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(2) *Notice of grant award.* The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Categories of grant instruments.* The major categories of grant instruments by which the Department may provide support are as follows:

(1) *Standard grant.* This is a grant instrument by which the Department agrees to support a specified level of research effort for a predetermined project period without the announced intention of providing additional support at a future date. This type of research project grant is approved on the basis of peer review and recommendation and is funded for the entire project period at the time of award.

(2) *Renewal grant.* This is a document by which the Department agrees to provide additional funding under a standard grant as specified in paragraph (c)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date under the previous grant instrument. Such a renewal shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Continuation grant.* This is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. It involves a long-term research project that is considered by peer reviewers and Departmental officers to have an unusually high degree of scientific merit, the results of which are expected to have a significant impact on the productivity of the Nation's rangelands, and it supports the efforts of experienced scientists with records of outstanding research accomplishments. This kind of document normally will be awarded for an initial one-year period and any subsequent continuation research project grants also will be awarded in one-year increments, but in no case may the cumulative period of the project exceed the statutory limit. The award of a continuation research project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. A grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Such requests must include: an interim progress report detailing all work performed to date; an Application for Funding; a proposed budget for the enuring period, including an estimate of funds anticipated to remain unobligated at the end of the current budget period; and current information regarding other extramural support for senior personnel. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and within the context of available funds. Since initial peer reviews were based upon the full term and scope of the original rangeland research application for funding, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the application for funding originally reviewed and approved), additional reviews may be required prior to approval of continued funding.

(4) *Supplemental grant.* This is an instrument by which the Department agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond

that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed the statutory time limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification of need to warrant such action. A request of this nature normally does not require additional peer review.

(d) *Obligation of the Federal government.* Neither the approval of any application nor the award of any research project grant shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

[61 FR 27753, May 31, 1996, as amended at 79 FR 75998, Dec. 19, 2014]

§ 3401.9 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not delegate or transfer in whole or in part, to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the grantee or the principal investigator(s) is uncertain as to whether a change complies with this provision, the question shall be referred to the Director for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes, except as may be allowed in the terms and conditions of a grant award.

(c) *Changes in project period.* The project period determined pursuant to § 3401.7(b) may be extended by the Director without additional financial support, for such additional period(s) as the Director determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall be conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

§ 3401.10 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.
2 CFR part 180 and Part 417—OMB Guidelines To Agencies On Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension
7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.
7 CFR 1.1—USDA implementation of Freedom of Information Act.
7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection.
7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.
7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;
29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and
35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[79 FR 75998, Dec. 19, 2014]

§ 3401.11 Other conditions.

The Director may, with respect to any research project grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Director's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Applications for Funding

§ 3401.12 Establishment and operation of peer review groups.

Subject to § 3401.7, the Director will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3401.16.

§ 3401.13 Composition of peer review groups.

Peer review group members will be selected based upon their training or experience in relevant scientific or technical fields, taking into account the following factors:

(a) The level of formal scientific or technical education by the individual;

(b) The extent to which the individual has engaged in relevant research, the capacities in which the individual has done so (e.g., principal investigator, assistant), and the quality of such research;

(c) Professional recognition as reflected by awards and other honors received from scientific and professional organizations outside of the Department;

(d) The need of the group to include within its membership experts from various areas of specialization within relevant scientific or technical fields;

(e) The need of the group to include within its membership experts from a variety of organizational types (e.g., universities, industry, private consultant(s)) and geographic locations; and

(f) The need of the group to maintain a balanced membership, e.g., minority and female representation and an equitable age distribution.

§ 3401.14 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in Title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (part 0 of this title), and Executive Order 11222 (3 CFR, 1964–1965 Comp., p. 306), as amended. Administration of the peer review group must be in accordance with the Department's conflict of interest policy, 2 CFR 400.2.

[61 FR 27753, May 31, 1996, as amended at 79 FR 75998, Dec. 19, 2014]

§ 3401.15 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a.), and

implementing Departmental regulations (part 1 of this title).

§ 3401.16 Proposal review.

(a) All research Applications for Funding will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to research program area). Proposals that do not fall within the guidelines as stated in the annual request for proposals will be eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount for a particular program area as announced in the request for proposals may be considered as lying outside the guidelines.

(b) All applications will be reviewed carefully by the Director , qualified officers or employees of the Department, the respective merit review panel, and ad hoc reviewers, as required. Written comments will be solicited from ad hoc reviewers, when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the applicable request for proposals.

(c) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding official.

§ 3401.17 Review criteria.

(a) Federally funded research supported under these provisions shall be designed to, among other things, accomplish one or more of the following purposes:

(1) Improve management of rangelands as an integrated system and/or watershed;

(2) Remedy unstable or unsatisfactory rangeland conditions;

(3) Increase revegetation and/or rehabilitation of rangelands;

(4) Examine the health of rangelands; and

(5) Define economic parameters associated with rangelands.

(b) In carrying out its review under § 3401.16, the peer review panel will use the following form upon which the evaluation criteria to be used are enumerated, unless, pursuant to § 3401.7(a), different evaluation criteria are specified in the annual solicitation of proposals for a particular program:

Peer Panel Scoring Form

Proposal Identification No. _____

Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines? _____ Yes _____ No. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal	.....	10		
2. Scientific and technical quality of the approach	.....	10		
3. Relevance and importance of proposed research to solution of specific areas of inquiry	.....	6		
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment	.....	5	.....	.....

Score _____

Summary Comments _____

(c) Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer review panel for each criterion utilizing a scale of 1 through 10. A score of one (1) will be considered low and a score of ten (10) will be considered high for each selection criterion. A weighted factor is used for each criterion.

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE AND POSTGRADUATE FELLOWSHIP GRANTS PROGRAM

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AUTHORITY: 7 U.S.C. 3316.

SOURCE: 69 FR 62537, Oct. 26, 2004, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3402 appear at 76 FR 4807, Jan. 27, 2011.

Subpart A—General Introduction

§ 3402.1 Applicability of regulations.

(a) The regulations of this part apply to competitive grants awarded under the provisions of section 1417(b)(6) of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3152(b)(6). The Act designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. Section 1417(b)(6) authorizes the Secretary of Agriculture, who has delegated the authority to theNational Institute of Food and Agriculture (NIFA), to make competitive grants to land-grant colleges and universities, colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct graduate and postdoctoral fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences. The Graduate Fellowships are intended to encourage outstanding students to pursue and complete graduate degrees in the areas of food and agricultural sciences designated by NIFA through the Office of Higher Education Programs (HEP) as national needs. The postdoctoral Fellowships are intended to provide additional mentoring and training to outstanding USDA Graduate Fellows who completed their doctoral degrees no more than five (5) years before they begin the postdoctoral Fellowships.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3402.2 Definitions.

As used in this part:

Citizen or national of the United States means—

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College and university means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Is legally authorized within such State to provide a program of education beyond secondary education,

(3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded,

(4) Is a public or other nonprofit institution, and

(5) Is accredited by a nationally recognized accrediting agency or association.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences in the broadest sense of these terms including but not limited to research, extension and teaching activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied fields.

Graduate degree means a master's or doctoral degree.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Virgin Islands of the United States, and the District of Columbia.

Teaching activities means formal classroom instruction, laboratory instruction, and practicum experience specific to the food and agricultural sciences and matters relating thereto conducted by colleges and universities offering baccalaureate or higher degrees.

§ 3402.3 Institutional eligibility.

Applications may be submitted by land-grant colleges and universities, by colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and by other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences. All applicants must be institutions that confer a graduate degree in at least one area of the food and agricultural sciences targeted for National Needs Fellowships, that have a significant on-going commitment to the food and agricultural sciences generally, and that have a significant ongoing commitment to the specific subject area for which a grant application is made. It is the objective to award grants to colleges and universities which have notable teaching and research competencies in the food and agricultural sciences. The Graduate Fellowships are specifically intended to support programs that encourage outstanding students to pursue and complete a graduate degree at such institutions in an area of the food and agricultural sciences for which there is a national need for the development of scientific and professional expertise. The postdoctoral Fellowships are designed to support academic programs that provide additional training and mentoring to USDA Graduate Fellows and have notable teaching and research competencies in the NIFA designated national need areas. Institutions which currently have excellent programs of graduate study and training in the food and agricultural sciences dealing with targeted national needs are particularly encouraged to apply for all National Needs Fellowships.

Subpart B—Program Description

§ 3402.4 Food and agricultural sciences areas targeted for National Needs Graduate and Postdoctoral Fellowship Grants Program support.

Areas of the food and agricultural sciences, including multidisciplinary studies, appropriate for Fellowship grant applications are those in which developing shortages of expertise have been determined and targeted by HEP for National Needs Graduate and Postdoctoral Fellowship Grants Program support. When funds are available and HEP determines that a new competition is warranted, the specific areas and funds per area will be identified in a funding opportunity announcement announcing the program and soliciting program applications.

§ 3402.5 Overview of National Needs Graduate and Postdoctoral Fellowship Grants Program.

(a) The program will provide funds for a limited number of grants to support graduate student stipends and cost-of-education institutional allowances. These grants will be awarded competitively to eligible institutions. In order to encourage the development of special activities that are expected to contribute to Fellows' advanced degree objectives, the program will also provide competitive, special international study or thesis/dissertation research travel allowances for a limited number of USDA Graduate Fellows. To encourage academic institutions to provide additional training/mentoring to outstanding USDA Graduate Fellows who have completed their doctoral degrees, the program will also provide postdoctoral Fellowship grants to a limited number of USDA Graduate Fellows.

(b) Based on the amount of funds appropriated in any fiscal year, HEP will determine:

(1) Whether new competitions for graduate Fellowships, postdoctoral Fellowships, and/or special international study or thesis/dissertation research travel allowances will be held during that fiscal year;

(2) The degree level(s) to be supported—master's, doctoral and/or postdoctoral;

(3) The proportion of appropriations to be targeted for Fellowship stipends for each respective degree level supported;

(4) The proportion of appropriations to be targeted for the cost-of-education institutional allowances for each respective degree level supported;

(5) The proportion of appropriations to be targeted for the special international study or thesis/dissertation research travel allowances for each respective degree level supported;

(6) The allowable stipend amount for each respective degree level supported, the cost-of-education institutional allowance for each respective degree level supported, and the maximum funds available for each special international study or thesis/dissertation research travel allowance for each respective degree level supported;

(7) The activities for which the cost-of-education allowance may be used for awards made in that year; and

(8) The maximum total funds that may be awarded to an institution under the program in a given fiscal year.

(c) HEP will also determine:

(1) The maximum number of national needs areas for which funding may be requested in a single application;

(2) The degree levels for which funding may be requested in a single application;

(3) The minimum and maximum number of fellowships for which an institution may apply in a single application; and

(4) The limits on the total number of applications that can be submitted by an institution, college, school, or other administrative unit.

(d) These determinations will be published as a part of the solicitation, which will be available at *http://www.grants.gov*.

§ 3402.6 Overview of the special international study and/or thesis/dissertation research travel allowance.

(a) For each USDA Graduate Fellow who desires to be considered for a special international study or thesis/dissertation research travel allowance, the Project Director must apply to HEP for a supplemental grant in accordance with instructions published in the solicitation. Postdoctoral Fellows are not eligible to receive the special international study or thesis/dissertation research travel allowance. Each application must include a ''Proposal Cover Page'' (Form NIFA–2002), ''Project Summary'' (Form NIFA–2003), ''Budget'' (Form NIFA–2004) and National Environmental Policy Act Exclusions Form (Form NIFA—2006).

(1) To provide HEP with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following:

(i) The specific destination(s) and duration of the travel;

(ii) The specific study or thesis/dissertation research activities in which the Fellow will be engaged;

(iii) How the international experience will contribute to the Fellow's program of study;

(iv) A budget narrative specifying and justifying the dollar amount requested for the travel;

(v) Summary credentials of the faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person);

(vi) A letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and

(vii) A letter from the fellowship grant Project Director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

(2) The narrative portion of the application must not exceed the page limitation included in the program solicitation.

(b) All complete requests will be evaluated by professional staff from USDA or other Federal agencies, as appropriate. Evaluation criteria will be published in the solicitation. HEP will award grants in accordance with evaluation criteria and to the extent possible based on availability of funds.

(c) Any current Fellow with sufficient time to complete the international experience before the termination date of the grant under which he/she is supported is eligible for a special international study or thesis/dissertation research travel allowance. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the Fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s).

§ 3402.7 Fellowship appointments.

(a)(1) Fellows must be identified and Fellowships must be awarded within 18 months of the effective date of a grant. Institutions failing to meet this deadline will be required to refund monies associated with any unawarded Fellowship(s). Graduate Fellowship appointments may be held only by persons who enroll and pursue full-time study in a graduate degree program in the national need area and at the degree level supported by the grant. Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching or extension in the national need area and are supervised by the mentor indicated in the grant application.

(2) It will be the responsibility of the grantee institution to award fellowships to students of superior academic ability.

(3) Graduate Fellows:

(i) Must be appointed before completing two semesters or equivalent hours of full-time study, as defined by the institution, or immediately after passing of candidacy/qualifying examinations, whichever is later;

(ii) Must be citizens or nationals of the United States as determined in accordance with Federal law; and

(iii) Must have strong interest, as judged by the institution, in pursuing a degree in a targeted national need area and in preparing for a career as a food or agricultural scientist or professional.

(4) Postdoctoral Fellows:

(i) Must have been USDA Graduate Fellows who successfully completed their doctoral degrees in areas of the food and agricultural sciences designated by NIFA as national need areas;

(ii) Must not have obtained their doctoral degrees more than five years prior to beginning their postdoctoral Fellowships;

(iii) Must have strong interest, as judged by the institution, in preparing for a career in agricultural research, teaching or extension.

(5)(i) A doctoral level Graduate Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 36 months within a 42-month period. A

master's level Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 24 months during a 30-month period. A postdoctoral Fellow who achieves his or her training objectives is eligible for support for a maximum of 36 months during a 60-month period. It is the intent of this program that Graduate Fellows pursue full-time uninterrupted study or thesis/dissertation research, including time spent pursuing USDA-funded special international study or thesis/dissertation research activities.

(ii) Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching, or extension in the national need area and are supervised by the mentor indicated in the grant application.

However, during the period of support, USDA Graduate and Postdoctoral Fellows are permitted, at the discretion of their institutions, to accept additional supplemental employment that would positively contribute to their training or research and provide eligibility for tuition waivers (e.g., full or partial tuition waivers with research or teaching assignments).

(iii) For graduate Fellows requiring additional time to complete a degree, it is expected that the institution will endeavor to continue supporting individuals originally appointed to Fellowships through such other institutional means as teaching assistantships and research assistantships. For postdoctoral Fellows who terminate the Fellowships prematurely, the institution must return all unexpended monies to USDA. For USDA Graduate Fellows who complete the program of study early (less than 24 months for master's degree or 36 months for doctoral degree) or terminate their Fellowships prematurely, the institution may use any unexpended monies, within the time remaining on the project grant, to support pursuit of a doctoral degree in a discipline in the food and agricultural sciences by a master's degree level Fellow at the grantee institution; or a replacement Graduate Fellow. Where less than one semester/quarter remains before the expiration date of the Graduate Fellowship grant, the institution must refund any unexpended monies to the granting agency. Such funds cannot be used to increase the annual stipend amounts for current USDA Graduate or Postdoctoral Fellows.

(b) Within the framework of the regulations in this part, all decisions with respect to the appointment of Fellows will be made by the institution. However, institutions are urged to take maximum advantage of opportunities for awarding Fellowships to members of underrepresented groups at the graduate and postdoctoral level in the food and agricultural sciences, particularly minorities and women. Throughout a USDA Graduate Fellow's tenure, the institution should satisfy itself that the Fellow is making satisfactory academic progress, and carrying out, or planning to carry out, national needs related research. If an institution finds it necessary to terminate support of a USDA Graduate Fellow or a postdoctoral Fellow for insufficient progress or by decision on the part of the Fellow, the Fellow may no longer receive funds from the active grant. However, termination does not automatically disqualify a Fellow from receiving future grant support under this program. If a graduate or postdoctoral Fellow finds it necessary to interrupt his or her program of study because of health, personal reasons, or outside employment, the institution must reserve the funds for the purpose of allowing the Fellow to resume funded training any time within a six (6) month period. However, a USDA Graduate or Postdoctoral Fellow who finds it necessary to interrupt his/her program of training more than one time cannot exceed a total of six (6) months' cumulative leave status without forfeiting eligibility. For a USDA Graduate Fellowship terminated because of insufficient progress, by decision on the part of the Fellow, or reserved due to an interrupted program but not resumed within the required time period, the institution may use any unexpended monies to support, within the time remaining on the project grant, and subject to the limitations above, a replacement Fellow at the same master's or doctoral levels. For postdoctoral Fellowships terminated

because of insufficient progress, by decision on the part of the Fellow, or reserved due to an interrupted program but not resumed within the required time period, the institution must return all the unexpended monies to NIFA.

(c) Only Fellows enrolled in master's programs of study may be supported under master's Fellowship grants. Master's degree level Fellows who complete their degree early may be supported under master's Fellowship grants, if they are enrolled in Ph.D. programs in areas of the food and agricultural sciences designated as national need areas. Only Fellows enrolled in doctoral programs of study may be supported under doctoral degree Fellowship grants. Only USDA Graduate Fellows who have completed their doctoral degrees may be supported under postdoctoral Fellowship grants.

§ 3402.8 Fellowship activities.

A USDA Graduate Fellow shall be enrolled as a full-time graduate student, as defined by the institution, at all times during the tenure of the Fellowship in the national need area and at the degree level supported by the grant. This includes the time used for special international study or thesis/dissertation research, if the international travel is funded through a special international study or thesis/dissertation research travel allowance under this grant program. However, the normal requirement for formal registration during part of this tenure may be waived if permitted by the policy of the Fellowship institution, provided that the Graduate Fellow is making satisfactory progress toward degree completion and remains engaged in appropriate full-time Fellowship activities such as thesis/dissertation research. Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching, or extension in the national need area and are supervised by the mentor indicated in the grant application. Graduate and postdoctoral Fellows in academic institutions are not entitled to vacations as such. They are entitled to the short normal student holidays observed by the institution. The time between academic semesters or quarters is to be utilized as an active part of the grant period. During the period of support, USDA Graduate and Postdoctoral Fellows are permitted, at the discretion of their institutions, to accept additional supplemental employment that would positively contribute to their training or research and provide eligibility for tuition waivers (e.g., full or partial tuition waivers provided with research or teaching assignments). A Fellow may accept from any other entity a grant supporting the Fellow's research costs.

§ 3402.9 Financial provisions.

An institution may elect to apply the cost-of-education/training institutional allowance to a Fellow's tuition, fees and laboratory expenses and to defray other program expenses (e.g., recruitment, travel, publications, or salaries of project personnel), unless stated otherwise in the solicitation. Tuition and fees are the responsibility of the Fellow unless an institution elects to use its cost-of-education institutional allowance for this purpose or elects to pay such costs out of non-USDA monies. No dependency allowances are provided to any USDA Graduate or Postdoctoral Fellows. Stipend payments and special international study or thesis/dissertation research travel allowances may be made to Fellows by the institution, in accordance with standard institutional procedures for graduate and postdoctoral fellowships and assistantships.

Subpart C—Preparation of an Application

§ 3402.10 Application package.

Applications will be available at *http://www.grants.gov* and through the NIFA Web site. An application package will be made available to any potential grant applicant upon request. This package will include all necessary forms and instructions to apply for a grant under this program.

§ 3402.11 Proposal cover page.

The Proposal Cover Page, Form NIFA–2002, must be completed in its

entirety, including all authorizing signatures. One copy of each grant application must contain the original pen-and-ink signatures, or approved electronic equivalent, of:

(a) The Project Director(s); and

(b) The Authorized Organizational Representative for the institution.

§ 3402.12 Project summary.

Using the Project Summary, Form NIFA–2003, applicants must summarize the proposed graduate program of study and/or the academic and research strengths of the institution in the national need area for which funding is requested. To the extent possible, applicants should emphasize the uniqueness of the proposed program of training. The summary should not include any reference to the specific number of fellowships requested. The information on Form NIFA–2003 will be used in assigning the most appropriate panelists to review an application. If an application is supported, this Form may be used in program publications.

§ 3402.13 National need narrative.

HEP will determine the composition of the narrative for each competition, including page limits, font size, the number and the order of sections, and other supporting information that may be required. Detailed instructions for preparing the narrative will be published in the solicitation.

§ 3402.14 Budget and budget narrative.

Applicants must prepare the Budget, Form NIFA–2004, and a budget narrative identifying all costs associated with the application. Instructions for completing the Budget are provided with the form.

§ 3402.15 Faculty vitae.

This section should include a Summary Vita, no more than 2 pages excluding publications listing, for each faculty member contributing significantly to institutional competence at the level of graduate study for the national need area addressed in the application. Applicants should arrange the faculty vitae with the Project Director(s) first, followed by the remaining faculty, in alphabetical order.

§ 3402.16 Appendix.

Any additional supporting information deemed essential to enhancing the application should be included in an Appendix and referenced in the national need narrative.

Subpart D—Submission and Evaluation of an Application

§ 3402.17 Where to submit an application.

The solicitation will indicate the date for submission of applications and the number of application copies required to apply for a grant. In addition, the solicitation will provide the address to which the application, the required number of accompanying duplicate copies, and any other required forms and materials should be sent.

§ 3402.18 Evaluation criteria.

Applications addressing a particular national need area at a particular Fellowship level (master's, doctoral or postdoctoral) will be evaluated in competition with other applications addressing the same national need area at the same level. Both USDA internal staff and the panelists will evaluate applications on the basis of the criteria published in the solicitation.

Subpart E—Supplementary Information

§ 3402.19 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make project grants to those responsible, eligible applicants whose applications are judged most meritorious according to evaluation criteria stated in the solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and 2 CFR part 200.

§ 3402.20 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[79 FR 75998, Dec. 19, 2014]

§ 3402.21 Confidential aspects of applications and awards.

When an application results in a grant, the application and supporting information become part of the record of NIFA transactions, and available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 3402.22 Access to peer review information.

After final decisions have been announced, HEP will, upon request, inform the PD of the reasons for its decision on an application. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective PDs upon specific request.

§ 3402.23 Documentation of progress on funded projects.

(a) Fellowships/Scholarships Entry/Exit Forms (Form NIFA–2010) are available from NIFA upon request. Upon request by HEP, Project Directors awarded Graduate Fellowship (excluding supplemental international and postdoctoral) grants under the program shall complete and submit this form.

(1) Appointment Information shall be submitted to HEP within 3 months of appointment of a Fellow;

(2) The Project Director shall submit an annual update of each Fellow's progress to HEP by September 30 each year. Additional progress reports may be needed to assess continuing progress of Fellows supported by any special

international study or thesis/dissertation research allowance and/or institutional adherence to program guidelines.

(3) Exit Information shall be completed and submitted to HEP by the Project Director for each Fellow supported by a grant as soon as a Fellow either: Graduates; is officially terminated from the Fellowship or the academic program due to unsatisfactory academic progress; or voluntarily withdraws from the Fellowship or the academic program. If a Fellow has not completed all degree requirements at the end of the five-year grant duration, HEP may request a preliminary exit report. In such a case, a final exit report shall be required at a later date. When a final exit report for each Fellow supported by a grant has been accepted by HEP, the grantee will have satisfied the requirement of a final performance report for the grant. Additional follow-up reports to track Fellows' career patterns may be requested.

(b) All grantees (supplemental international, graduate, and postdoctoral) shall submit initial project information and annual and summary reports to NIFA' Current Research Information System (CRIS). The CRIS database contains narrative project information, progress/impact statements, and final technical reports that are made available to the public. For applications recommended for funding, instructions on preparation and submission of project documentation will be provided to the applicant by the agency contact. Documentation must be submitted to CRIS before NIFA funds will be released. Project reports will be requested by the CRIS office when required. For more information about CRIS, visit *http://cris.nifa.usda.gov*.

§ 3402.24 Evaluation of program.

Grantees should be aware that HEP may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities through independent third parties. Thus, grantees should be prepared to cooperate with evaluators retained by HEP to analyze both the institutional context and the impact of any supported project.

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

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AUTHORITY: 15 U.S.C. 638.

SOURCE: 72 FR 20703, Apr. 26, 2007, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3403 appear at 76 FR 4807, Jan. 27, 2011.

Subpart A—General Information

§ 3403.1 Applicability of regulations.

(a) The regulations of this part apply to small business innovation research grants awarded under the general authority of section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending 1987, and for other purposes as made applicable by section 101(a) of Pub. L. 99–591, 100 Stat. 3341, and the provisions of the Small Business Innovation Development Act of 1982, as amended (15

U.S.C. 638), and the Small Business Innovation Research Program Reauthorization Act of 2000, Pub. L. 106–554, which extends the SBIR Program through September 30, 2008. The Small Business Innovation Development Act of 1982, as amended, mandates that each Federal agency with an annual extramural budget for research or research and development in excess of $100 million participate in a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of its annual extramural budget for award to small business concerns for research or research and development in order to stimulate technological innovation, use small business to meet Federal research and development needs, increase private sector commercialization of innovations derived from Federal research and development, and foster and encourage the participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in technological innovation. The Department will participate in this program through the issuance of competitive research grants which will be administered by NIFA.

(b) The regulations of this part do not apply to research grants awarded by the Department under any other authority.

[72 FR 20703, Apr. 26, 2007, as amended at 79 FR 75998, Dec. 19, 2014]

§ 3403.2 Definitions.

As used in this part:

Ad hoc reviewers means experts or consultants, qualified by training and experience in particular scientific or technical fields to render expert advice on the scientific technical merit of the grant applications in those fields, who review on an individual basis one or several of the eligible proposals submitted to this program in their area of expertise and who submit to the Department written evaluations of such proposals.

Applicant is the organizational entity that, at the time of award, will qualify as a small business concern and that submits a grant application for a funding agreement under the SBIR Program.

Authorized departmental officer (ADO) means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary. The ADO is also referred to as the Funding Agreement Officer.

Authorized organizational representative (AOR) means the president, director, or chief executive officer or other designated official of the applicant organization who has the authority to commit the resources of the organization.

Budget Period means the interval of time into which the project period is divided for budgetary and reporting purposes.

Commercialization is the process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to Government or commercial markets.

Department means the U.S. Department of Agriculture.

Essentially equivalent work occurs when:

(1) Substantially the same research is proposed for funding in more than one grant application submitted to the same Federal agency;

(2) Substantially the same research is submitted to two or more different Federal agencies for review and funding consideration; or

(3) A specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.

Funding agreement is any contract, grant, or cooperative agreement entered into between any Federal agency and any small business concern for the performance of experimental, developmental, or research work, including products or services funded in whole or in part by the Federal Government.

A grant is a financial assistance mechanism providing money, property, or both to an eligible entity to carry out the approved project or activity, and substantial programmatic involvement by Government is not anticipated.

Grantee means the small business concern designated in the grant award

document as the responsible legal entity to whom the grant is awarded under this part.

Innovation is something new or improved, having marketable potential including:

(1) Development of new technologies;

(2) Refinement of existing technologies; or

(3) Development of new applications for existing technologies.

Intellectual property means the separate and distinct types of intangible property that are referred to collectively as ''intellectual property,'' including but not limited to: Patents, trademarks, copyrights, trade secrets, SBIR technical data (as defined in this section), ideas, designs, know-how, business, technical and research methods, other types of intangible business assets, and all types of intangible assets either proposed or generated by a small business concern as a result of its participation in the SBIR Program.

Joint venture is an association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

NIFA means the National Institute of Food and Agriculture.

Outcomes are the measure of long-term, eventual, program impact.

Outputs are the measures of near-term program impact.

Peer review group means experts or consultants, qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications to those fields, who assemble as a group to discuss and evaluate all of the eligible proposals submitted to this program in their area of expertise.

Principal investigator/project director is the one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.

Professional Employer Organization is an organization that provides an integrated approach to the management and administration of the human resources and employer risk of its clients, by contractually assuming substantial employer rights, responsibilities, and risk, through the establishment and maintenance of an employer relationship with the workers assigned to its clients.

Program solicitation is a formal request for proposals whereby an agency notifies the small business community of its research or research and development needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from small business concerns in response to these needs and interests.

Project period means the total length of time that is approved by the Department for conducting the research project as outlined in an approved grant application.

Prototype is a model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

Research or research and development (R/R&D) means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Research project grant means the award by the Department of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research topic area identified in the annual solicitation of applications.

SBIR Participants are business concerns that have received SBIR awards or that have submitted SBIR proposals/applications.

SBIR Technical Data is defined as all data generated during the performance of an SBIR award.

SBIR Technical Data Rights are the rights a small business concern obtains in data generated during the performance of any SBIR award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the government receives a license.

Small business concern (SBC) means a concern that, on the date of award for both Phase I and Phase II funding agreements:

(1) Is organized for profit, with a place of business located in the United States, which operates primarily within the United States, or which makes a significant contribution to the United States economy through the payment of taxes or use of American products, materials or labor;

(2) Is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture;

(3) Is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity in the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in the United States; and

(4) Has, including its affiliates, not more than 500 employees. The term ''affiliates'' is defined in greater detail in 13 CFR 121.103. The term ''number of employees'' is defined in 13 CFR 121.106.

Socially and economically disadvantaged small business concern is defined in 13 CFR part 124–8(A) Business Development/Small Disadvantaged Business Status Determinations, §124.103 (Who is socially disadvantaged?) and §124.104 (Who is economically disadvantaged?).

United States means the 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Women-owned small business concern means a small business concern that is at least 51 percent owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock is owned by women, and women control the management and daily business operations.

[72 FR 20703, Apr. 26, 2007, as amended at 76 FR 4808, Jan. 27, 2011]

§ 3403.3 Eligibility requirements.

(a) *Eligibility of organization*. (1) To receive SBIR funds, each awardee of a SBIR Phase I or Phase II must qualify as a small business concern.

(2) For Phase I, a minimum of two-thirds of the research or analytical effort, as measured by the budget, must be performed by the awardee. Occasionally, deviations from this requirement may occur, and must be approved in writing by the ADO after consultation with the agency SBIR National Program Leader.

(3) For Phase II, a minimum of one-half of the research or analytical effort, as measured by the budget, must be performed by the awardee. Occasionally, deviations from this requirement may occur, and must be approved in writing by the ADO after consultation with the agency SBIR National Program Leader.

(4) For both Phase I and Phase II, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC. This precludes full-time employment with another organization. Occasionally, deviations from this requirement may occur, and must be approved in writing by the ADO after consultation with the agency SBIR National Program Leader. Further, an SBC may replace the principal investigator on an SBIR Phase I or Phase II award, subject to approval in writing by the ADO after consultation with the SBIR National Program Leader. For purposes of the SBIR Program, personnel obtained through a Professional Employer Organization or other similar personnel

leasing company must be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

(5) For both Phase I and Phase II, the R/R&D must be performed in the United States. However, based on a rare and unique circumstance, ADO approval may be granted to perform a particular portion of the research or research and development work outside of the United States, for example, if a supply of material or other item or project requirement is not available in the United States. The ADO, after consultation with the agency SBIR National Program Leader, must approve each such specific condition in writing.

(b) [Reserved]

Subpart B—Program Description

§ 3403.4 Three-phase program.

The Small Business Innovation Research Grants Program is carried out in three separate phases described in this section. The first two phases are designed to assist USDA in meeting its research or research and development objectives and will be supported with SBIR Program funds. The purpose of the third phase is to pursue the commercial applications or objectives of the research carried out in Phases I and II through the use of private or Federal non-SBIR funds.

(a) *Phase I.* Phase I involves a solicitation of grant applications (hereinafter referred to as proposals) to conduct feasibility-related experimental research and development related to described agency requirements. These requirements, as defined by agency topics contained in the solicitation, may be general or narrow in scope, depending on USDA needs. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the small business concern with a relatively small agency investment before consideration of further Federal support in Phase II.

(b) *Phase II* is the principal research or research and development effort in which the results from Phase I are expanded upon and further pursued, normally for a period not to exceed 24 months. Only SBIR awardees in Phase I are eligible to participate in Phase II. This includes those awardees identified via a ''novated'' or ''successor in interest'' or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. For each Phase I project funded, the awardee may apply for a Phase II award only once. Phase I awardees who for valid reasons cannot apply for Phase II support in the next fiscal year funding cycle may normally apply for support no later than the second fiscal year funding cycle.

(c) *Phase III* refers to work that derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements, but is funded by sources other than the SBIR Program. Phase III work is typically oriented towards commercialization of SBIR research or technology. This portion of a project is funded by a non-SBIR source through the use of a follow-on funding commitment. A follow-on funding commitment is an agreement between the small business concern and a provider of the follow-on capital for a specified amount of funds to be made available to the small business concern for future development of their effort upon achieving certain mutually agreed upon technical objectives.

Subpart C—Preparation of Proposals

§ 3403.5 Program solicitation.

(a) *Phase I.* A program solicitation requesting Phase I proposals will be prepared each fiscal year in which funds are made available for this purpose. This solicitation will contain information sufficient to enable eligible applicants to prepare grant proposals and will include descriptions of specific research topic areas which the Department will support during the fiscal year involved. A notice of solicitation, and the entire contents of the program solicitation will be published, at a minimum, on the agency's Web site.

(b) *Phase II.* For each fiscal year in which funds are made available for this

purpose, the Department will send correspondence requesting Phase II proposals from the Phase I grantees eligible to apply for Phase II funding in that fiscal year. The correspondence will contain information sufficient to enable eligible applicants to prepare grant proposals.

§ 3403.6 Content of proposals.

(a) The proposed research must be responsive to one of the USDA program interests stated in the research topic descriptions of the program solicitation.

(b) Proposals must cover only scientific/technological research activities. A small business concern must not propose product development, technical assistance, demonstration projects, classified research, or patent applications. Many of the research projects supported by the SBIR program lead to the development of new products based upon the research results obtained during the project. However, projects that seek funding solely for product development where no research is involved, *i.e.*, funds are needed to permit the development of a project based on previously completed research, will not be accepted. Literature surveys should be conducted prior to preparing proposals for submission and must not be proposed as a part of the SBIR Phase I or Phase II effort. Proposals principally for the development of proven concepts toward commercialization or for market research should not be submitted since such efforts are considered the responsibility of the private sector and therefore are not supported by USDA.

(c) A proposal must be limited to only one topic. The same proposal may not be submitted under more than one topic as defined in the solicitation. However, an organization may submit separate proposals on the same topic. Where similar research is discussed under more than one topic, the proposer should choose that topic whose description appears most relevant to the proposer's research concept. USDA will not consider funding duplicate (essentially equivalent work) proposals. In addition, essentially equivalent work funded by another entity will be returned to the applicant without review.

§ 3403.7 Proposal format for phase I applications.

(a) The following items relate to Phase I applications. Further instructions or descriptions for these items as well as any additional items to be included will be provided in the annual solicitation, as necessary.

(1) *SF–424 R&R Cover*. Applicants must submit basic proposal identification information on the first page of the proposals. Applicants must also certify on the first page of the proposals that they meet the definition of a small business concern as stated in the solicitation, and must certify as to whether or not they qualify as socially and economically disadvantaged small business concerns, or women-owned small business concerns.

(2) *Project Summary/Abstract*. The technical abstract should include a brief description of the problem or opportunity, project objectives, and a description of the effort. Anticipated results and potential commercial applications of the proposed research also should be summarized in the space provided. Keywords should characterize the most important aspects of the project. The project summary of successful proposals may be published by USDA and therefore should not contain proprietary information.

(3) *Project Narrative*. The main body of the proposal should include:

(i) Identification and significance of the problem or opportunity.

(ii) Background and rationale.

(iii) Relationship with future research or research and development.

(iv) Phase I technical objectives.

(v) Phase I work plan.

(vi) Related research or research and development.

(vii) References. For each reference cited in the Proposal, provide the complete name for each author, the date of publication, the full title of the article, name of the journal, etc.

(4) *Key personnel and bibliography*. Identify key personnel involved in the effort, including information on their directly related education and experience. For each key person, provide a chronological list of the most recent

representative publications in the topic area.

(5) *Facilities and equipment.* Describe the types, location, and availability of instrumentation and physical facilities necessary to carry out the work proposed. Items of equipment to be purchased must be fully justified under this section.

(6) *Outside services.* Involvement of university or other consultants in the planning and research stages of the project as consultants or through subcontracting arrangements is permitted and may be particularly helpful to small business concerns that have not previously received Federal research awards. If such involvement is intended, it should be described in detail.

(7) *Satisfying the public interest.* Specify how the proposed research will satisfy one or more of the following objectives:

(i) Develops sustainable agriculture production systems;

(ii) Protects natural resources and the environment;

(iii) Creates a safe, nutritious and affordable food supply;

(iv) Develops value-added food and non-food products from agricultural materials;

(v) Enhances global competitiveness; and

(vi) Enhances economic opportunity and quality of life, especially for people in rural areas.

(8) *Potential post applications.* Briefly describe the commercialization potential of the proposed research. Indicate whether and by what means there appears to be a potential for the Federal Government to use the proposed research. Include a brief description of the proposing company (e.g., date founded, number of employees) and its field of interest. What are the major competitive products in this field, and what advantages will the proposed research have over existing technology (in application, performance, technique, efficiency or cost)?

(9) *Similar Proposals or Awards.* (i) WARNING—While it is permissible with proposal notification to submit identical proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

(A) Name and address of the agency(ies) to which the proposal was submitted, or will be submitted, or from which an award is expected or has been received.

(B) Date of actual or anticipated proposal submission or date of award, as appropriate.

(C) Title of proposal or award, identifying number assigned to the solicitation or proposal by the agency involved, and the date the proposal(s) were submitted or the award was received.

(D) Applicable research topic area for each proposal submitted or award received.

(E) Titles of research projects.

(F) Name and title of principal investigator for each proposal submitted or award received.

(ii) *USDA will not make awards that duplicate research funded (or to be funded) by other Federal agencies.*

(10) *Cost breakdown on proposal budget.* Complete a budget form for the phase under which you are currently applying. (An applicant for Phase I funding should not submit both Phase I and Phase II budgets.) A budget narrative with supporting detail for each budget category must be included.

(11) *Special Considerations.* If the proposed research will include laboratory animals or human subjects at risk, the applicant may be required to have the research plan reviewed and approved by an Institutional Animal Care and Use Committee (IACUC) or Institutional Review Board (IRB) prior to commencing actual substantive work. If such approval is required, USDA may not release funds for the award until proper documentation is submitted and accepted by USDA. It is suggested that applicants contact local universities,

colleges, or nonprofit research organizations which have established reviewing mechanisms to have this service performed.

(12) *Proprietary information.* (i) If proprietary information is provided by an applicant in a proposal which constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law. This information must be clearly marked by the applicant with the term ''confidential proprietary information'' and the following legend must appear on the title page of the proposal: ''These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages ____ of this proposal.''

(ii) USDA, by law, is required to make the final decision as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the applicant. However, USDA will retain for three years one copy of all proposals received; extra copies will be destroyed. Public release of information for any proposal submitted will be subject to existing statutory and regulatory requirements. Any proposal which is funded will be considered an integral part of the award and normally will be made available to the public upon request through the Freedom of Information Act, except for designated proprietary information.

(iii) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports which attempt to restrict dissemination of large amounts of information may be found unacceptable by USDA.

(13) *Rights in data developed under SBIR funding agreement.* The legend (or statements) in the SBIR datarights clause included in the SBIR award must be affixed to any submissions of technical data. Where such legend is affixed, rights in technical data, including software developed under the terms of any funding agreement resulting from a proposal submitted in response to the program solicitation shall remain with the grantee. The Government may not use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend for 4 years. After expiration of the 4-year period, the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent SBIR award shall remain protected through the protection of that subsequent SBIR award.

(14) *Patents and Inventions.* Allocation of rights to inventions shall be in accordance with 35 U.S.C. 202 through 206 and the Department of Commerce implementing regulations entitled ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements'' at 37 CFR part 401. These regulations provide that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support. USDA receives a royalty-free license

for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, USDA will not make public any information disclosing a USDA-supported invention for a four-year period. SBIR awardees must report inventions to the awarding agency within two months of the inventor's report to the awardee. The reporting of inventions shall be made through submission to Interagency Edison as specified in the terms and conditions of the grant.

(15) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the submission of certain organizational management, personnel, and financial information to assure responsibility of the applicant. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only. However, new information should be submitted if a small business concern has undergone significant changes in organization, personnel, finance or policies, including those relating to civil rights.

(16) *Documentation of commercialization record of firms with multiple phase II awards.* A small business concern submitting a proposal for a Phase I award that has received more than 15 Phase II SBIR awards during the preceding five fiscal years must document the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards.

(b) [Reserved]

§ 3403.8 Proposal format for phase II applications.

(a) The following items relate to Phase II applications. Further instructions or descriptions for these items as well as any additional items to be included will be identified in the annual program solicitation as necessary. See § 3403.9.

(1) *SF–424 R&R cover sheet.* Follow instructions found in § 3403.7(a)(1).

(2) *Project summary.* Follow instructions found at § 3403.7(a)(2).

(3) *Phase I results.* The proposal should contain an extensive section that lists Phase I objectives and makes detailed presentation of the Phase I results. This section should establish the degree to which Phase I objectives were met and feasibility of the proposed research project was established.

(4) *Proposal.* Since Phase II is the principal research and development effort, proposals should be more comprehensive than those submitted under Phase I. However, the outline and information contained in § 3403.7(a)(3)–(9) and § 3403.7(a)(11)–(14) should be followed, tailoring the information requested to the Phase II project.

(5) *Cost breakdown on proposal budget.* For Phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period. A budget narrative, with supporting budget detail for each budget category must be included.

(6) *Organizational management information.* Each Phase II awardee will be asked to submit an updated statement of financial condition (such as the latest audit report, financial statements or balance sheet) and report any changes in management or principals.

(7) *Commercialization Plan.* A succinct commercialization plan must be included in each SBIR Phase II proposal moving toward commercialization. Elements of a commercialization plan may include the following:

(i) *Company information.* Focused objectives/core competencies; size; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding; regulatory experience; and subsequent commercialization.

(ii) *Customer and competition.* Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

(iii) *Market.* Milestone, target dates, analyses of market size, and estimated market share after first year sales and after five years; explanation of plan to obtain market share.

(iv) *Intellectual property.* Patent status, technology lead, trade secrets or

other demonstration of a plan to achieve sufficient protection to realize the commercialization state and attain at least a temporary competitive advantage.

(v) *Financing.* Plans for securing necessary funding in Phase III.

(vi) *Assistance and mentoring.* Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, Small Business Development Centers, Federally-funded research laboratories, manufacturing extension Partnership Centers, or other assistance providers.

(8) *Data Collection.* Each Phase II applicant will be required to provide information to the Tech-Net Database System (*http://technet.sba.gov*) per OMB No. 3245–03356. The following are examples of the data to be entered by applicants into Tech-Net:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made;

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award; and

(iv) Updates to information in the Tech-Net database for any prior Phase II award received by the small business concern.

(b) [Reserved]

Subpart D—Submission and Evaluation of Proposals

§ 3403.9 Submission of proposals.

The SBIR program solicitation for Phase I proposals and the correspondence requesting Phase II proposals will provide the deadline date for submitting proposals, and instructions for submitting the proposal to NIFA for funding consideration.

§ 3403.10 Proposal review.

(a) The receipt of all proposals will be acknowledged.

(b) All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. USDA is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic.

(c) Phase I and II proposal evaluation criteria will be published in the ''Method of Selection and Evaluation Criteria'' section of the program solicitation.

(d) External peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, government, and nonprofit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(e) Reviewers will base their conclusions and recommendations on information contained in the Phase I or Phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposals should be self-contained and written with the care and thoroughness accorded papers for publication.

(f) Final decisions will be made by USDA based upon the rating assigned by reviewers in consideration of the technical and commercial potential of the application, duplication of research, any critical USDA requirements, resubmission and budget limitation. In the event that two or more proposals are of approximately equal merit, the existence of a cooperative research and development agreement (CRADA) with a USDA laboratory will

be an important consideration. The existence of a follow-on funding commitment for continued development in Phase III will also be an important consideration. The value of any commitment will depend upon the degree of financial commitment made by investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to funding requested from USDA in Phase II.

§ 3403.11 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), the SBIR Policy Directive, and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR part 1.

Subpart E—Supplementary Information

§ 3403.12 Terms and conditions of grant awards.

Within the limit of funds available for such purposes, the Authorized Departmental Officer shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in the annual program solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of award, the Federal Acquisition Regulations (48 CFR part 31), and 2 CFR part 200.

[72 FR 20703, Apr. 26, 2007, as amended at 79 FR 75998, Dec. 19, 2014]

§ 3403.13 Notice of grant awards.

(a) The grant award document may include the following:

(1) Legal name and address of performing organization or institution;

(2) Title of project;

(3) Name and institution of Project Director's chosen to direct and control approved activities;

(4) Identifying grant number assigned by the Department;

(5) Project period, specifying the amount of time the Department intends to support the project;

(6) Total amount of Departmental financial assistance approved for the project period;

(7) Legal authority(ies) under which the grant is awarded;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Applicable award terms and conditions;

(10) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(11) Other information or provisions deemed necessary by NIFA to carry out its respective granting activities or to accomplish the purpose of a particular grant.

(b) [Reserved]

§ 3403.14 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Changes in Project Plans.* (1) The permissible changes by the grantee, Project Director, or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the grantee or the Project Director (PD) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The signatory of the award document is the ADO, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader,

approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader, approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader, approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(c) *Changes in Project Period.* The project period may be extended by NIFA without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project provided Federal funds remain. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO unless otherwise noted in the award terms and conditions. In such cases the extension will not normally exceed 12 months. The Phase I award will still be limited to the approved award amount, and the submission of a Phase II proposal will normally be delayed by no more than one year. The extension allows the grantee to continue expending the remaining Federal funds for the intended purpose over the extension period. In instances where no Federal funds remain, it is unnecessary to approve an extension since the purpose of the extension is to continue using Federal funds. The grantee may opt to continue the Phase I project after the grant's termination and closeout, however, the grantee would have to do so without additional Federal funds. In the latter case, no communication with USDA is necessary.

(d) *Changes in approved budget.* Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or grant award.

(e) *Use of Change of Name and Novation Agreement.* (1) Occasionally, after an award has been made the name of the Awardee may change. NIFA requires execution of a ''Change of Name Agreement'' in such instances. The specific circumstances of each situation will determine which kind of agreement should be executed. This decision will be determined by the ADO.

(i) A Change of Name Agreement is a legal instrument executed by the Awardee and the Government that recognizes a change of the legal name of the Awardee without disturbing the original rights and obligations of the parties. If only a change of the Awardee's name is involved and the Government's and Awardee's rights and obligations remain unaffected, the parties should execute an agreement to reflect the name change.

(ii) In order to execute the actual Change of Name Agreement with USDA, the Awardee is required to submit the following information:

(A) The document effecting the name change, authenticated by a proper official of the State having jurisdiction;

(B) The opinion of the Grantee's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;

(C) A list of all affected awards between the Grantee and NIFA.

(iii) When NIFA is notified that a change of name has taken place, the ADO will request the aforementioned information from the Grantee. Upon receipt and review of this information, parties will properly execute a Change of Name Agreement and the appropriate changes will be made to the Agency's records. The following suggested format for an agreement may be adapted for specific cases:

CHANGE OF NAME AGREEMENT

THE ABC CORPORATION (Grantee), a corporation duly organized and existing under the laws of _____ (insert State), and theNATIONAL INSTITUTE OF FOOD AND

AGRICULTURE, USDA (Government) enter into this Agreement as of _____ (insert date when the change of name became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

1. The Government, represented by the ADO, has entered into certain awards with XYZ CORPORATION, namely _____ (insert award number or delete ''namely'' and insert ''as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference.'') The term ''the awards,'' as used in this Agreement, means the above awards and all other awards, including all modifications, made by the Government and the Grantee before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Grantee has any remaining rights, duties, or obligations under these awards.)

2. The XYZ CORPORATION, by an amendment to its certificate of incorporation, dated _____, 20___, has changed its corporate name to ABC CORPORATION.

3. This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Grantee under the awards are unaffected by this change.

4. Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

1. The awards covered by this Agreement are amended by substituting the name ''ABC CORPORATION'' for the name ''XYZ CORPORATION'' wherever it appears in the awards; and

2. Each party has executed this Agreement as of the day and year first above written.

NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA

BY: _____

TITLE: _____

ABC CORPORATION

BY: _____

TITLE: _____

CERTIFICATE

I, _____, certify that I am the Secretary of ABC CORPORATION, that _____ , who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers.

WITNESS MY HAND, and the seal of this corporation, this _____ day of _____, 20___.

BY: _____

(CORPORATE SEAL)

(2) From time to time the legal entity performing the research under the award may have to be changed. In such instances, USDA will ensure that all parties properly execute a Novation Agreement (Successor in Interest Agreement).

(i) A Novation Agreement is a legal instrument executed by the Grantee (transferor), the successor in interest (transferee), and the Government by which, among other things, the transferor guarantees performance of the award, the transferee assumes all obligations under the award, and the Government recognizes the transfer of the award and related assets. This occurs when the third party's interest in the award arises out of the transfer of all the Grantee's assets or the entire portion of the assets involved in performing the award. Examples include, but are not limited to: the sale of these assets with a provision for assuming liabilities; the transfer of these assets incident to a merger or corporate consolidation; and the incorporation of a proprietorship or partnership, or the formation of a partnership.

(ii) When a Grantee asks the Government to recognize a successor in interest, the responsible ADO shall obtain the following from the Grantee:

(A) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;

(B) A list of all affected awards;

(C) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;

(D) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;

(E) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;

(F) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the

assets involved in performing the Government award;

(G) Evidence of transferee's capability to perform the award; and

(H) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, certified for accuracy by independent accountants.

(iii) The ADO will review the Agency's financial records concerning the correct cash-on-hand balances held by the transferor to ensure that they are properly accounted for in the transfer process. If recognizing a successor in interest to a Government award is consistent with the Government's interest, the ADO will prepare a Novation Agreement for execution by all three parties. The agreement will provide that:

(A) The transferee assumes all the transferor's obligations under the award(s);

(B) The transferor waives all rights under the award against the Government;

(C) The transferor guarantees performance of the award by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(D) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(E) The following suggested format for an agreement may be adapted for specific cases:

NOVATION AGREEMENT (SUCCESSOR IN INTEREST AGREEMENT)

THE ABC CORPORATION (Transferor), a corporation duly organized and existing under the laws of _____ (insert state) with its principal office in _____ (insert city); the XYZ CORPORATION (Transferee), a corporation duly organized and existing under the laws of _____ (insert state) with its principal office in _____ (insert city); and theNATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA (Government) enter into this Agreement as of _____ (insert the date transfer of assets became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

1. The Government, represented by the ADO has entered into certain awards with the Transferor, namely: _____ (insert award number or delete ''namely'' and insert ''as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference.'') The term ''the awards,'' as used in this Agreement, means the above awards and all other awards, including all modifications, made between the Government and Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these awards.) Included in the term ''award'' are also all modifications made under the terms and conditions of these awards between the Government and the Transferor, on or after the effective date of this Agreement.

2. As of _____, 20___, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a _____ (insert terms or legal transaction involved) between the Transferor and the Transferee.

3. The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

4. The Transferee has assumed all obligations and liabilities of the Transferor under the awards by virtue of the above transfer.

5. The Transferee is in a position to fully perform all obligations that may exist under the awards.

6. It is consistent with the Government's interest to recognize the Transferee as the successor party to the awards.

7. Evidence of the above transfer has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT:

1. The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the awards.

2. The Transferee agrees to be bound by and to perform each award in accordance with the conditions contained in the awards. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the awards as if the Transferee were the original party to the awards.

3. The Transferee ratifies all previous actions taken by the Transferor with respect to the awards, with the same force and effect as if the action had been taken by the Transferee.

4. The Government recognizes the Transferee as the Transferor's successor in interest in and to the awards. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the awards as if the Transferee were the original party to the awards. Following the effective date of this Agreement, the term Grantee, as used in the awards, shall refer to the Transferee.

5. Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

6. All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the awards, shall be considered to have discharged those parts of the Government's obligations under the awards. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the awards, to the extent of the amounts paid or reimbursed.

7. The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the awards.

8. The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should these awards be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

9. The awards shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA

BY: _____

TITLE: _____

ABC CORPORATION

BY: _____

TITLE: _____

XYZ CORPORATION

BY: _____

TITLE: _____

CERTIFICATE

I, _____, certify that I am the Secretary of ABC CORPORATION, that _____, who signed this Agreement for this corporation, was then_____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers. WITNESS MY HAND, and the seal of this corporation, this _____day of _____, 20____

BY: _____

(CORPORATE SEAL)

CERTIFICATE

I, _____, certify that I am the Secretary of XYZ CORPORATION, that _____, who signed this Agreement for this corporation, was then_____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers. WITNESS MY HAND, and the seal of this corporation, this _____day of _____, 20____

BY: _____

(CORPORATE SEAL)

§ 3403.15 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures to Implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[79 FR 75998, Dec. 19, 2014]

§ 3403.16 Other considerations.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

PART 3404—PUBLIC INFORMATION

Sec.

3404.1 General statement.
3404.2 Public inspection, copying, and indexing.
3404.3 Requests for records.
3404.4 Multitrack processing.
3404.5 Denials.
3404.6 Appeals.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

SOURCE: 66 FR 57842, Nov. 19, 2001, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3404 appear at 76 FR 4808, Jan. 27, 2011.

§ 3404.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the National Institute of Food and Agriculture (NIFA) to the public.

§ 3404.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by NIFA at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic*.

§ 3404.3 Requests for records.

Requests for records of NIFA under 5 U.S.C. 552(a)(3) shall be made in accordance with §1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743; Facsimile (301) 504–1648; or E-mail *shutchison@ars.usda.gov*. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with §1.3(c) of this title.

[66 FR 57842, Nov. 19, 2001, as amended at 76 FR 4808, Jan. 27, 2011]

§ 3404.4 Multitrack processing.

(a) When NIFA has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) NIFA may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may

be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) NIFA shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in §1.16 of this title, or the requester is entitled to expedited processing as set forth in §1.9 of this title.

§ 3404.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with §1.7(a) of this title.

§ 3404.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.14 of this title and should be addressed as follows: Director, NIFA, U.S. Department of Agriculture, Washington, DC 20250.

PART 3405—HIGHER EDUCATION CHALLENGE GRANTS PROGRAM

Subpart A—General Information

Sec.

3405.1 Applicability of regulations.
3405.2 Definitions.
3405.3 Institutional eligibility.

Subpart B—Program Description

3405.4 Purpose of the program.
3405.5 Matching funds.
3405.6 Scope of program.
3405.7 Joint project proposals.
3405.8 Complementary project proposals.
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Subpart C—Preparation of a Proposal

3405.10 Program application materials.
3405.11 Content of a proposal.

Subpart D—Submission of a Proposal

3405.12 Intent to submit a proposal.
3405.13 When and where to submit a proposal.

Subpart E—Proposal Review and Evaluation

3405.14 Proposal review.
3405.15 Evaluation criteria.

Subpart F—Supplementary Information

3405.16 Access to peer review information.
3405.17 Grant awards.
3405.18 Use of funds; changes.
3405.19 Monitoring progress of funded projects.
3405.20 Other Federal statutes and regulations that apply.
3405.21 Confidential aspects of proposals and awards.
3405.22 Evaluation of program.

AUTHORITY: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

SOURCE: 62 FR 39317, July 22, 1997, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3405 appear at 76 FR 4808, Jan. 27, 2011.

Subpart A—General Information

§ 3405.1 Applicability of regulations.

(a) The regulations of this part only apply to competitive Higher Education Challenge Grants awarded under the provisions of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA)(7 U.S.C. 3152(b)(1)), to strengthen institutional capacities, including curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention. Section 1405 of NARETPA (7 U.S.C. 3121) designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. Section 1417 of NARETPA (7 U.S.C. 3152) authorizes the Secretary of Agriculture, who has delegated the authority to theDirector of the National Institute of Food and Agriculture (NIFA), to make competitive grants to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences,

for a period not to exceed 5 years, to administer and conduct programs to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences.

(b) To the extent that funds are available, each year NIFA will publish a FEDERAL REGISTER notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, NIFA will determine and cite in the program announcement:

(i) The targeted need area(s) to be supported or, if the entire scope of a particular targeted need area is not to be supported, the specific special interest(s) within that targeted need area to be supported;

(ii) The degree level(s) to be supported;

(iii) The maximum project period a proposal may request;

(iv) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(v) The maximum total funds that may be awarded to an institution under the program in a given fiscal year, including how funds awarded for complementary and for joint project proposals will be counted toward the institutional maximum.

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form NIFA–711, ''Intent to Submit a Proposal,'' is requested.

(d)(1) If it is deemed by NIFA that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The minimum project period a proposal may request;

(v) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vi) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(vii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(viii) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(ix) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year; and

(x) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by NIFA for proper conduct of the program in the applicable year.

(e) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3405.2 Definitions.

As used in this part:

(a) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(b) *Authorized organizational representative* means the president of the institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

(c) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(d) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(e) *Citizen or national of the United States means:*

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(f) *College* or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(g) *Complementary project proposal* means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

(h) *Department* or *USDA* means the United States Department of Agriculture.

(i) *Eligible institution* means a land-grant or other U.S. college or university offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. The definition includes a research foundation maintained by an eligible college or university.

(j) *Eligible participant* means, for purposes of §3405.6(b), Faculty Preparation and Enhancement for Teaching, and §3405.6(f), Student Recruitment and Retention, an individual who: Is a citizen or national of the United States, as defined in §3405.2(e); or is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under §3405.2(e)(2), documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to NIFA upon request.

(k) *Food and agricultural sciences* means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

(l) *Grantee* means the eligible institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

(m) *Joint project proposal* means a proposal for a project, which will involve the applicant institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the definition of ''eligible institution'' as specified in §3405.2(i); the other institutions participating in a joint project proposal are not required to meet the definition of ''eligible institution'' as specified in §3405.2(i), nor required to meet the definition of ''college'' or ''university'' as specified in §3405.2(f).

(n) *Land-grant colleges and universities* means those institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307 and 308), or the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), including Tuskegee University.

(o) *Matching* or *Cost-sharing* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

(p) *Peer review panel* means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(q) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in § 3405.2(a) of this part.

(r) *Project* means the particular activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

(s) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(t) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(u) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(v) *State* means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

(w) *Teaching* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

(x) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

(y) *United States* means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

§ 3405.3 Institutional eligibility.

Proposals may be submitted by land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. Each applicant must have a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested. Awards may be made only to eligible institutions as defined in § 3405.2(i).

Subpart B—Program Description

§ 3405.4 Purpose of the program.

The Department of Agriculture is designated as the lead Federal agency for higher education in the food and agricultural sciences. In this context, NIFA has specific responsibility to initiate and support projects to strengthen college and university teaching programs in the food and agricultural sciences. One national initiative for carrying out this responsibility is the competitive Higher Education Challenge Grants Program. A primary goal of the program is to attract and ensure a continual flow of outstanding students into food and agricultural sciences higher education programs and to provide them with an education of the highest quality available anywhere in the world and which reflects the unique needs of the Nation. It is designed to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will:

(a) Address a State, regional, national, or international educational need;

(b) Involve a creative or nontraditional approach toward addressing that need which can serve as a model to others;

(c) Encourage and facilitate better working relationships in the university science and education community, as well as between universities and the private sector, to enhance program quality and supplement available resources; and

(d) Result in benefits which will likely transcend the project duration and USDA support.

§ 3405.5 Matching funds.

Each application must provide for matching support from a non-Federal source. NIFA will cite in the program announcement the required percentage of institutional cost sharing.

§ 3405.6 Scope of program.

This program supports projects related to strengthening undergraduate or graduate teaching programs as specified in the annual program announcement. Only proposals addressing one or more of the specific targeted need areas(s) identified in the program announcement will be funded. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Targeted need areas will consist of one or more of the following:

(a) *Curricula design and materials development.* (1) The purpose of this initiative is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty preparation and enhancement for teaching.* (1) The purpose of this initiative is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be

strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3405.6(b) must be an ''eligible participant'' as defined in § 3405.2(j) of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(vi) Increase understanding of the special needs of non-traditional students or students from groups that are underrepresented in the food and agricultural sciences workforce.

(c) *Instruction delivery systems.* (1) The purpose of this initiative is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(vii) Symposia, forums, regional or national workshops, etc.

(d) *Scientific instrumentation for teaching.* (1) The purpose of this initiative is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing nonfunctional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student experiential learning.* (1) The purpose of this initiative is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential

in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) *Student recruitment and retention.* (1) The purpose of this initiative is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under §3405.6(f) must be enrolled at an eligible institution and meet the requirement of an ''eligible participant'' as defined in §3405.2(j) of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

(viii) Special recruitment programs to increase the participation of students from non-traditional or underrepresented groups in courses of study in the food and agricultural sciences.

§ 3405.7 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in §3405.2(m), which address regional or national problems and which will result overall in strengthening higher education in the food and agricultural sciences. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3405.8 Complementary project proposals.

Institutions may submit proposals that are complementary in nature as

defined in § 3405.2(g). Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3405.9 Use of funds for facilities.

Under the Higher Education Challenge Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in 2 CFR part 200, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

[62 FR 39317, July 22, 1997, as amended at 79 FR 75999, Dec. 19, 2014]

Subpart C—Preparation of a Proposal

§ 3405.10 Program application materials.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit grant applications under the program.

§ 3405.11 Content of a proposal.

(a) *Proposal cover page.* (1) Form NIFA–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the NIFA information system and will assist in the processing of the proposal.

(2) One copy of the Form NIFA–712 must contain the pen-and-ink signatures of the Project Director(s) and authorized organizational representative for the applicant institution.

(3) The title of the project shown on the ''Higher Education Proposal Cover Page'' must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form NIFA–712, enter ''Higher Education Challenge Grants Program.''

(5) In block 8.a. of Form NIFA–712, enter ''Teaching.'' In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project and place an asterisk (*) immediately following the code for the primary targeted need area. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project. This information will be used by program staff for the proper assignment of proposals to peer reviewers.

(6) In block 9. of Form NIFA–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3405.2(g) and § 3405.2(m), respectively, of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form NIFA–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the Higher Education Challenge Grants Program in a previous competition.

(b) *Table of contents.* For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(c) *Project summary.* (1) A Project Summary should immediately follow the Table of Contents. The information provided in the Project Summary may be used by the program staff for a variety of purposes, including the proper assignment of proposals to peer reviewers and providing information to peer reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of

the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in §3405.2(g) of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in §3405.2(m) of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a description of how the project will strengthen higher education in the food and agricultural sciences in the United States; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(d) *Resubmission of a proposal*—(1) *Resubmission of previously unfunded proposals*. If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal: The fiscal year(s) in which the proposal was submitted previously; a summary of the peer reviewers' comments; and how these comments have been addressed in the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed. This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see §3405.11(i)). In either case, the location of this information should be indicated in the Table of Contents. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals*. The Higher Education Challenge Grants Program is not designed to support activities that essentially are repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding. Proposals that are sequential continuations or new stages of previously funded Challenge Grants Program projects must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (*i.e.*, demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project.

(e) *Narrative of a proposal*. The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the Table of Contents must be paginated. It should be noted that peer reviewers will not be required to read

beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Potential for advancing the quality of education*—(i) *Impact.* (A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the applicant institution or the grant period. Also discuss the probabilities of the project being adapted by other institutions. For example, can the project serve as a model for others?

(ii) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) *Products and results.* Explain the expected products and results and their potential impact on strengthening food and agricultural sciences higher education in the United States.

(2) *Overall approach and cooperative linkages*—(i) *Proposed approach*—(A) *bjectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation.* (*1*) Describe procedures for accomplishing the objectives of the project.

(*2*) Describe plans for management of the project to ensure its proper and efficient administration.

(*3*) Describe the way in which resources and personnel will be used to conduct the project.

(C) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in § 3405.11(e)(2)(ii)(A).

(iii) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually

have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail.

(3) *Institutional commitment and resources*—(i) *Institutional commitment.* Discuss the institution's commitment to the project. For example, substantiate that the institution attributes a high priority to the project, discuss how the project will contribute to the achievement of the institution's long-term (five-to ten-year) goals, explain how the project will help satisfy the institution's high-priority objectives, or show how this project is linked to and supported by the institution's strategic plan.

(ii) *Institutional resources.* Document the commitment of institutional resources to the project, and show that the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(f) *Key personnel.* A Form NIFA–708, ''Summary Vita—Teaching Proposal,'' should be included for each key person associated with the project.

(g) *Budget and cost-effectiveness*—(1) *Budget form.* (i) Prepare Form NIFA–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form NIFA–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these administrative provisions, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column of Form NIFA–713 entitled ''Applicant Contributions to Matching Funds,'' only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form NIFA–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To be counted toward the matching requirements stated in § 3405.5 of this part, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representative(s) of the donor organization and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements referenced in §3405.11(g)(2)(iii) (A) and (B) must be placed in the proposal immediately following Form NIFA–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to 2 CFR part 200 and part 400 for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating: The names of the participating institutions; the amount of funds to be disbursed to those institutions; and the way in which such funds will be used in accordance with items A through L of Form NIFA–713, ''Higher Education Budget.'' If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how such budget items as professional or technical staff, travel, equipment, etc., are essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area, or to promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(h) *Current and pending support.* Each applicant must complete Form NIFA–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects

to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(i) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to §3405.11(d)). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form NIFA–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

[62 FR 39317, July 22, 1997, as amended at 79 FR 75999, Dec. 19, 2014]

Subpart D—Submission of a Proposal

§ 3405.12 Intent to submit a proposal.

To assist NIFA in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form NIFA–711, ''Intent to Submit a Proposal,'' provided in the application package. NIFA will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does not commit an institution to any course of action, nor does failure to send this form prohibit an institution from submitting a proposal.

§ 3405.13 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart E—Proposal Review and Evaluation

§ 3405.14 Proposal review.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3405.15 Evaluation criteria.

The maximum score a proposal can receive is 200 points. Unless otherwise stated in the annual solicitation published in the FEDERAL REGISTER, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation Criterion	Weight
(a) *Potential for advancing the quality of education:*	
This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?.	20 points.

Evaluation Criterion	Weight
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?.	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?.	20 points.
(4) Products and results—Are the expected products and results of the project clearly explained? Do they have the potential to strengthen food and agricultural sciences higher education? Are the products likely to be of high quality? Will the project contribute to a better understanding of or improvement in the quality, distribution, effectiveness, or racial, ethnic, or gender diversity of the Nation's food and agricultural scientific and professional expertise base?.	20 points.
(b) *Overall approach and cooperative linkages:*	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and/or scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?.	20 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous and/or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?.	10 points.
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, and/or use by faculty development or research/teaching skills workshops.	10 points.
(4) Partnerships and collaborative efforts—Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?.	20 points.
(c) *Institutional commitment and resources:*	
This criterion relates to the institution's commitment to the project and the adequacy of institutional resources available to carry out the project.	
(1) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans?.	10 points.
(2) Institutional resources—Will the project have adequate support to carry out the proposed activities? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?.	10 points.
(d) *Key personnel:*	20 points.
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	
(e) *Budget and cost-effectiveness:*	
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?.	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?.	10 points.
(f) *Overall quality of proposal:*	10 points.
This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	

Subpart F—Supplementary Information

§ 3405.16 Access to peer review information.

After final decisions have been announced, NIFA will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the peer reviewers, will be made available to respective project directors upon specific request.

§ 3405.17 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and 2 CFR part 200.

(b) *Organizational management information.* Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of the forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) *Notice of grant award.* The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant shall legally commit or obligate NIFA or the United States to provide further support of a project or any portion thereof.

[62 FR 39317, July 22, 1997, as amended at 79 FR 75999, Dec. 19, 2014]

§ 3405.18 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved that are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel

shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant, or pre-award date, if applicable. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3405.19 Monitoring progress of funded projects.

(a) During the tenure of a grant, project directors must attend at least one national project directors meeting, if offered, in Washington, DC or any other announced location. The purpose of the meeting will be to discuss project and grant management opportunities for collaborative efforts, future directions for education reform, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award.

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3405.20 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR

part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment and Suspension
7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.
7 CFR 1.1—USDA Implementation of Freedom of Information Act.
7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.
7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.
7 CFR part 3407—NIFA Procedures To Implement The National Environmental Policy Act;
29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and
35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[79 FR 75999, Dec. 19, 2014]

§ 3405.21 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3405.22 Evaluation of program.

Grantees should be aware that NIFA may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with NIFA personnel, or persons retained by NIFA, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

PART 3406—1890 INSTITUTION CAPACITY BUILDING GRANTS PROGRAM

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AUTHORITY: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

SOURCE: 62 FR 39331, July 22, 1997, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3406 appear at 76 FR 4809, Jan. 27, 2011.

Subpart A—General Information

§ 3406.1 Applicability of regulations.

(a) The regulations of this part apply only to capacity building grants awarded to the 1890 land-grant institutions and Tuskegee University under the provisions of section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(4)) and pursuant to annual appropriations made available specifically for an 1890 capacity building program. Section 1417(b)(4) authorizes the Secretary of Agriculture, who has delegated the authority to theDirector of the National Institute of Food and Agriculture (NIFA), to make competitive grants to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, for a period not to exceed 5 years, to design and implement food and agricultural programs to build teaching and research capacity at colleges and universities having significant minority enrollments. Based on and subject to the express provisions of the annual appropriations act, only 1890 land-grant institutions and Tuskegee University are eligible for this grants program.

(b) To the extent that funds are available, each year NIFA will publish a FEDERAL REGISTER notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, NIFA will determine and cite in the program announcement:

(i) The program area(s) to be supported (teaching, research, or both);

(ii) The proportion of the appropriation reserved for, or available to, teaching projects and research projects;

(iii) The targeted need area(s) in teaching and in research to be supported;

(iv) The degree level(s) to be supported;

(v) The maximum project period a proposal may request;

(vi) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(vii) The maximum total funds that may be awarded to an institution under the program in a given fiscal

year, including how funds awarded for complementary and for joint projects will be counted toward the institutional maximum.

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form NIFA–711, ''Intent to Submit a Proposal,'' is requested.

(d)(1) If it is deemed by NIFA that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The maximum number of proposals that may be submitted by an individual in any one targeted need area;

(v) The minimum project period a proposal may request;

(vi) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vii) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(viii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(ix) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(x) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year, including how grants awarded for complementary and joint projects will be counted toward the institutional maximum; and

(xi) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by NIF for proper conduct of the program in the applicable year.

(e) The regulations of this part prescribe that this is a competitive program; it is possible that an institution may not receive any grant awards in a particular year.

(f) The regulations of this part do not apply to grants for other purposes awarded by the Department of Agriculture under section 1417 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152) or any other authority.

§ 3406.2 Definitions.

As used in this part:

Authorized departmental officer means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative means the president of the 1890 Institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

Citizen or national of the United States means:

(1) A citizen or native resident of a State; or,

(2) a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

Complementary project proposal means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

Cost-sharing or *Matching* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

Department or *USDA* means the United States Department of Agriculture.

1890 Institution or *1890 land-grant institution* or *1890 colleges and universities* means one of those institutions eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), or a research foundation maintained by such institution, that are the intended recipients of funds under programs established in Subtitle G of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 *et seq.*), including Tuskegee University.

Eligible participant means, for purposes of § 3406.11(b), Faculty Preparation and Enhancement for Teaching, and § 3406.11(f), Student Recruitment and Retention, an individual who:

(1) Is a citizen or national of the United States, as defined in this section; or

(2) Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under paragraph (2) of the definition of ''citizen or national of the United States'' as specified in this section, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to NIFA upon request.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

Grantee means the 1890 Institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

Joint project proposal means a proposal for a project, which will involve the applicant 1890 Institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the definition of ''1890 Institution'' as specified in this section; the other institutions participating in a joint project proposal are not required to meet the definition of ''1890 Institution'' as specified in this section, nor required to meet the definition of ''college'' or ''university'' as specified in this section.

Peer review panel means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

Principal investigator/project director means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

Prior approval means written approval evidencing prior consent by an ''authorized departmental officer'' as defined in this section.

Project means the particular teaching or research activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic inquiry directed toward new or fuller knowledge and understanding of the subject studied.

Research capacity means the quality and depth of an institution's research infrastructure as evidenced by its: faculty expertise in the natural or social sciences, scientific and technical resources, research environment, library resources, and organizational structures and reward systems for attracting and retaining first-rate research faculty or students at the graduate and post-doctorate levels.

Research project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening research programs including, but not limited to, such initiatives as: Studies and experimentation in food and agricultural sciences, centralized research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the Nation's food and agricultural research system.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

Teaching means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

Teaching capacity means the quality and depth of an institution's academic programs infrastructure as evidenced by its: Curriculum, teaching faculty, instructional delivery systems, student experiential learning opportunities, scientific instrumentation for teaching, library resources, academic standing and racial, ethnic, or gender diversity of its faculty and student body as well as faculty and student recruitment and retention programs provided by a college or university in order to achieve maximum results in the development of scientific and professional expertise for the Nation's food and agricultural system.

Teaching project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening teaching programs including, but not limited to, such initiatives as: Curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

Third party in-kind contributions means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

USDA agency cooperator means any agency or office of the Department which has reviewed and endorsed an applicant's request for support, and indicates a willingness to make available non-monetary resources or technical assistance throughout the life of a project to ensure the accomplishment

of the objectives of a grant awarded under this program.

[62 FR 39331, July 22, 1997, as amended at 76 FR 4810, Jan. 27, 2011]

§ 3406.3 Institutional eligibility.

Proposals may be submitted by any of the 16 historically black 1890 land-grant institutions and Tuskegee University. The 1890 land-grant institutions are: Alabama A&M University; University of Arkansas—Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State College; Kentucky State University; Southern University and A&M College; University of Maryland—Eastern Shore; Alcorn State University; Lincoln University; North Carolina A&T State University; Langston University; South Carolina State University; Tennessee State University; Prairie View A&M University; and Virginia State University. An institution eligible to receive an award under this program includes a research foundation maintained by an 1890 land-grant institution or Tuskegee University.

Subpart B—Program Description

§ 3406.4 Purpose of the program.

(a) The Department of Agriculture and the Nation depend upon sound programs in the food and agricultural sciences at the Nation's colleges and universities to produce well trained professionals for careers in the food and agricultural sciences. The capacity of institutions to offer suitable programs in the food and agricultural sciences to meet the Nation's need for a well trained work force in the food and agricultural sciences is a proper concern for the Department.

(b) Historically, the Department has had a close relationship with the 1890 colleges and universities, including Tuskegee University. Through its role as administrator of the Second Morrill Act, the Department has borne the responsibility for helping these institutions develop to their fullest potential in order to meet the needs of students and the needs of the Nation.

(c) The institutional capacity building grants program is intended to stimulate development of quality education and research programs at these institutions in order that they may better assist the Department, on behalf of the Nation, in its mission of providing a professional work force in the food and agricultural sciences.

(d) This program is designed specifically to build the institutional teaching and research capacities of the 1890 land-grant institutions through cooperative programs with Federal and non-Federal entities. The program is competitive among the 1890 Institutions and encourages matching funds on the part of the States, private organizations, and other non-Federal entities to encourage expanded linkages with 1890 Institutions as performers of research and education, and as developers of scientific and professional talent for the United States food and agricultural system. In addition, through this program, NIFA will strive to increase the overall pool of qualified job applicants from underrepresented groups in order to make significant progress toward achieving the objectives of work force diversity within the Federal Government, particularly the U.S. Department of Agriculture.

§ 3406.5 Matching support.

The Department strongly encourages and may require non-Federal matching support for this program. In the annual program solicitation, NIFA will announce any incentives that may be offered to applicants for committing their own institutional resources or securing third party contributions in support of capacity building projects. NIFA may also announce any required fixed dollar amount or percentage of institutional cost sharing, if applicable.

§ 3406.6 USDA agency cooperator requirement.

(a) Each application must provide documentation that at least one USDA agency or office has agreed to cooperate with the applicant institution on the proposed project. The documentation should describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution, and describe the partnership effort between USDA and the 1890 Institution in regard to the proposed

project. Such USDA agency cooperation may include, but is not limited to, assisting the applicant institution with proposal development, identifying possible sources of matching funds, securing resources, implementing funded projects, providing technical assistance and expertise throughout the life of the project, participating in project evaluation, and disseminating project results.

(b) The designated NIFA agency contact can provide suggestions to institutions seeking to secure a USDA agency cooperator on a particular proposal.

(c) USDA 1890 Liaison Officers, and other USDA employees serving on the campuses of the 1890 colleges and universities, may assist with proposal development and project execution to satisfy the cooperator requirement, in whole or in part, but may not serve as project directors or principal investigators.

(d) Any USDA office responsible for administering a competitive or formula grants program specifically targeted to 1890 Institutions may not be a cooperator for this program.

§ 3406.7 General scope of program.

This program supports both teaching project grants and research project grants. Such grants are intended to strengthen the teaching and research capabilities of applicant institutions. Each 1890 Institution may submit one or more grant applications for either category of grants (as allowed by the annual program notice). However, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

§ 3406.8 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3406.2, which address regional or national problems and which will result overall in strengthening the 1890 university system. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3406.9 Complementary project proposals.

Institutions may submit proposals that are complementary in nature as defined in § 3406.2. Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3406.10 Use of funds for facilities.

Under the 1890 Institution Capacity Building Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in 2 CFR part 200, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching or research spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

[62 FR 39331, July 22, 1997, as amended at 79 FR 75999, Dec. 19, 2014]

Subpart C—Preparation of a Teaching Proposal

§ 3406.11 Scope of a teaching proposal.

The teaching component of the program will support the targeted need area(s) related to strengthening teaching programs as specified in the annual program announcement. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science

and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Applicants are also encouraged to include a library enhancement component related to the teaching project in their proposals. A proposal may be directed toward the undergraduate or graduate level of study as specified in the annual program announcement. Targeted need areas for teaching programs will consist of one or more of the following:

(a) *Curricula design and materials development.* (1) The purpose of this need area is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: The development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty preparation and enhancement for teaching.* (1) The purpose of this need area is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3406.11(b) must be an ''eligible participant'' as defined in § 3406.2 of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(c) *Instruction delivery systems.* (1) The purpose of this need area is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative

instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(vii) Symposia, forums, regional or national workshops, etc.

(d) *Scientific Instrumentation for teaching.* (1) The purpose of this need area is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing nonfunctional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student experiential learning.* (1) The purpose of this need area is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) *Student recruitment and retention.* (1) The purpose of this need area is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective

use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3406.11(f) must be enrolled at an eligible institution and meet the requirement of an ''eligible participant'' as defined in § 3406.2 of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

§ 3406.12 Program application materials—teaching.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit teaching grant applications under the program.

§ 3406.13 Content of a teaching proposal.

(a) *Proposal cover page.* (1) Form NIFA–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the NIFA information system and will assist in the processing of the proposal.

(2) One copy of the Form NIFA–712 must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant institution.

(3) The title of the teaching project shown on the ''Higher Education Proposal Cover Page'' must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form NIFA–712, enter ''1890 Institution Capacity Building Grants Program.''

(5) In block 8.a. of Form NIFA–712, enter ''Teaching.'' In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, limit the selection to three areas. This information will be used by program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form NIFA–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3406.2 of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form NIFA–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) *Table of contents.* For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the summary documentation of USDA agency cooperation.

(c) *USDA agency cooperator*. To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used:

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in §3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(C) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) *Project summary*. (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation section. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in §3406.2 of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in §3406.2 of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a statement of how the project will enhance the teaching capacity of the institution; a description of how

the project will strengthen higher education in the food and agricultural sciences in the United States; a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) *Resubmission of a proposal*—(1) *Resubmission of previously unfunded proposals.* (i) If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal:

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed.

(ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (*i.e.*, demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding.

(f) *Narrative of a teaching proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that peer reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Potential for advancing the quality of education*—(i) *Impact.* (A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period. Also discuss the probabilities of its adaptation by other institutions. For example, can the project serve as a model for others?

(ii) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) *Products and results.* Explain the kinds of results and products expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students and increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) *Overall approach and cooperative linkages*—(i) *Proposed approach*—(A) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation.* (*1*) Describe procedures for accomplishing the objectives of the project.

(*2*) Describe plans for management of the project to enhance its proper and efficient administration.

(*3*) Describe the way in which resources and personnel will be used to conduct the project.

(C) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in paragraph (f) (2)(ii)(A) of this section.

(iii) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of

the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) *Institutional capacity building*—(i) *Institutional enhancement.* Explain how the proposed project will strengthen the teaching capacity, as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's academic infrastructure by expanding the current faculty's expertise base, advancing the scholarly quality of the institution's academic programs, enriching the racial, ethnic, or gender diversity of the student body, helping the institution establish itself as a center of excellence in a particular field of education, helping the institution maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching, or enabling the institution to provide more meaningful student experiential learning opportunities.

(ii) *Institutional commitment.* (A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supported by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) *Key personnel.* A Form NIFA–708, ''Summary Vita—Teaching Proposal,'' should be included for each key person associated with the project.

(h) *Budget and cost-effectiveness*—(1) *Budget form.* (i) Prepare Form NIFA–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form NIFA–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, the administrative provisions in this part, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column entitled ''Applicant Contributions to Matching Funds'' of Form NIFA–713, only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form NIFA–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for any incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form NIFA–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations,'' and A–21, ''Cost Principles for Educational Institutions,'' for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* (i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) the amount of funds to be disbursed to those institutions; and

(C) the way in which such funds will be used in accordance with items A through L of Form NIFA–713, ''Higher Education Budget.''

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student stipends/scholarships, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area or promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) *Current and pending support.* Each applicant must complete Form NIFA–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form NIFA–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Review and Evaluation of a Teaching Proposal

§ 3406.14 Proposal review—teaching.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified to render expert advice in the areas supported. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.15 Evaluation criteria for teaching proposals.

The maximum score a teaching proposal can receive is 150 points. Unless

otherwise stated in the annual solicitation published in the FEDERAL REGISTER, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation criterion	Weight
(a) Potential for advancing the quality of education:	
This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	15 points.
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support with the use of institutional funds? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?	10 points.
(4) Products and results—Are the expected products and results of the project clearly defined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15 points.
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	15 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5 points.
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, or use by faculty development or research/teaching skills workshops?	5 points.
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)? Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	15 points.
(c) Institutional capacity building:	
This criterion relates to the degree to which the project will strengthen the teaching capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the teaching capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to: Expand the current faculty's expertise base; attract, hire, and retain outstanding teaching faculty; advance and strengthen the scholarly quality of the institution's academic programs; enrich the racial, ethnic, or gender diversity of the faculty and student body; recruit students with higher grade point averages, higher standardized test scores, and those who are more committed to graduation; become a center of excellence in a particular field of education and bring it greater academic recognition; attract outside resources for academic programs; maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching; or provide more meaningful student experiential learning opportunities?	15 points.
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	15 points.
(d) Personnel Resources: This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	10 points.
(e) Budget and cost-effectiveness:	

Evaluation criterion	Weight
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	5 points.
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	5 points.

Subpart E—Preparation of a Research Proposal

§ 3406.16 Scope of a research proposal.

The research component of the program will support projects that address high-priority research initiatives in areas such as those illustrated in this section where there is a present or anticipated need for increased knowledge or capabilities or in which it is feasible for applicants to develop programs recognized for their excellence. Applicants are also encouraged to include in their proposals a library enhancement component related to the initiative(s) for which they have prepared their proposals.

(a) *Studies and experimentation in food and agricultural sciences.* (1) The purpose of this initiative is to advance the body of knowledge in those basic and applied natural and social sciences that comprise the food and agricultural sciences.

(2) Examples include, but are not limited to:

(i) Conduct plant or animal breeding programs to develop better crops, forests, or livestock (e.g., more disease resistant, more productive, yielding higher quality products).

(ii) Conceive, design, and evaluate new bioprocessing techniques for eliminating undesirable constituents from or adding desirable ones to food products.

(iii) Propose and evaluate ways to enhance utilization of the capabilities and resources of food and agricultural institutions to promote rural development (e.g., exploitation of new technologies by small rural businesses).

(iv) Identify control factors influencing consumer demand for agricultural products.

(v) Analyze social, economic, and physiological aspects of nutrition, housing, and life-style choices, and of community strategies for meeting the changing needs of different population groups.

(vi) Other high-priority areas such as human nutrition, sustainable agriculture, biotechnology, agribusiness management and marketing, and aquaculture.

(b) *Centralized research support systems.* (1) The purpose of this initiative is to establish centralized support systems to meet national needs or serve regions or clientele that cannot otherwise afford or have ready access to the support in question, or to provide such support more economically thereby freeing up resources for other research uses.

(2) Examples include, but are not limited to:

(i) Storage, maintenance, characterization, evaluation and enhancement of germplasm for use by animal and plant breeders, including those using the techniques of biotechnology.

(ii) Computerized data banks of important scientific information (e.g., epidemiological, demographic, nutrition, weather, economic, crop yields, etc.).

(iii) Expert service centers for sophisticated and highly specialized methodologies (e.g., evaluation of organoleptic and nutritional quality of

foods, toxicology, taxonomic identifications, consumer preferences, demographics, etc.).

(c) *Technology delivery systems.* (1) The purpose of this initiative is to promote innovations and improvements in the delivery of benefits of food and agricultural sciences to producers and consumers, particularly those who are currently disproportionately low in receipt of such benefits.

(2) Examples include, but are not limited to:

(i) Computer-based decision support systems to assist small-scale farmers to take advantage of relevant technologies, programs, policies, etc.

(ii) Efficacious delivery systems for nutrition information or for resource management assistance for low-income families and individuals.

(d) *Other creative proposals.* The purpose of this initiative is to encourage other creative proposals, outside the areas previously outlined, that are designed to provide needed enhancement of the Nation's food and agricultural research system.

§ 3406.17 Program application materials—research.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit research grant applications under the program.

§ 3406.18 Content of a research proposal.

(a) *Proposal cover page.* (1) Form NIFA–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the NIFA information system and will assist in the processing of the proposal.

(2) One copy of Form NIFA–712 must contain the pen-and-ink signatures of the principal investigator(s) and Authorized Organizational Representative for the applicant institution.

(3) The title of the research project shown on the ''Higher Education Proposal Cover Page'' must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form NIFA–712, enter ''Capacity Building Grants Program.''

(5) In block 8.a. of Form NIFA–712, enter ''Research.'' In block 8.b. identify the code of the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, please limit your selection to three areas. This information will be used by the program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form NIFA–712, indicate if the proposal is a complementary project proposal or joint project proposal as defined in §3406.2 of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular proposal.

(7) In block 13. of Form NIFA–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) *Table of contents.* For ease of locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the summary documentation of USDA agency cooperation.

(c) *USDA agency cooperator.* To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used:

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(C) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) *Project summary.* (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to peer reviewers and providing information to peer reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, clearly state this fact and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the principal investigator, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key person responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text should not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objective of the project, a synopsis of the plan of operation, a statement of how the project will enhance the research capacity of the institution, a description of how the project will enhance research in the food and agricultural sciences, and a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) *Resubmission of a proposal*—(1) *Resubmission of previously unfunded proposals.* (i) If the proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal:

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed.

(ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in a tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, principal investigators should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (*i.e.*, demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Principal investigators who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for future funding.

(f) *Narrative of a research proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that peer reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Significance of the problem*—(i) *Impact*—(A) *Identification of the problem or opportunity*. Clearly identify the specific problem or opportunity to be addressed and present any research questions or hypotheses to be examined.

(B) *Rationale.* Provide a rationale for the proposed approach to the problem or opportunity and indicate the part that the proposed project will play in advancing food and agricultural research and knowledge. Discuss how the project will be of value and importance at the State, regional, national, or international level(s). Also discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period.

(C) *Literature review.* Include a comprehensive summary of the pertinent scientific literature. Citations may be footnoted to a bibliography in the Appendix. Citations should be accurate, complete, and adhere to an acceptable

journal format. Explain how such knowledge (or previous findings) is related to the proposed project.

(D) *Current research and related activities.* Describe the relevancy of the proposed project to current research or significant research support activities at the proposing institution and any other institution participating in the project, including research which may be as yet unpublished.

(ii) *Continuation plans.* Discuss the likelihood or plans for continuation or expansion of the project beyond USDA support. Discuss, as applicable, how the institution's long-range budget, and administrative and academic plans, provide for the realistic continuation or expansion of the line of research or research support activity undertaken by this project after the end of the grant period. For example, are there plans for securing non-Federal support for the project? Is there any potential for income from patents, technology transfer or university-business enterprises resulting from the project? Also discuss the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions.

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to a food and agricultural research initiative.

(iv) *Products and results.* Explain the kinds of products and results expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students or increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) *Overall approach and cooperative linkages*—(i) *Approach*—(A) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation.* The procedures or methodologies to be applied to the proposed project should be explicitly stated. This section should include, but not necessarily be limited to a description of:

(*1*) The proposed investigations, experiments, or research support enhancements in the sequence in which they will be carried out.

(*2*) Procedures and techniques to be employed, including their feasibility.

(*3*) Means by which data will be collected and analyzed.

(*4*) Pitfalls that might be encountered.

(*5*) Limitations to proposed procedures.

(C) *Timetable.* Provide a timetable for execution of the project. Identify all important research milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any performance data to be collected and analyzed, and explain the methodologies that will be used to determine the extent to which the needs underlying the project are being met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in paragraph (f)(2)(ii)(A) of this section.

(iii) Dissemination plans. Provide plans for disseminating project results and products including the possibilities for publications. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been

discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) *Institutional capacity building*—(i) *Institutional enhancement.* Explain how the proposed project will strengthen the research capacity, as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's research infrastructure by advancing the expertise of the current faculty in the natural or social sciences; providing a better research environment, state-of-the-art equipment, or supplies; enhancing library collections; or enabling the institution to provide efficacious organizational structures and reward systems to attract and retain first-rate research faculty and students—particularly those from underrepresented groups.

(ii) *Institutional commitment.* (A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supported by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) *Key personnel.* A Form NIFA–710, ''Summary Vita—Research Proposal,'' should be included for each key person associated with the project.

(h) *Budget and cost-effectiveness*—(1) *Budget form.* (i) Prepare Form NIFA–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form NIFA–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, the administrative provisions in this part, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated research rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from

USDA, the remaining allowable indirect costs may be used as matching funds. In the event that a proposal reflects an incorrect indirect cost rate and is recommended for funding, the correct rate will be applied to the approved budget in the grant award.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column entitled ''Applicant Contributions to Matching Funds'' of Form NIFA–713, only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form NIFA–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for any incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form NIFA–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations,'' and A–21, ''Cost Principles for Educational Institutions,'' for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* (i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) the amount of funds to be disbursed to those institutions; and

(C) the way in which such funds will be used in accordance with items A through L of Form NIFA–713, ''Higher Education Budget.''

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student workers, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA

and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes research value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a high-priority research initiative(s) or promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area, estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) *Current and pending support.* Each applicant must complete Form NIFA–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in the Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in the Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form NIFA–712 of the proposal and the name(s) of the principal investigator(s). The Appendix must be referenced in the proposal narrative.

(k) *Special considerations.* A number of situations encountered in the conduct of research require special information or supporting documentation before funding can be approved for the project. If such situations are anticipated, proposals must so indicate via completion of Form NIFA–662, ''Assurance Statement(s).'' It is expected that some applications submitted in response to these guidelines will involve the following:

(1) *Recombinant DNA research.* All key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised.

All applicants proposing to use recombinant DNA techniques must so indicate by checking the appropriate box on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and by completing the applicable section of Form NIFA–662. In the event a project involving recombinant DNA or RNA molecules results in a grant award, the Institutional Biosafety Committee of the proposing institution must approve the research plan before NIFA will release grant funds.

(2) *Protection of human subjects.* Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by NIFA rests with the performing organization. Guidance on this is contained in Department of Agriculture regulations under 7 CFR part 1c. All applicants who propose to use human subjects for experimental purposes must indicate their intention by checking the appropriate block on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and by completing the appropriate portion of Form NIFA–662. In the event a project involving human subjects results in a grant award, the Institutional Review Board of the proposing institution must approve the research plan before NIFA will release grant funds.

(3) *Laboratory animal care.* Responsibility for the humane care and treatment of laboratory animals used in any grant project supported with funds provided by NIFA rests with the performing organization. All key project personnel and all endorsing officials of the proposing organization are required to comply with the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of laboratory animals. All applicants proposing a project which involves the use of laboratory animals must indicate their intention by checking the appropriate block on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and by completing the appropriate portion of Form NIFA–662. In the event a project involving the use of living vertebrate animals results in a grant award, the Institutional Animal Care and Use Committee of the proposing institution must approve the research plan before NIFA will release grant funds.

(l) *Compliance with the National Environmental Policy Act (NEPA).* As outlined in 7 CFR part 3407 (the Agriculture regulations implementing NEPA), the environmental data for any proposed project is to be provided to NIFA so that NIFA may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

(1) *NEPA determination.* In order for NIFA to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form NIFA–1234, ''NEPA Exclusions Form,''ust be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form NIFA–1234 and any supporting documentation should be placed at the end of the proposal and identified in the Table of Contents.

(2) *Exceptions to categorical exclusions.* Even though a project may fall within the categorical exclusions, NIFA may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Subpart F—Review and Evaluation of a Research Proposal

§ 3406.19 Proposal review—research.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified

to render expert advice in the areas supported. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.20 Evaluation criteria for research proposals.

The maximum score a research proposal can receive is 150 points. Unless otherwise stated in the annual solicitation published in the FEDERAL REGISTER, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation criterion	Weight
(a) Significance of the problem:	
This criterion is used to assess the likelihood that the project will advance or have a substantial impact upon the body of knowledge constituting the natural and social sciences undergirding the agricultural, natural resources, and food systems.	
(1) Impact—Is the problem or opportunity to be addressed by the proposed project clearly identified, outlined, and delineated? Are research questions or hypotheses precisely stated? Is the project likely to further advance food and agricultural research and knowledge? Does the project have potential for augmenting the food and agricultural scientific knowledge base? Does the project address a State, regional, national, or international problem(s)? Will the benefits to be derived from the project transcend the applicant institution or the grant period?	15 points.
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there plans for continuing this line of research or research support activity with the use of institutional funds after the end of the grant? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting? What is the potential for royalty or patent income, technology transfer or university-business enterprises? What are the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions?	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach? Does the project reflect creative thinking? To what degree does the venture reflect a unique approach that is new to the applicant institution or new to the entire field of study?	10 points.
(4) Products and results—Are the expected products and results of the project clearly outlined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15 points.
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the proposed initiative(s) and the impact anticipated? Is the proposed sequence of work appropriate? Does the proposed approach reflect sound knowledge of current theory and practice and awareness of previous or ongoing related research? If the proposed project is a continuation of a current line of study or currently funded project, does the proposal include sufficient preliminary data from the previous research or research support activity? Does the proposed project flow logically from the findings of the previous stage of study? Are the procedures scientifically and managerially sound? Are potential pitfalls and limitations clearly identified? Are contingency plans delineated? Does the timetable appear to be readily achievable?	5 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5 points
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications and presentations at professional society meetings?	5 points.
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)? Will the project encourage and facilitate better working relationships in the university science community, as well as between universities and the public or private sector? Does the project encourage appropriate multi-disciplinary collaboration? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance research quality or supplement available resources?	15 points.
(c) Institutional capacity building:	

Evaluation criterion	Weight
This criterion relates to the degree to which the project will strengthen the research capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the research capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to advance the expertise of current faculty in the natural or social sciences; provide a better research environment, state-of-the-art equipment, or supplies; enhance library collections related to the area of research; or enable the institution to provide efficacious organizational structures and reward systems to attract, hire and retain first-rate research faculty and students—particularly those from underrepresented groups?	15 points.
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as scientific instrumentation, facilities, computer services, library and other research support resources?	15 points.
(d) Personnel Resources	10 Points
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes? Will the project help develop the expertise of young scientists at the doctoral or post-doctorate level?	
(e) Budget and cost-effectiveness:	
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize research value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a high-priority research initiative(s), or promote coalition building for current or future ventures?	5 points.
(f) Overall quality of proposal	5 points
This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, thoroughly explained, etc.)?	

Subpart G—Submission of a Teaching or Research Proposal

§ 3406.21 Intent to submit a proposal.

To assist NIFA in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form NIFA–711, ''Intent to Submit a Proposal,'' provided in the application package. NIFA will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does not commit an institution to any course of action, nor does failure to send this form prohibit an institution from submitting a proposal.

§ 3406.22 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart H—Supplementary Information

§ 3406.23 Access to peer review information.

After final decisions have been announced, NIFA will, upon request, inform the principal investigator/project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the peer reviewers, will be made

available to the respective principal investigator/project directors upon specific request.

§ 3406.24 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and2 CFR part 200 and part 400.

(b) *Organizational management information.* Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) *Notice of grant award.* The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of principal investigator(s)/project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant shall legally commit or obligate NIFA or the United States to provide further support of a project or any portion thereof.

[62 FR 39331, July 22, 1997, as amended at 79 FR 75999, Dec. 19, 2014]

§ 3406.25 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s)/project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the principal investigator(s)/project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal

funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3406.26 Monitoring progress of funded projects.

(a) During the tenure of a grant, principal investigators/project directors must attend at least one national principal investigators/project directors meeting, if offered, in Washington, DC or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, research project management, advancing a field of science, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's planned activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award. These reports are in addition to the annual Current Research Information System (CRIS) reports required for all research grants under the award's ''Special Terms and Conditions.''

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the principal investigator(s)/project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3406.27 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR

part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.
2 CFR part 180 and Part 417—OMB Guidelines To Agencies On Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension
7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.
7 CFR 1.1—USDA implementation of Freedom of Information Act.
7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection.
7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.
7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;
29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and
35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[79 FR 75999, Dec. 19, 2014]

§ 3406.28 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3406.29 Evaluation of program.

Grantees should be aware that NIFA may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with NIFA personnel, or persons retained by NIFA, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

PART 3407 [RESERVED]

PART 3411—NATIONAL RESEARCH INITIATIVE COMPETITION GRANTS PROGRAM [RESERVED]

PART 3415—BIOTECHNOLOGY RISK ASSESSMENT RESEARCH GRANTS PROGRAM

Subpart A—General

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Subpart B—Scientific Peer Review of Research Grant Applications

3415.10 Establishment and operation of peer review groups.
3415.11 Composition of peer review groups.
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3415.15 Evaluation factors.

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 5921.

SOURCE: 58 FR 65647, Dec. 15, 1993, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3415 appear at 76 FR 4811, Jan. 27, 2011.

Subpart A—General

§ 3415.1 Applicability of regulations.

(a) The regulations of this part apply to research grants awarded under the authority of section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990, (7 U.S.C. 5921). Grants awarded under this section will support biotechnology risk assessment research to help address concerns about the effects of introducing certain biotechnology products into the environment and to help regulators develop policies concerning the introduction of such products. Taking into consideration any determinations made through consultations with such entities as the Animal and Plant Health Inspection Service, the Forest Service, the Environmental Protection Agency, the Office of Agricultural Biotechnology, and the Agricultural Biotechnology Research Advisory Committee, the Director of NIFA and Administrator of ARS shall determine and announce, through publication of a Notice in such publications as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, specific areas of research for which preproposals or proposals will be solicited and the extent that funds are available therefor.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3415.2 Definitions.

As used in this part:

(a) *Ad hoc reviewers* means experts or consultants qualified by training and experience in particular scientific or technical fields to render special expert advice, through written evaluations of grant applications, in accordance with the provisions of this part, on the scientific or technical merit of grant applications in those fields.

(b) *Administrator* means the Administrator of the Agricultural Research Service (ARS) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(c) *Awarding official* means the Director or Administrator and any other officer or employee of the Department to whom the authority to issue or modify grant instruments has been delegated.

(d) *Biotechnology* means any technique that uses living organisms (or parts of organisms) to make or modify products, to improve plants or animals, or to develop microorganisms for specific use. The development of materials that mimic molecular structures or functions of living systems is included.

(e) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(f) *Department* means the Department of Agriculture.

(g) *Director* means the Director of the National Institute of Food and Agriculture (NIFA) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(h) *Grant* means the award by the Director or Administrator of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in program solicitation.

(i) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training and experience in

particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of grant applications in those fields.

(k) *Principal investigator* means a single individual who is responsible for the scientific and technical direction of the project, as designated by the grantee in the grant application and approved by the Director or Administrator.

(l) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual program solicitation that is supported by a grant under this part.

(m) *Project period* means the total time approved by the Director or Administrator for conducting the proposed project as outlined in an approved grant application.

(n) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(o) *Methodology* means the project approach to be followed to carry out the project.

[58 FR 65647, Dec. 15, 1993, as amended at 76 FR 4811, Jan. 27, 2011]

§ 3415.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any public or private research or educational institution or organization shall be eligible to apply for and to receive a grant award under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including by proposed subagreements);

(2) Ability to comply with the proposed or required completion schedule for the project;

(3) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants or contracts from the Federal government;

(4) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets; and

(5) Otherwise be qualified and eligible to receive a grant under the applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such finding and the basis therefor.

§ 3415.4 How to apply for a grant.

(a) A program solicitation will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, as early as practicable each fiscal year.

The Department may elect to solicit preproposals each fiscal year in order to eliminate from consideration proposed research that does not address narrowly focused program objectives. A preproposal will be limited in length (in comparison to a full proposal) to alleviate waste of time and effort by applicants in the preparation of proposals and USDA staff in the review of proposals. If the Department solicits preproposals through publication of the annual program solicitation, the Department does not anticipate publishing a subsequent solicitation for full proposals. Applicants submitting preproposals deemed appropriate to the objectives of this program as set out in the annual solicitation will be requested to submit full proposals; the full proposals will then be evaluated in accordance with §3415.5 through §3415.15 of this part.

The annual program solicitation will contain information sufficient to enable applicants to prepare preproposals or full proposals under this program and will be as complete as possible with respect to:

(1) Descriptions of the specific research areas that the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Eligibility requirements;

(3) Obtaining application kits;

(4) Deadline dates for submission of preproposal or proposal packages;

(5) Name and mailing address to send preproposals or proposals;

(6) Number of copies to submit; and

(7) Special requirements.

(b) *Application Kit.* An Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant preproposals or proposals.

(c) *Format for preproposals.* As stated above, the Department may elect to solicit preproposals under this program. Unless otherwise indicated by the Department in the annual program solicitation, the following general format applies for the preparation of preproposals:

(1) ''*Application for Funding (Form NIFA–661)*''. All preproposals submitted by eligible applicants should contain an ''Application for Funding'', Form NIFA–661, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources. The title of the proposal must be brief (80-character maximum), yet represent the major thrust of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' and ''research on'' should not be used.

(2) *Project summary.* Each preproposal must contain a project summary, the text of which may not exceed three (3) single- or double-spaced pages. The Department reserves the option of not forwarding for further consideration a preproposal in which the project summary page limit is exceeded. The project summary is not intended for the general reader; consequently, it may contain technical language comprehensible primarily by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained specific description of the activity to be undertaken and should focus on:

(i) Overall project goal(s) and supporting objectives;

(ii) Plans to accomplish project goal(s); and

(iii) Relevance or significance of the project to United States agriculture.

(3) *Budget.* A budget detailing requested support for the proposed project period must be included in each preproposal. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Application Kit identified under § 3415.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(4) *Special requirements.* (i) The annual program solicitation will describe any special preproposal submission requirements, such as paper size or type pitch to be used in the preparation of preproposals. The solicitation will also describe special program requirements, such as conference attendance or electronic project reporting, for which applicants may allocate funds when preparing proposed budgets.

(ii) By signing the ''Application for Funding'' identified under § 3415.4(c)(1) in its submission of a preproposal, the applicant is certifying compliance with the restrictions on the use of appropriated funds for lobbying set out in 7 CFR part 3018.

(5) *Evaluation of preproposals.* Preproposals shall be evaluated to determine whether the substance of the proposed project is appropriate to the objectives of this program as set out in the annual program solicitation. Subsequently, the Director or Administrator shall request full proposals from those applicants proposing projects deemed appropriate to the objectives of this program as set out in the annual program solicitation. Such proposals shall conform to the format for full proposals set out below and shall be

evaluated in accordance with § 3415.5 through § 3415.15 of this part.

(d) *Format for full proposals.* Unless otherwise indicated by the Department in the annual program solicitation, the following general format applies for the preparation of full proposals under this program:

(1) *''Application for Funding'' (Form NIFA–661).* All full proposals submitted by eligible applicants should contain an Application for Funding'', Form NIFA–661, which must be signed by the proposed principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Investigators who do not sign the full proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent The major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(2) *Project summary.* Each full proposal must contain a project summary, the length of which may not exceed three (3) single- or double-spaced pages. This summary is not intended for the general reader; consequently, it may contain technical language comprehensible primarily by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained, specific description of the activity to be undertaken and should focus on:

(i) Overall project goal(s) and supporting objectives;

(ii) Plans to accomplish project goal(s); and

(iii) Relevance or significance of the project to United States agriculture.

(3) *Project description.* The specific aims of the project must be included in all proposals. The text of the project description may not exceed 15 single- or double-spaced pages. The Department reserves the option of not forwarding for further consideration proposals in which the project description exceeds this page limit. The project description must contain the following components:

(i) *Introduction.* A clear statement of the long-term goal(s) and supporting objectives of the proposed project should preface the project description. The most significant published work in the field under consideration, including the work of key project personnel on the current application, should be reviewed. The current status of research in the particular scientific field also should be described. All work cited, including that of key personnel, should be referenced.

(ii) *Progress report.* If the proposal is a renewal of an existing project supported under this program, include a clearly marked performance report describing results to date from the previous award. This section should contain the following information:

(A) A comparison of actual accomplishments with the goals established for the previous award;

(B) The reasons established goals were not met, if applicable; and

(C) A listing of any publications resulting from the award. Copies of reprints or preprints may be appended to the proposal if desired.

(4) *Rationale and significance.* Present concisely the rationale behind the proposed project. The objectives' specific relationship and relevance to the area in which an application is submitted and the objectives' specific relationship and relevance to potential regulatory issues of United States biotechnology research should be shown clearly. Any novel ideas or contributions that the proposed project offers also should be discussed in this section.

(5) *Experimental plan.* The hypotheses or questions being asked and the methodology to be applied to the proposed project should be stated explicitly. Specifically, this section must include:

(i) A description of the investigations and/or experiments proposed and the sequence in which the investigations or experiments are to be performed;

(ii) Techniques to be used in carrying out the proposed project, including the feasibility of the techniques;

(iii) Results expected;

(iv) Means by which experimental data will be analyzed or interpreted;

(v) Pitfalls that may be encountered;

(vi) Limitations to proposed procedures; and

(vii) Tentative schedule for conducting major steps involved in these investigations and/or experiments.

In describing the experimental plan, the applicant must explain fully any materials, procedures, situations, or activities that may be hazardous to personnel (whether or not they are directly related to a particular phase of the proposed project), along with an outline of precautions to be exercised to avoid or mitigate the effects of such hazards.

(6) *Facilities and equipment.* All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

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

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

(i) An estimate of the time commitments necessary;

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. The vitae shall be no more than two pages each in length, excluding the publication lists. The Department reserves the option of not forwarding for further consideration a proposal in which each vitae exceeds the two-page limit; and

(iii) Publication List(s). A chronological list of all publications in referred journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(9) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, Form NIFA–55, along with instructions for completion, is included in the Application Kit identified under § 3415.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(10) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If any such situation is anticipated, the proposal must so indicate. It is expected that a significant number of proposals will involve the following:

(i) *Recombinant DNA and RNA molecules.* All key personnel identified in a

proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Application Kit, identified above in §3415.4(b), contains a form which is suitable for such certification of compliance (Form NIFA–662).

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any proposed project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the project plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit, identified above in §3415.4(b), contains a form which is suitable for such certification (Form NIFA–662).

(iii) *Experimental vertebrate animal care.* The responsibility for the humane care and treatment of any experimental vertebrate animal, which has the same meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any project supported with grant funds rests with the performing organization. In this regard, all key personnel associated with any supported project and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. The applicant must submit a statement certifying that the proposed project is in compliance with the aforementioned regulations, and that the proposed project is either under review by or has been reviewed and approved by an Institutional Animal Care and Use Committee. The Application Kit, identified above in §3415.4(b), contains a form which is suitable for such certification (Form NIFA–662).

(11) *Current and pending support.* All proposals must list any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Director or Administrator or experts or consultants engaged by the Director or Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit, identified above in §3415.4(b), contains a form which is suitable for listing current and pending support (Form NIFA–663).

(12) *Additions to project description.* Each project description is expected by the Director or Administrator, the members of peer review groups, and the relevant program staff to be complete while meeting the page limit established in §3415.4(d)(3). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), the number of copies submitted should match the number of copies of the application requested in the program solicitation. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

(13) *Organizational management information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant identified under this Part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. The Department will contact an applicant to request organizational management information once a proposal has been recommended for funding.

§ 3415.5 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants and submitted in accordance with deadlines established in the annual program solicitation shall be evaluated by the Director or Administrator through such officers, employees, and others as the Director or Administrator determines are uniquely qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Director or Administrator shall solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the areas covered by the applications received and whose general roles are defined in § 3415.2. Specific evaluations will be based upon the criteria established in subpart B, § 3415.15, unless NIFA and/or ARS determine that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, or for specific types of projects to be supported, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of these evaluations is to provide information upon which the Director or Administrator may make an informed judgment in selecting proposals for support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Director's or Administrator's evaluation of an application in accordance with paragraph (a) of this section, the Director or Administrator will (1) approve support using currently available funds, (2) defer support due to lack of funds or a need for further evaluation, or (3) disapprove support for the proposed project in whole or in part. With respect to approved projects, the Director or Administrator will determine the project period (subject to extension as provided in § 3415.7(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

[58 FR 65647, Dec. 15, 1993, as amended at 80 FR 81738, Dec. 31, 2015]

§ 3415.6 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official of NIFA or ARS shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Director or Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by NIFA or ARS under this Part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, 2 CFR part 200.

(b) *Grant award document and notice of grant award*—(1) *Grant award document.* The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Director or Administrator

has awarded a grant under the terms of this Part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Director or Administrator during the project period;

(vii) Legal authority(ies) under which the grant is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(ix) Other information or provisions deemed necessary by NIFA or ARS to carry out their respective granting activities or to accomplish the purpose of a particular grant.

(2) *Notice of grant award.* The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Types of grant instruments.* The major types of grant instruments shall be as follows:

(1) *New grant.* This is a grant instrument by which NIFA or ARS agrees to support a specified level of effort for a project that generally has not been supported previously under this program. This type of grant is approved on the basis of peer review recommendation.

(2) *Renewal grant.* This is a grant instrument by which NIFA or ARS agrees to provide additional funding for a project period beyond that approved in an original or amended award. When a renewal application is submitted, it should include a summary of progress to date from the previous granting period. A renewal grant shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award action reflecting that the grant has been renewed.

(3) *Supplemental grant.* This is an instrument by which NIFA or ARS agrees to provide small amounts of additional funding under a new or renewal grant as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature normally will not require additional peer review.

(d) *Funding mechanisms.* The two mechanisms by which NIFA or ARS may elect to award new, renewal, and supplemental grants are as follows:

(1) *Standard grant.* This is a funding mechanism whereby NIFA or ARS agrees to support a specified level of effort for a predetermined time period without the announced intention of providing additional support at a future date.

(2) *Continuation grant.* This is a funding mechanism whereby NIFA or ARS agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent continuation project grants also will be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by NIFA or ARS, a grantee must subject a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively

after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original grant application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

(e) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant commits or obligates the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion thereof.

[58 FR 65647, Dec. 15, 1993, as amended at 79 FR 76000, Dec. 19, 2014]

§ 3415.7 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the awarding official of NIFA or ARS, as appropriate, for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the awarding official of NIFA or ARS, as appropriate, prior to effecting such changes. Normally, no requests for such changes that are outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of NIFA or ARS, as appropriate, prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the awarding official of NIFA or ARS, as appropriate, prior to effecting such changes, unless prescribed otherwise in the terms and conditions of a grant.

(c) *Changes in project period.* The project period determined pursuant to § 3415.5(b) may be extended by the awarding official of NIFA or ARS, as appropriate, without additional financial support, for such additional period(s) as the appropriate awarding official determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the appropriate awarding official, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe the circumstances under which written approval must be requested and obtained from the awarding official of NIFA or ARS, as appropriate, prior to instituting changes in an approved budget.

§ 3415.8 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200

as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment And Suspension (Nonprocurement) and USDA Nonprocurement Debarment And Suspension
7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.
7 CFR 1.1—USDA Implementation of Freedom of Information Act.
7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.
7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.
7 CFR part 3407—NIFA Procedures To Implement the National Environmental Policy Act;
29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and
35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[79 FR 76000, Dec. 19, 2014]

§ 3415.9 Other conditions.

The Director or Administrator may elect to use a portion of available funding each fiscal year to support an Annual Conference, the purpose of which will be to bring together scientists and regulatory officials relevant to this program. At the Annual Conference, the participants may offer individual opinions regarding research needs, update information and discuss progress, or may offer individual opinions on areas of risk assessment research appropriate to agricultural biotechnology. The annual program solicitation will indicate whether funds are available to support an Annual Conference and, if so, will include instructions on the preparation and submission of proposals requesting funds from the Department for support of an Annual Conference. The Department may also elect to require principal investigators whose research is funded under this program to attend an Annual Conference and to present data on the results of their research efforts. Should attendance at an Annual Conference be required, the annual program solicitation will so indicate, and principal investigators may include attendance costs in their proposed budgets.

The Director or Administrator may, with respect to any grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Director's or Administrator's judgment, such conditions are necessary to ensure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Grant Applications

§ 3415.10 Establishment and operation of peer review groups.

Subject to § 3415.5, the Director or Administrator shall adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3415.14.

§ 3415.11 Composition of peer review groups.

(a) Peer review group members and *ad hoc* reviewers will be selected based upon their training and experience in relevant scientific or technical fields, taking into account the following factors:

(1) The level of formal scientific or technical education by the individual and the extent to which an individual is engaged in relevant research activities;

(2) The need to include as peer reviewers experts from various areas of specialization within relevant scientific or technical fields;

(3) The need to include as peer reviewers experts from a variety of organizational types (e.g., universities, Federal laboratories, industry, private

consultant(s), Federal and State regulatory agencies, environmental organizations) and geographic locations; and

(4) The need to maintain a balanced composition of peer review groups related to minority and female representation and an equitable age distribution.

(b) [Reserved]

§ 3415.12 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in title 18 of the United States Code relating to criminal activity, Departmental regulations governing employee responsibilities and conduct (part O of this title), and Executive Order No. 11222, as amended.

§ 3415.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a.), and implementing Departmental regulations (part 1 of this title).

§ 3415.14 Proposal review.

(a) All grant applications will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (e.g., relationship of application to announced program area). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(b) All applications will be carefully reviewed by the Director or Administrator, qualified officers or employees of the Department, the respective peer review group, and *ad hoc* reviewers, as required. Written comments will be solicited from *ad hoc* reviewers when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the program solicitation.

(c) No awarding official will make a grant based upon an application covered by this part unless the application has been reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

(d) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding officials of NIFA and ARS.

§ 3415.15 Evaluation factors.

In carrying out its review under § 3415.14, the peer review group will take into account the following factors unless, pursuant to § 3415.5(a), different evaluation criteria are specified in the annual program solicitation:

(a) Scientific merit of the proposal.

(1) Conceptual adequacy of hypothesis;

(2) Clarity and delineation of objectives;

(3) Adequacy of the description of the undertaking and suitability and feasibility of methodology;

(4) Demonstration of feasibility through preliminary data;

(5) Probability of success of project;

(6) Novelty, uniqueness and originality; and

(7) Appropriateness to regulation of biotechnology and risk assessment.

(b) Qualifications of proposed project personnel and adequacy of facilities.

(1) Training and demonstrated awareness of previous and alternative approaches to the problem identified in the proposal, and performance record and/or potential for future accomplishments;

(2) Time allocated for systematic attainment of objectives;

(3) Institutional experience and competence in subject area; and

(4) Adequacy of available or obtainable support personnel, facilities, and instrumentation.

(c) Relevance of project to solving biotechnology regulatory uncertainty for United States agriculture.

(1) Scientific contribution of research in leading to important discoveries or significant breakthroughs in announced program areas; and

(2) Relevance of the risk assessment research to agriculture and environmental regulations.

PART 3418—STAKEHOLDER INPUT REQUIREMENTS FOR RECIPIENTS OF AGRICULTURAL RESEARCH, EDUCATION, AND EXTENSION FORMULA FUNDS

Sec.
3418.1 Definitions.
3418.2 Scope and purpose.
3418.3 Applicability.
3418.4 Reporting requirement.
3418.5 Failure to comply and report.
3418.6 Prohibition.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 7612(c)(2).

SOURCE: 65 FR 5998, Feb. 8, 2000, unless otherwise noted.

§ 3418.1 Definitions.

As used in this part:

1862 institution means a college or university eligible to receive funds under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*).

1890 institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, *et seq.*), including Tuskegee University.

1994 institution means an institution as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Formula funds means agricultural research funds provided to 1862 institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471; agricultural extension and research funds provided to 1890 institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA)(7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided to forestry schools under the McIntire-Stennis Act of 1962 (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

Recipient institution means any 1862 institution, 1890 institution, 1994 institution, or any other institution that receives formula funds from the Department of Agriculture.

Seek stakeholder input means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice, and one that treats all with dignity and respect.

Stakeholder means any person who has the opportunity to use or conduct agricultural research, extension, or education activities of recipient institutions.

§ 3418.2 Scope and Purpose.

Section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7612(c)) requires land-grant institutions, as a condition of receipt of formula funds, to solicit and consider input and recommendations from stakeholders concerning the use of formula funds. This regulation implements this requirement consistently for all recipient institutions that receive formula funds.

§ 3418.3 Applicability.

To obtain formula funds after September 30, 1999, each recipient institution shall establish and implement a process for obtaining stakeholder input on the uses of formula funds in accordance with this part.

§ 3418.4 Reporting requirement.

Each recipient institution shall report to the Department of Agriculture by October 1 of each fiscal year, the following information related to stakeholder input and recommendations:

(a) Actions taken to seek stakeholder input that encourages their participation;

(b) A brief statement of the process used by the recipient institution to identify individuals and groups who are stakeholders and to collect input from them; and

(c) A statement of how collected input was considered.

§ 3418.5 Failure to comply and report.

Formula funds may be withheld and redistributed if a recipient institution fails to either comply with § 3418.3 or report under § 3418.4.

§ 3418.6 Prohibition.

A recipient institution shall not require input from stakeholders as a condition of receiving the benefits of, or participating in, the agricultural research, education, or extension programs of the recipient institution.

PART 3419—MATCHING FUNDS REQUIREMENT FOR AGRICULTURAL RESEARCH AND EXTENSION CAPACITY FUNDS AT 1890 LAND-GRANT INSTITUTIONS, INCLUDING CENTRAL STATE UNIVERSITY, TUSKEGEE UNIVERSITY, AND WEST VIRGINIA STATE UNIVERSITY AND AT 1862 LAND-GRANT INSTITUTIONS IN INSULAR AREAS

Sec.

3419.1 Definitions.
3419.2 Matching funds requirement.
3419.3 Limited waiver authority.
3419.4 Applications for waivers for both 1890 land-grant institutions and 1862 land-grant institutions in insular areas.
3419.5 Certification of matching funds.
3419.6 Use of matching funds.
3419.7 Reporting of matching funds.
3419.8 Redistribution of funds.

AUTHORITY: 7 U.S.C. 3222d; 7 U.S.C. 343(e); 7 U.S.C. 361c; Pub. L. 107–171; Pub. L. 110–234; Pub. L. 113–79.

SOURCE: 65 FR 21631, Apr. 21, 2000, unless otherwise noted.

§ 3419.1 Definitions.

As used in this part:

Capacity funds means agricultural extension and research funds provided by formula to the eligible institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended, or under sections 3(b) and (c) of the Smith-Lever Act, 7 U.S.C. 343(b) and (c) or under section 3 of the Hatch Act of 1887, 7 U.S.C. 361c.

Eligible institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*) (commonly known as the Second Morrill Act), including Central State University, Tuskegee University, and West Virginia State University (1890 land-grant institutions), and a college or university designated under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*) (commonly known as the First Morrill Act) and located in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the U.S. Virgin Islands (1862 land-grant institutions in insular areas).

Matching funds means funds from non-Federal sources, including those made available by the State to the eligible institutions, for programs or activities that fall within the purposes of agricultural research and cooperative extension under: sections 1444 and 1445 of NARETPA; the Hatch Act of 1887; and the Smith-Lever Act.

Non-Federal sources means funds made available by the State to the eligible institution either through direct appropriation or under any authority (other than authority to charge tuition and fees paid by students) provided by a State to an eligible institution to raise revenue, such as gift acceptance authority or user fees.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means the government of any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of Northern Marianas, the Virgin Islands of the United States, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

[65 FR 21631, Apr. 21, 2000, as amended at 83 FR 21849, May 11, 2018]

§ 3419.2 Matching funds requirement.

(a) *1890 land-grant institutions.* The distribution of capacity funds are subject to a matching requirement. Matching funds will equal not less than 100% of the capacity funds to be distributed to the institution.

(b) *1862 land-grant institutions in insular* areas. The distribution of capacity

funds are subject to a matching requirement. Matching funds will equal not less than 50% of the capacity funds to be distributed to the institution.

(c) For fiscal year 2002 and each fiscal year thereafter, the matching funds shall equal not less than 50 percent of the formula funds to be distributed to the eligible institution.

[65 FR 21631, Apr. 21, 2000, as amended at 83 FR 21849, May 11, 2018]

§ 3419.3 Limited waiver authority.

(a) *1890 land-grant institutions:* The Secretary may waive the matching funds requirement in § 3419.2 above the 50% level for any fiscal year for an eligible institution of a State if the Secretary determines that the State will be unlikely to satisfy the matching requirement.

(b) *1862 land-grant institutions in insular areas:* The Secretary may waive up to 100% of the matching funds requirements in § 3419.2 for any fiscal year for an eligible institution in an insular area.

(c) The criteria to waive the applicable matching requirement for 1890 land-grant institutions and 1862 land-grant institutions in insular areas is demonstration of one or more of the following:

(1) Impacts from natural disaster, flood, fire, tornado, hurricane, or drought;

(2) State and/or institution facing a financial crisis; or

(3) Lack of matching funds after demonstration of good faith efforts to obtain funds.

(d) Approval or disapproval of the request for a waiver will be based on the application submitted, as defined under § 3419.4.

[Redesignated and revised at 83 FR 21849, May 11, 2018]

§ 3419.4 Applications for waivers for both 1890 land-grant institutions and 1862 land-grant institutions in insular areas.

Application for waivers for both 1890 land-grant institutions and 1862 land-grant institutions in insular areas. The president of the eligible institution must submit any request for a waiver for matching requirements. A waiver application must include the name of the eligible institution, the type of Federal capacity funds (*i.e.* research, extension, Hatch, etc.), appropriate fiscal year, the basis for the request (*e.g.* one or more of the criteria identified in § 3419.3); current supporting documentation, where current is defined as within the past two years from the date of the letter requesting the waiver; and the amount of the request.

[83 FR 21849, May 11, 2018]

§ 3419.5 Certification of matching funds.

Prior to the distribution of capacity funds each fiscal year, each eligible institution must certify as to the availability of matching funds. Eligible institutions may revise their certification of matching funds through July 1 of the fiscal year in which funds are appropriated.

[65 FR 21631, Apr. 21, 2000, as amended at 83 FR 21850, May 11, 2018]

§ 3419.6 Use of matching funds.

The required matching funds for the capacity programs must be used by an eligible institution for the same purpose as Federal award dollars: Agricultural research and extension activities that have been approved in the plan of work required under sections 1445(c) and 1444(d) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, section 7 of the Hatch Act of 1887, and section 4 of the Smith-Lever Act. For all programs, tuition dollars and student fees may not be used as matching funds.

[83 FR 21850, May 11, 2018]

§ 3419.7 Reporting of matching funds.

Institutions will report all capacity matching funds expended annually using Standard Form (SF) 425, in accordance with 7 CFR 3430.56(a).

[83 FR 21850, May 11, 2018]

§ 3419.8 Redistribution of funds.

Unmatched research and extension funds will be reapportioned in accordance with the research and extension statutory distribution formulas applicable to the 1890 and 1862 land-grant institutions in insular areas, respectively. Any redistribution of funds

must be subject to the same matching requirement under §3419.2.

[Redesignated and revised at 83 FR 21850, May 11, 2018]

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVISIONS

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SOURCE: 74 FR 45740, Sept. 4, 2009, unless otherwise noted.

Subpart A—General Information

§ 3430.1 Applicability of regulations.

(a) *General.* This part provides agency specific regulations regarding the application for, and evaluation, award, and post-award administration of, National Institute of Food and Agriculture (NIFA) awards, and is supplementary to the USDA uniform assistance regulations at 2 CFR part 200, as applicable. These regulations apply to the following types of Federal assistance awards: Grants and cooperative agreements.

(b) *Competitive programs.* This part applies to all agricultural research, education, and extension competitive and related programs for which NIFA has administrative or other authority, as well as any other Federal assistance program delegated to the NIFA Director . In cases where regulations of this

part conflict with existing regulations of NIFA in Title 7 (*i.e.*, 7 CFR parts 3400 through 3499) of the Code of Federal Regulations, regulations of this part shall supersede. This part does not apply to the Small Business Innovation Research (SBIR) Program (7 CFR part 3403) and the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3151a).

(c) *Noncompetitive programs.* Subparts A, B, D, and E, as well as §3430.35 of subpart C, apply to all noncompetitive agricultural research, education, and extension programs administered by NIFA, as well as any other Federal assistance program delegated to the NIFA Director.

(d) *Federal assistance programs administered on behalf of other agencies.* Subparts A through E, as appropriate, apply to competitive and noncompetitive grants and cooperative agreements administered on behalf of other agencies of the Federal Government. Requirements specific to these Federal assistance programs will be included in the program solicitations or requests for applications (RFAs).

(e) *Federal assistance programs administered jointly with other agencies.* Subparts A through E, as appropriate, apply to competitive and noncompetitive grants and cooperative agreements administered jointly with other agencies of the Federal Government. Requirements specific to these Federal assistance programs will be included in the appropriate program solicitations or RFAs published by both or either agency.

(f) *Formula fund grants programs.* This part does not apply to any of the formula grant programs administered by NIFA. Formula funds are the research funds provided to 1862 Land-Grant Institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 Land-Grant Institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Public Law 93–471; agricultural extension and research funds provided to 1890 Land-Grant Institutions under sections 1444 and 1445 of NARETPA (7 U.S.C. 3221 and 3222); expanded food and nutrition education program funds authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)) to the 1862 Land-Grant Institutions and the 1890 Land-Grant Institutions; extension funds under the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671, *et seq.*) for the 1862 Land-Grant institutions and the 1890 Land-Grant Institutions; research funds provided to the 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, and forestry schools under the McIntire-Stennis Cooperative Forestry Act (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

[74 FR 45740, Sept. 4, 2009, as amended at 79 FR 76000, Dec. 19, 2014]

§ 3430.2 Definitions.

As used in this part:

1862 Land-Grant Institution means an institution eligible to receive funds under the Act of July 2, 1862, as amended (7 U.S.C. 301, *et seq.*). Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

1890 Land-Grant Institution means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321, *et seq.*), including Tuskegee University and West Virginia State University. Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

1994 Land-Grant Institution means one of those institutions as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994, as amended (7 U.S.C. 301 note). These institutions are commonly referred to as Tribal Colleges or Universities.

Advisory Board means the National Agricultural Research, Extension, Education, and Economics Advisory Board (as established under section 1408 of NARETPA (7 U.S.C. 3123).

Agricultural research means research in the food and agricultural sciences.

Applied research means research that includes expansion of the findings of

fundamental research to uncover practical ways in which new knowledge can be advanced to benefit individuals and society.

Authorized Departmental Officer or *ADO* means the Secretary or any employee of the Department with delegated authority to issue or modify award instruments on behalf of the Secretary.

Authorized Representative or *AR* means the President or Chief Executive Officer of the applicant organization or the official, designated by the President or Chief Executive Officer of the applicant organization, who has the authority to commit the resources of the organization to the project.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards may be grants or cooperative agreements.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties.

Center of Excellence in food and agricultural research, extension, and education is a grantee whose application was not only found to be highly meritorious by a peer panel, but met additional criteria (*see* §3430.17(c)) to receive the designation. This designation is specific to a grant application.

Certification of Non-Land-Grant College of Agriculture status means an institution that followed NIFA's Process for Non-Land Grant College of Agriculture (NLGCA) Designation and received a certification of NLGCA designation from NIFA (*see* §3430.16(c)).

College or *university* means, unless defined in a separate subpart, an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association. Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

Cooperative agreement means the award by the Authorized Departmental Officer of funds to an eligible awardee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA, and where substantial involvement is expected between NIFA and the awardee when carrying out the activity contemplated in the agreement.

Department means the United States Department of Agriculture.

Director means the Director of NIFA and any other officer or employee of NIFA to whom the authority involved is delegated.

Education activity or *teaching activity* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related matters such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies.

Established and demonstrated capacity means that an organization has met the following criteria:

(1) Conducts any systematic study directed toward new or fuller knowledge and understanding of the subject studied; or,

(2) Systematically relates or applies the findings of research or scientific experimentation to the application of new approaches to problem solving, technologies, or management practices; and

(3) Has facilities, qualified personnel, independent funding, and prior projects and accomplishments in research or technology transfer.

Extension means informal education programs conducted in the States in cooperation with the Department.

Extension activity means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in food and fiber, agricultural, renewable energy and natural resources, forestry, and physical and social sciences, including activities relating to the following:

(1) Animal health, production, and well-being.

(2) Plant health and production.

(3) Animal and plant germ plasm collection and preservation.

(4) Aquaculture.

(5) Food safety.

(6) Soil, water, and related resource conservation and improvement.

(7) Forestry, horticulture, and range management.

(8) Nutritional sciences and promotion.

(9) Farm enhancement, including financial management, input efficiency, and profitability.

(10) Home economics.

(11) Rural human ecology.

(12) Youth development and agricultural education, including 4–H clubs.

(13) Expansion of domestic and international markets for agricultural commodities and products, including agricultural trade barrier identification and analysis.

(14) Information management and technology transfer related to agriculture.

(15) Biotechnology related to agriculture.

(16) The processing, distributing, marketing, and utilization of food and agricultural products.

Fundamental research means research that increases knowledge or understanding of the fundamental aspects of phenomena and has the potential for broad application, and has an effect on agriculture, food, nutrition, or the environment.

Graduate degree means a Master's or doctoral degree.

Grant means the award by the Authorized Departmental Officer of funds to an eligible grantee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Insular area means the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands of the United States.

Integrated project means a project incorporating two or three components of the agricultural knowledge system (research, education, and extension) around a problem area or activity.

Land-grant Institutions means the 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, and 1994 Land-Grant Institutions.

Matching or cost sharing means that portion of allowable project or program costs not borne by the Federal Government, including the value of in-kind contributions.

Merit review means an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed.

Merit reviewers means peers and other individuals with expertise appropriate to conduct merit review of a proposed project.

Methodology means the project approach to be followed.

Mission-linked research means research on specifically identified agricultural problems which, through a continuum of efforts, provides information and technology that may be transferred to users and may relate to a product, practice, or process.

National laboratories include Federal laboratories that are government-owned contractor-operated or government-owned government-operated.

Non-citizen national of the United States means the award by the Authorized Departmental Officer of funds to an eligible awardee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA, and where substantial involvement is expected between NIFA and the awardee when carrying out the activity contemplated in the agreement.

Peer reviewers means experts or consultants qualified by training and experience to give expert advice on the scientific and technical merit of applications or the relevance of those applications to one or more of the application evaluation criteria. Peer reviewers may be adhoc or convened as a panel.

Prior approval means written approval by an Authorized Departmental Officer evidencing prior consent.

Private research organization means any non-governmental corporation, partnership, proprietorship, trust, or other organization.

Private sector means all non-public entities, including for-profit and nonprofit commercial and non-commercial entities, and including private or independent educational associations.

Program announcement (PA) means a detailed description of the RFA without the associated application package(s). NIFA will not solicit or accept applications in response to a PA.

Program Officer means a NIFA individual (often referred to as a National Program Leader) who is responsible for the technical oversight of the award on behalf of the Department.

Project means the particular activity within the scope of the program supported by an award.

Project Director or *PD* means the single individual designated by the awardee in the application and approved by the Authorized Departmental Officer who is responsible for the direction and management of the project, also known as a Principal Investigator (PI) for research activities.

Project period means the total length of time, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

Scientific peer review means an evaluation of the technical quality of a proposed project and its relevance to regional or national goals, performed by experts with the scientific knowledge and technical skills to conduct the proposed research work.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved is delegated.

Under Secretary means the Under Secretary for Research, Education, and Economics.

United States means the several States, the District of Columbia, and the insular areas.

Units of State government means all State institutions, including the formal divisions of State government (*i.e.*, the official State agencies such as departments of transportation and education), local government agencies (e.g., a county human services office), and including State educational institutions (e.g., public colleges and universities).

[74 FR 45740, Sept. 4, 2009, as amended at 76 FR 4813, Jan. 27, 2011; 79 FR 76000, Dec. 19, 2014; 81 FR 6413, Feb. 8, 2016; 82 FR 21109, May 5, 2017]

§ 3430.3 Deviations.

Any request by the applicant or awardee for a waiver of or deviation from any provision of this part shall be submitted to the ADO identified in the agency specific requirements. NIFA shall review the request and notify the applicant/awardee, within 30 calendar days from the date of receipt of the deviation request, whether the request to deviate has been approved. If the deviation request is still under consideration at the end of 30 calendar days, NIFA shall inform the applicant/awardee in writing of the date when the applicant/awardee may expect the decision.

§ 3430.4 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment and Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures to Implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[79 FR 76000, Dec. 19, 2014]

Subpart B—Pre-award: Solicitation and Application

§ 3430.11 Competition.

(a) *Standards for competition.* Except as provided in paragraph (b) of this section, NIFA will enter into grants and cooperative agreements, unless restricted by statute, only after competition.

(b) *Exception.* The NIFA ADO and the designated Agency approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Federal Government and necessary to the goals of the program.

§ 3430.12 Requests for applications.

(a) *General.* For each competitive and noncompetitive non-formula program, NIFA will prepare a program solicitation (also called a request for applications (RFA)), in accordance with appendix I to 2 CFR part 200, establishing a standard format for Federal agency announcements (*i.e.*, program solicitations or RFAs) of funding opportunities under programs that award discretionary grants or cooperative agreements. This policy directive requires the content of the RFA to be organized in a sequential manner beginning with overview information followed by the full text of the announcement and will apply unless superseded by statute or another OMB policy directive. The RFA may include all or a portion of the following items:

(1) Contact information.

(2) Directions for interested stakeholders or beneficiaries to submit written comments in a published program solicitation or RFA.

(3) Catalog of Federal Domestic Assistance (CFDA) number.

(4) Legislative authority and background information.

(5) Purpose, priorities, and fund availability.

(6) Program-specific eligibility requirements.

(7) Program-specific restrictions on the use of funds, if Applicable.

(8) Matching requirements, if applicable.

(9) Acceptable types of applications.

(10) Types of projects to be given priority consideration, including maximum anticipated awards and maximum project lengths, if applicable.

(11) Program areas, if applicable.

(12) Funding restrictions, if applicable.

(13) Directions for obtaining additional requests for applications and application forms.

(14) Information about how to obtain application forms and the instructions for completing such forms.

(15) Instructions and requirements for submitting applications, including submission deadline(s).

(16) Explanation of the application evaluation Process.

(17) Specific evaluation criteria used in the review Process.

(18) Type of Federal assistance awards (*i.e.*, grants and/or cooperative agreements).

(b) *RFA variations.* Where program-specific requirements differ from the requirements established in this part, program solicitations will also address any such variation(s). Variations may occur in the following:

(1) Award management guidelines.

(2) Restrictions on the delegation of fiscal responsibility.

(3) Required approval for changes to project plans.

(4) Expected program outputs and reporting requirements, if applicable.

(5) Applicable Federal statutes and regulations.

(6) Confidential aspects of applications and awards, if applicable.

(7) Regulatory information.

(8) Definitions.

(9) Minimum and maximum budget requests, and whether applications outside of these limits will be returned without further review.

(c) *Program announcements.* Occasionally, NIFA will issue a program announcement (PA) to alert potential applicants and the public about new and ongoing funding opportunities. These PAs may provide tentative due dates and are released without associated application packages. Hence, no applications are solicited under a PA. PAs are announced in the FEDERAL REGISTER or on the NIFA Web site.

(d) If applicants choose to address center of excellence criteria, they must do so in their project narrative, subject to any page limitations on that section of the application.

[74 FR 45740, Sept. 4, 2009, as amended at 79 FR 76001, Dec. 19, 2014; 82 FR 21109, May 5, 2017]

§ 3430.13 Letter of intent to submit an application.

(a) *General.* NIFA may request or require that prospective applicants notify program staff of their intent to submit an application, identified as ''letter of intent''. If applicable, the request or requirement will be included in the RFA, along with directions for the preparation and submission of the letter of intent, the type of letter of intent, and any relevant deadlines. There are two types of letters of intent: optional and required.

(b) *Optional letter of intent.* Entities interested in submitting an application for a NIFA award should complete and submit a ''Letter of Intent to Submit an Application'' by the due date specified in the RFA. This does not obligate the applicant in any way, but will provide useful information to NIFA in preparing for application review. Applicants that do not submit a letter of intent by the specified due date are still allowed to submit an application by the application due date specified in the RFA, unless otherwise specified in the RFA.

(c) *Required letter of intent.* Certain programs may require that the prospective applicants submit a letter of intent for specific programs. This type of letter is evaluated by the program staff for suitability to the program and in regard to program priorities, needs, and scope. Invitations to submit a full application will be issued by the Program Officer or his or her representative. For programs requiring a letter of intent, applications submitted without prior approval of the letter of intent by the program staff will be returned without review. Programs requiring a specific letter of intent will be specified in the RFA.

§ 3430.14 Types of applications; types of award instruments.

(a) *Types of applications.* The type of application acceptable may vary by funding opportunity. The RFA will stipulate the type of application that

may be submitted to NIFA in response to the funding opportunity. Applicants may submit the following types of applications as specified in the RFA.

(1) *New.* An application that is being submitted to the program for the first time.

(2) *Resubmission.* This is a project application that has been submitted for consideration under the same program previously but has not been approved for an award under the program. For competitive programs, this type of application is evaluated in competition with other pending applications in the area to which it is assigned. Resubmissions are reviewed according to the same evaluation criteria as new applications. In addition, applicants must respond to the previous panel review summaries, unless waived by NIFA.

(3) *Renewal.* An application requesting additional funding for a period subsequent to that provided by a current award. For competitive programs, a renewal application competes with all other applications. Renewal applications must be developed as fully as though the applicant is applying for the first time. Renewal applicants also must have filed a progress report via Current Research Information System (CRIS), unless waived by NIFA.

(4) *Continuation.* A noncompeting application for an additional funding/budget period within a previously approved project.

(5) *Revision.* An application that proposes a change in the Federal Government's financial obligations or contingent liability from an existing obligation; or, any other change in the terms and conditions of the existing award.

(6) *Resubmitted renewal.* This is a project application that has been submitted for consideration under the same program previously. This type of application has also been submitted for renewal under the same program but was not approved. For competitive programs, this type of application is evaluated in competition with other pending applications in the area to which it is assigned. Resubmitted renewal applications are reviewed according to the same evaluation criteria as new applications. Applicants must respond to the previous panel review summaries and file a progress report via CRIS, unless waived by NIFA.

(b) *Types of award instruments.* The following is a list of corresponding categories of award instruments issued by NIFA.

(1) *Standard.* This is an award instrument by which NIFA agrees to support a specified level of effort for a predetermined project period without the announced intention of providing additional support at a future date.

(2) *Renewal.* This is an award instrument by which NIFA agrees to provide additional funding under a standard award as specified in paragraph (b)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed any statutory time limitation of the award.

(3) *Continuation.* This is an award instrument by which NIFA agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interest of the Federal Government and the public.

(4) *Supplemental.* This is an award instrument by which NIFA agrees to provide small amounts of additional funding under a standard, renewal, or continuation award as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed any statutory time limitation of the award.

(c) *Obligation of the Federal Government.* Neither the acceptance of any application nor the award of any project shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3430.15 Stakeholder input.

Section 103(c)(2) of the Agricultural Research, Extension, and Education

Reform Act of 1998 (AREERA) (7 U.S.C. 7613(c)(2)) requires the Secretary to solicit and consider input on each program RFA from persons who conduct agricultural research, education, and extension for use in formulating future RFAs for competitive programs. NIFA will provide instructions for submission of stakeholder input in the RFA. NIFA will consider any comments received within the specified timeframe in the development of the future RFAs for the program.

§ 3430.16 Eligibility requirements.

(a) *General.* Program-specific eligibility requirements appear in the subpart applicable to each program and in the RFAs.

(b) *Foreign entities*—(1) *Awards to institutions.* Unless specifically allowed, foreign commercial and non-profit institutions are not considered eligible to apply for and receive NIFA awards.

(2) *Awards to individuals.* Unless otherwise specified, only United States citizens, non-citizen nationals of the United States, and lawful permanent residents of the United States are eligible to apply for and receive NIFA awards.

(c) *Responsibility determination.* In addition to program-specific eligibility requirements, awards will be made only to responsible applicants. Specific management information relating to an applicant shall be submitted on a one-time basis, with updates on an as-needed basis, as part of the responsibility determination prior to an award being made under a specific NIFA program, if such information has not been provided previously under this or another NIFA program. NIFA will provide copies of forms recommended for use in fulfilling these requirements as part of the pre-award process. Although an applicant may be eligible based on its status as one of these entities, there are factors that may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under a NIFA program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

(d) *Certification of NLGCA status.* NIFA will make publically available (*e.g.*, FEDERAL REGISTER) the process through which institutions may apply for designation as a NLGCA. The public notice will, at a minimum, include NLGCA criteria, instructions on how to request designation, information about how NIFA will respond to requests, and termination of NLGCA status.

(e) *Center of Excellence.* (1) To be considered as a center of excellence, a center of excellence must be one of the following entities that provides financial or in-kind support to the center being proposed:

(i) State agricultural experiment stations;

(ii) Colleges and universities;

(iii) University research foundations;

(iv) Other research institutions and organizations;

(v) Federal agencies;

(vi) National laboratories;

(vii) Private organizations, foundations, or corporations;

(viii) Individuals; or

(ix) A group consisting of two or more of the entities described in paragraphs (e)(1)(i) through (viii) of this section.

(2) Only standard grant and coordinated agricultural project (CAP) grant applicants may be considered for center of excellence designation.

[74 FR 45740, Sept. 4, 2009, as amended at 81 FR 6414, Feb. 8, 2016; 82 FR 21109, May 5, 2017]

§ 3430.17 Content of an application.

(a) The RFA provides instructions on how to access a funding opportunity. The funding opportunity contains the application package, which includes the forms necessary for completion of an application in response to the RFA, as well as the application instructions. The application instructions document, ''NIFA Grants.gov Application Guide: A Guide for Preparation and Submission of NIFA Applications via Grants.gov,'' is intended to assist applicants in the preparation and submission of applications to NIFA. It is also the primary document for use in the preparation of NIFA applications via Grants.gov.

(b) *Center of Excellence:* In addition to meeting the other requirements detailed in the request for application (RFA), eligible applicants who wish to be considered as a center of excellence must provide a brief justification statement at the end of their project narrative and within the page limits provided for the project narrative, describing how they meet the standards of a center of excellence, based on the following criteria:

(1) The ability of the center of excellence to ensure coordination and cost effectiveness by reducing unnecessarily duplicative efforts regarding research, teaching, and extension in the implementation of the proposed research and/or extension activity outlined in this application;

(2) In addition to any applicable matching requirements, the ability of the center of excellence to leverage available resources by using public-private partnerships among agricultural industry groups, institutions of higher education, and the Federal Government in the implementation of the proposed research and/or extension activity outlined in this application. Resources leveraged should be commensurate with the size of the award;

(3) The planned scope and capability of the center of excellence to implement teaching initiatives to increase awareness and effectively disseminate solutions to target audiences through extension activities in the implementation of the proposed research and/or extension activity outlined in this application; and

(4) The ability or capacity of the center of excellence to increase the economic returns to rural communities by identifying, attracting, and directing funds to high-priority agricultural issues in support of and as a result of the implementation of the proposed research and/or extension activity outlined in this application.

(5) Additionally, where practicable (not required), center of excellence applicants should describe proposed efforts to improve teaching capacity and infrastructure at colleges and universities (including land-grant colleges and universities, cooperating forestry schools, certified Non-Land Grant Colleges of Agriculture (NLGCA) (list of certified NLGCA is available at *http://www.nifa.usda.gov/funding/pdfs/nlgca_colleges.pdf*), and schools of veterinary medicine).

[74 FR 45740, Sept. 4, 2009, as amended at 82 FR 21109, May 5, 2017]

§ 3430.18 Submission of an application.

(a) *When to submit.* The RFA will provide deadlines for the submission of letters of intent, if requested and required, and applications. NIFA may issue separate RFAs and/or establish separate deadlines for different types of applications, different award instruments, or different topics or phases of the Federal assistance programs. If applications are not received by applicable deadlines, they will not be considered for funding. Exceptions will be considered only when extenuating circumstances exist, as determined by NIFA, and justification and supporting documentation are provided to NIFA.

(b) *What to submit.* The contents of the applicable application package, as well as any other information, are to be submitted by the due date.

(c) *Where to submit.* The RFA will provide addresses for submission of letters of intent, if requested or required, and applications. It also will indicate permissible methods of submission (*i.e.*, electronic, e-mail, hand-delivery, U.S. Postal Service, courier). Conformance with preparation and submission instructions is required and will be strictly enforced unless a deviation had been approved. NIFA may establish additional requirements. NIFA may return without review applications that are not consistent with the RFA instructions.

§ 3430.19 Resubmission of an application.

(a) *Previously unfunded applications.* (1) Applications that are resubmitted to a program, after being previously submitted but not funded by that program, must include the following information:

(i) The NIFA-assigned proposal number of the previously submitted application.

(ii) Summary of the previous reviewers' comments.

(iii) Explanation of how the previous reviewers' comments or previous panel

summary have been addressed in the current application.

(2) Resubmitting an application that has been revised based on previous reviewers' critiques does not guarantee the application will be recommended for funding.

(b) *Previously funded applications.* (1) NIFA competitive programs are generally not designed to support multiple Federal assistance awards activities that are essentially repetitive in nature. PDs who have had their projects funded previously are discouraged from resubmitting relatively identical applications for further funding. Applications that are sequential continuations or new stages of previously funded projects must compete with first-time applications, and should thoroughly demonstrate how the proposed project expands substantially on previously funded efforts and promotes innovation and creativity beyond the scope of the previously funded project.

(2) An application may be submitted only once to NIFA. The submission of duplicative or substantially similar applications concurrently for review by more than one program will result in the exclusion of the redundant applications from NIFA consideration.

§ 3430.20 Acknowledgment of an application.

The receipt of all letters of intent and applications will be acknowledged by NIFA. Applicants who do not receive an acknowledgement within a certain number of days (as established in the RFA, e.g., 15 and 30 days) of the submission deadline should contact the program contact. Once the application has been assigned a proposal number by NIFA, that number should be cited on all future correspondence.

§ 3430.21 Confidentiality of applications and awards.

(a) *General.* Names of submitting institutions and individuals, as well as application contents and evaluations, will be kept confidential, except to those involved in the review process, to the extent permissible by law.

(b) *Identifying confidential and proprietary information in an application.* If an application contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided that the information is clearly marked by the proposer with the term ''confidential and proprietary information'' and that the following statement is included at the bottom of the project narrative or any other attachment included in the application that contains such information: ''The following pages (specify) contain proprietary information which (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation.''

(c) *Disposition of applications.* By law, the Department is required to make the final decisions as to whether the information is required to be kept in confidence. Information contained in unsuccessful applications will remain the property of the proposer. However, the Department will retain for three years one file copy of each application received; extra copies will be destroyed. Public release of information from any application submitted will be subject to existing legal requirements. Any application that is funded will be considered an integral part of the award and normally will be made available to the public upon request, except for designated proprietary information that is determined by the Department to be proprietary information.

(d) *Submission of proprietary information.* The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the application. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items that, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information that could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Applications or reports that attempt to restrict dissemination of large amounts of information may be found unacceptable by the Department and

constitute grounds for return of the application without further consideration. Without assuming any liability for inadvertent disclosure, the Department will limit dissemination of such information to its employees and, where necessary for the evaluation of the application, to outside reviewers on a confidential basis. An application may be withdrawn at any time prior to the final action thereon.

Subpart C—Pre-award: Application Review and Evaluation

§ 3430.31 Guiding principles.

The guiding principle for Federal assistance application review and evaluation is to ensure that each proposal is treated in a consistent and fair manner regardless of regional and institutional affiliation. After the evaluation process by the review panel, NIFA, through the program officer, ensures that applicants receive appropriate feedback and comments on their proposals, and processes the awards in as timely a manner as possible.

§ 3430.32 Preliminary application review.

Prior to technical examination, a preliminary review will be made of all applications for responsiveness to the administrative requirements set forth in the RFA. Applications that do not meet the administrative requirements may be eliminated from program competition. However, NIFA retains the right to conduct discussions with applicants to resolve technical and/or budget issues, as deemed necessary by NIFA.

§ 3430.33 Selection of reviewers.

(a) *Requirement.* NIFA is responsible for performing a review of applications submitted to NIFA competitive award programs in accordance with section 103(a) of AREERA (7 U.S.C. 7613(a)). Reviews are undertaken to ensure that projects supported by NIFA are of high quality and are consistent with the goals and requirements of the funding program. Applications submitted to NIFA undergo a programmatic evaluation to determine the worthiness of Federal support. The scientific peer review or merit review is performed by peer or merit reviewers and also may entail an assessment by Federal employees.

(b) *NIFA Peer Review System.* The NIFA Application Review Process is accomplished through the use of the NIFA Peer Review System (PRS), a Web-based system which allows reviewers and potential reviewers to update personal information and to complete and submit reviews electronically to NIFA.

(c) *Relevant training and experience.* Reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields taking into account the following factors:

(1) Level of relevant formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities.

(2) Need to include as reviewers experts from various areas of specialization within relevant scientific, education, and extension fields.

(3) Need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs.

(4) Need to include as reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, State and Federal agencies, private profit and nonprofit organizations) and geographic locations.

(5) Need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution.

(6) Need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(d) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants. If it is possible to reveal the names of reviewers in such a way that they cannot be identified with the review of any particular application, this will be done at the end of the fiscal year or as requested. Names of submitting institutions and

individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. Reviewers are expected to be in compliance with NIFA Confidentiality Guidelines. Reviewers provide this assurance through PRS.

(e) *Conflicts of interest.* During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. For the purpose of determining conflicts of interest, the academic and administrative autonomy of an institution shall be determined. Reviewers are expected to be in compliance with NIFA Conflict-of-Interest Guidelines. Reviewers provide this assurance through PRS.

§ 3430.34 Evaluation criteria.

(a) *General.* To ensure any project receiving funds from NIFA is consistent with the broad goals of the funding program, the content of each proposal/application submitted to NIFA will be evaluated based on a pre-determined set of review criteria. It is the responsibility of the Program Officer to develop, adopt, adapt, or otherwise establish the criteria by which proposals are to be evaluated. It may be appropriate for the Program Officer to involve other scientists or stakeholders in the development of criteria, or to extract criteria from legislative authority or appropriations language. The review criteria are described in the RFA and shall not include criteria concerning any cost sharing or matching requirements per section 103(a)(3) of AREERA (7 U.S.C. 7613(a)(3)).

(b) *Guidance for reviewers.* In order that all potential applicants for a program have similar opportunities to compete for funds, all reviewers will receive from the Program Officer a description of the review criteria. Reviewers are instructed to use those same evaluation criteria, and only those criteria, to judge the merit of the proposals they review.

(c) *Center of Excellence status.* All eligible applicants will be competitively peer reviewed (as described in Part V, A. and B. of the RFA), and ranked in accordance with the evaluation criteria. Those that rank highly meritorious and requested to be considered as a center of excellence will be further evaluated by the peer panel to determine whether they have met the criteria to be a center of excellence. In instances where they are found to be equally meritorious with the application of a non-center of excellence, based on peer review, selection for funding will be weighed in favor of applicants meeting the center of excellence criteria. NIFA will effectively use the center of excellence prioritization as a ''tie breaker''. Applicants that rank highly meritorious but who did not request consideration as a center of excellence or who are not deemed to have met the center of excellence standards may still receive funding.

[74 FR 45740, Sept. 4, 2009, as amended at 82 FR 21109, May 5, 2017]

§ 3430.35 Review of noncompetitive applications.

(a) *General.* Some projects are directed by either authorizing legislation and/or appropriations to specifically support a designated institution or set of institutions for particular research, education, or extension topics of importance to the nation, a State, or a region. Although these projects may be awarded noncompetitively, these projects or activities are subject to the same application process, award terms and conditions, Federal assistance laws and regulations, reporting and monitoring requirements, and post-award administration and closeout policies and procedures as competitive Federal assistance programs. The only difference is these applications are not subject to a competitive peer or merit review process at the Agency level.

(b) *Requirements.* All noncompetitive applications recommended for funding are required to be reviewed by the program officer and, as required, other Departmental and NIFA officials; and the review documented by the NIFA program officer. For awards recommended for funding at or greater than $10,000, an independent review and a unit review by program officials are required.

§ 3430.36 Procedures to minimize or eliminate duplication of effort.

NIFA may implement appropriate business processes to minimize or eliminate the awarding of NIFA Federal assistance that unnecessarily duplicates activities already being sponsored under other awards, including awards made by other Federal agencies. Business processes may include the review of the Current and Pending Support Form; documented CRIS searches prior to award; the conduct of PD workshops, conferences, meetings, and symposia; and agency participation in Federal Government-wide and other committees, taskforces, or groups that seek to solve problems related to agricultural research, education, and extension and other activities delegated to the NIFA Director.

§ 3430.37 Feedback to applicants.

Copies of individual reviews and/or summary reviews, not including the identity of reviewers, will be sent to the applicant PDs after the review process has been completed.

Subpart D—Award

§ 3430.41 Administration.

(a) *General.* Within the limit of funds available for such purpose, the NIFA ADO shall make Federal assistance awards to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in the RFA. The date specified by the NIFA ADO as the effective date of the award shall be no later than September 30th of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds awarded by NIFA shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (e.g., 2 CFR part 200).

(b) *Notice of Award.* The notice of award document (*i.e.*, Form NIFA–2009, Award Face Sheet) will provide pertinent instructions and information noted in 2 CFR 200.211.

(c) *Center of Excellence.* Applicant's Notice of Award will reflect that, for that particular grant program, the applicant meets all of the requirements of a center of excellence. Entities recognized as a center of excellence will maintain that distinction for the duration of their award or as identified in the terms and conditions of that award.

[74 FR 45740, Sept. 4, 2009, as amended at 79 FR 76001, Dec. 19, 2014; 82 FR 21110, May 5, 2017; 85 FR 72913, Nov. 16, 2020]

§ 3430.42 Special award conditions.

(a) *General.* NIFA may, with respect to any award, impose additional conditions prior to or at the time of any award when, in the judgment of NIFA, such conditions are necessary to ensure or protect advancement of the approved project, the interests of the public, or the conservation of grant or cooperative agreement funds. NIFA may impose additional requirements if an applicant or recipient has a history of poor performance; is not financially stable; has a management system that does not meet prescribed standards; has not complied with the terms and conditions of a previous award; or is not otherwise responsible.

(b) *Notification of additional requirements.* When NIFA imposes additional requirements, NIFA will notify the recipient in writing as to the following: The nature of the additional requirements; the reason why the additional requirements are being imposed; the nature of the corrective actions needed; the time allowed for completing the corrective actions; and the method for requesting reconsideration of the additional requirements imposed.

(c) *Form NIFA–2009, Award Face Sheet.* These special award conditions, as applicable, will be added as a special provision to the award terms and conditions and identified on the Form NIFA–2009, Award Face Sheet, for the award.

(d) *Removal of additional requirements.* NIFA will promptly remove any additional requirements once the conditions that prompted them have been corrected.

Subpart E—Post-Award and Closeout

§ 3430.51 Payment.

(a) *General.* All payments will be made in advance unless a deviation is accepted (see § 3430.3) or as specified in paragraph (b) of this section. All payments to the awardee shall be made via the U.S. Department of Health and Human Services' Payment Management System (DHHS–PMS), U.S. Department of the Treasury's Automated Standard Application for Payments (ASAP) system, or another electronic funds transfer (EFT) method, except for awards to other Federal agencies. Awardees are expected to request funds via DHHS–PMS, ASAP, or other electronic payment system for reimbursement basis in a timely manner.

(b) *Reimbursement method.* NIFA shall use the reimbursement method if it determines that advance payment is not feasible and that the awardee does not maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the awardee, and financial management systems that meet the standards for fund control and accountability.

§ 3430.52 Cost sharing and matching.

(a) *General.* Awardees may be required to match the Federal funds received under a NIFA award. The required percentage of matching, type of matching (e.g., cash and/or in-kind contributions), sources of match (e.g., non-Federal), and whether NIFA has any authority to waive the match will be specified in the subpart applicable to the specific Federal assistance program, as well as in the RFA.

(1) A recipient of a NIFA competitive grant programs that are awarded under a covered law provided in section 3371 of under the National Agricultural Research, Extension, and Teaching Policy Act of 1977 must provide funds, in-kind contributions, or a combination of both, from sources other than funds provided through such grant in an amount that is at least equal to the amount awarded by NIFA unless an exception applies. NIFA will determine program applicability of this match and include in the RFA for those programs: The match requirement, exceptions, waivers, and any other information necessary to determine applicability of the match requirement. In accordance with section 1492 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3371), as added by section 7128 of the Agricultural Act of 2014 (Pub. L. 113–79), for grants awarded after October 1, 2014, the recipient of an award must provide funds, in-kind contributions, or a combination of both, from sources other than funds provided through such grant in an amount that is at least equal to the amount awarded by NIFA unless one of the exemptions described herein is applicable.

(2) The matching funds requirement does not apply to grants awarded:

(i) To a research agency of the United States Department of Agriculture (USDA); or

(ii) To an entity eligible to receive funds under a capacity and infrastructure program (as defined in section 251(f)(1)(C) of the Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6971(f)(1)(C)), including a partner of such an entity. Entities eligible to receive funds under a capacity and infrastructure program and exempt from the matching funds requirement include:

(A) 1862 Land-grant Institutions, including State Agricultural Experiment Stations receiving funding under the Hatch Act of 1887;

(B) 1890 Land-grant Institutions;

(C) 1994 Land-grant Institutions;

(D) Entities eligible to receive funds under the of Continuing Animal Health and Disease, Food Security, and Stewardship Research, Education, and Extension Program Funds—Capacity and Infrastructure Program (CIP);

(E) Hispanic-Serving Agricultural Colleges and Universities (HSACU);

(F) Insular Area Schools Eligible to Receive Funds from the Distance Education/Resident Instruction Grant Programs;

(G) Entities eligible to receive funds under the of McIntire-Stennis Cooperative Forestry Program Funds;

(H) Non-Land Grant Colleges of Agriculture (NLGCA)—(for exemption from the new matching requirement, these applications must include NLGCA certification, see instructions for requesting certifications at *http://www.nifa.usda.gov/form/form.html*, and for attaching the certification in Part IV, B. of this RFA);

(I) Entities eligible to receive funds under a program established under section 1417(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3152(b)), including:

(*1*) 1890 Institution Teaching, Research, and Extension Capacity Building Grants Program;

(*2*) Higher Education Challenge Grants Program;

(*3*) Higher Education Multicultural Scholars Program; and

(*4*) Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program.

(J) Individual public or private, nonprofit Alaska Native-Serving and Native Hawaiian-Serving Institutions of higher education (see 20 U.S.C. 1059d).

(b) *Indirect Costs as in-kind matching contributions.* Indirect costs may be claimed under the Federal portion of the award budget or, alternatively, indirect costs may be claimed as a matching contribution (if no indirect costs are requested under the Federal portion of the award budget). However, unless explicitly authorized in the RFA, indirect costs may not be claimed on both the Federal portion of the award budget and as a matching contribution, unless the total claimed on both the Federal portion of the award budget and as a matching contribution does not exceed the maximum allowed indirect costs or the institution's negotiated indirect cost rate, whichever is less. An awardee may split the allocation between the Federal and non-Federal portions of the budget only if the total amount of indirect costs charged to the project does not exceed the maximum allowed indirect costs or the institution's negotiated indirect cost rate, whichever is less. For example, if an awardee's indirect costs are capped at 22 percent pursuant to section 1462(a) of NARETPA (7 U.S.C. 3310(a)), the awardee may request 11 percent of the indirect costs on both the Federal portion of the award and as a matching contribution. Or, the awardee may request any similar percentage that, when combined, does not exceed the maximum indirect cost rate of 22 percent.

[74 FR 45740, Sept. 4, 2009, as amended at 81 FR 6414, Feb. 8, 2016]

§ 3430.53 Program income.

(a) *General.* NIFA shall apply the standards set forth in this subpart in requiring awardee organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Addition method.* Unless otherwise provided in the authorizing statute, in accordance with the terms and conditions of the award, program income earned during the project period shall be retained by the awardee and shall be added to funds committed to the project by NIFA and the awardee and used to further eligible project or program objectives. Any specific program deviations will be identified in the individual subparts.

(c) *Award terms and conditions.* Unless the program regulations identified in the individual subpart provide otherwise, awardees shall follow the terms and conditions of the award.

§ 3430.54 Indirect costs.

Indirect cost rates for grants and cooperative agreements shall be determined in accordance with 2 CFR part 200, unless superseded by another authority. Any restriction on indirect costs is to be identified in the request for applications as appropriate. Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

[81 FR 6414, Feb. 8, 2016]

§ 3430.55 Technical reporting.

(a) *Requirement.* All projects supported with Federal funds under this part must be documented in the Current Research Information System (CRIS).

(b) *Initial Documentation in the CRIS Database.* Information collected in the

''Work Unit Description'' (Form AD–416) and ''Work Unit Classification'' (Form AD–417) is required upon project initiation for all new awards in CRIS (*i.e.*, prior to award).

(c) *Annual CRIS Reports.* Unless stated differently in the award terms and conditions, an annual ''Accomplishments Report'' (Form AD–421) is due 90 calendar days after the award's anniversary date (*i.e.*, one year following the month and day on which the project period begins and each year thereafter up until a final report is required). An annual report covers a one-year period. In addition to the Form AD–421, the following information, when applicable, must be submitted to the programmatic contact person identified in block 14 of the Award Face Sheet (Form NIFA–2009): a comparison of actual accomplishments with the goals established for the reporting period (where the output of the project can be expressed readily in numbers, a computation of the cost per unit of output should be considered if the information is considered useful); the reasons for slippage if established goals were not met; and additional pertinent information including, when appropriate, analysis and explanation of cost overruns or unexpectedly high unit costs. The annual report of ''Funding and Staff Support'' (Form AD–419) is due February 1 of the year subsequent to the Federal fiscal year being reported.

(d) *CRIS Final Report.* The CRIS final report, ''Accomplishments Report'' (Form AD–421), covers the entire period of performance of the award. The report should encompass progress made during the entire timeframe of the project instead of covering accomplishments made only during the final reporting segment of the project. In addition to providing the information required under paragraph (c) of this section, the final report must include the following when applicable: a disclosure of any inventions not previously reported that were conceived or first actually reduced to practice during the performance of the work under the award; a written statement on whether or not the awardee elects (or plans to elect) to obtain patent(s) on any such invention; and an identification of equipment purchased with any Federal funds under the award and any subsequent use of such equipment.

(e) *CRIS Web Site Via Internet.* The CRIS database is available to the public on the worldwide web. CRIS project information is available via the Internet CRIS Web site at *http://cris.nifa.usda.gov.* To submit forms electronically, the CRIS forms Web site can be accessed through the CRIS Web site or accessed directly at *http://cwf.uvm.edu/cris.*

(f) *Additional reporting requirements.* Awardees may be required to submit other technical reports or submit the CRIS reports more frequently than annually. Additional requirements for a specific Federal assistance program are described in the applicable subpart after subpart E and are identified in the RFA. The Award Face Sheet (Form NIFA–2009) also will specify these additional reporting requirements as a special provision to the award terms and conditions.

§ 3430.56 Financial reporting.

(a) *SF–269, Financial Status Report.* Unless stated differently in the award terms and conditions, a final SF–269, Financial Status Report, is due 90 days after the expiration of the award and should be submitted to the Awards Management Branch (AMB) at Awards Management Branch; Office of Extramural Programs, NIFA; U.S. Department of Agriculture; STOP 2271; 1400 Independence Avenue, SW.; Washington, DC 20250–2271. The awardee shall report program outlays and program income on the same accounting basis (*i.e.*, cash or accrual) that it uses in its normal accounting system. When submitting a final SF–269, Financial Status Report, the total matching contribution, if required, should be shown in the report. The final SF–269 must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the report is due, it shall request an extension of time for submitting the report pursuant to paragraph (c) of this section; submit a provisional report (showing the unliquidated obligations) by the due date; and submit a final report when all obligations have been liquidated, but no later than the approved

extension date. SF–269, Financial Status Reports, must be submitted by all awardees, including Federal agencies and national laboratories.

(b) *Awards with Required Matching.* For awards requiring a matching contribution, an annual SF–269, Financial Status Report, is required and this requirement will be indicated on the Award Face Sheet, Form–2009, in which case it must be submitted no later than 45 days following the end of the budget or reporting period.

(c) *Requests for an extension to submit a final SF–269, Financial Status Report—* (1) *Before the due date.* Awardees may request, prior to the end of the 90-day period following the award expiration date, an extension to submit a final SF–269, Financial Status Report. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date and a justification for the late submission. Subject to § 3430.63 or other statutory or agency policy limitations, funds will remain available for drawdown during this period.

(2) *After the due date.* Requests are considered late when they are submitted after the 90-day period following the award expiration date. Requests to submit a final SF–269, Financial Status Report, will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date, a justification for the late submission, and a justification for the extenuating circumstances. However, such requests are subject to § 3430.63 or any other statutory or agency policy limitations. If an awardee needs to request additional funds, procedures in paragraph (d) of this section apply.

(d) *Overdue SF–269, Financial Status Reports.* Awardees with overdue SF–269, Financial Status Reports, or other required financial reports (as identified in the award terms and conditions), will have their applicable balances at DHHS–PMS, ASAP, or other electronic payment system restricted or placed on ''manual review,'' which restricts the awardee's ability to draw funds, thus requiring prior approval from NIFA. If any remaining available balances are needed by the awardee (beyond the 90-day period following the award expiration date) and the awardee has not requested an extension to submit a final SF–269, Financial Status Report, the awardee will be required to contact AMB to request permission to draw any additional funds and will be required to provide justification and documentation to support the draw. Awardees also will need to comply with procedures in paragraph (c) of this section. AMB will approve these draw requests only in extenuating circumstances, as determined by NIFA.

(e) *SF–272, Federal Cash Transactions Report.* Awardees receiving electronic payments through DHHS–PMS are required to submit their SF–272, Federal Cash Transactions Report, via the DHHS–PMS by the specified dates. Failure to submit this quarterly report by the due date may result in funds being restricted by DHHS–PMS. Awardees not receiving payments through DHHS–PMS may be exempt from this reporting requirement.

(f) *Additional reporting requirements.* NIFA may require additional financial reporting requirements as follows: NIFA may require forecasts of Federal cash requirements in the ''Remarks'' section of the report; and when practical and deemed necessary, NIFA may require awardees to report in the ''Remarks'' section the amount of cash advances received in excess of three days (*i.e.*, short narrative with explanations of actions taken to reduce the excess balances). When NIFA needs additional information or more frequent reports, a special provision will be added to the award terms and conditions and identified on the Form NIFA–2009, Award Face Sheet. Should NIFA determine that an awardee's accounting system is inadequate, additional pertinent information to further monitor awards may be requested from the awardee until such time as the system is brought up to standard, as determined by NIFA. This additional reporting requirement will be required via a special provision to the award terms and conditions and identified on the Form–2009, Award Face Sheet.

§ 3430.57 Project meetings.

In addition to reviewing (and monitoring the status of) progress and final technical reports and financial reports, NIFA Program Officers may use regular and periodic conference calls to monitor the awardee's performance as well as PD conferences, workshops, meetings, and symposia to not only monitor the awards, but to facilitate communication and the sharing of project results. These opportunities also serve to eliminate or minimize NIFA funding unneeded duplicative project activities. Required attendance at these conference calls, conferences, workshops, meetings, and symposia will be identified in the RFA and the awardee should develop a proposal accordingly.

§ 3430.58 Prior approvals.

(a) *Subcontracts.* No more than 50 percent of the award may be subcontracted to other parties without prior written approval of the ADO except contracts to other Federal agencies. Any subcontract awarded to a Federal agency under an award must have prior written approval of the ADO. To request approval, a justification for the proposed subcontractual arrangements, a performance statement, and a detailed budget for the subcontract must be submitted to the ADO.

(b) *No-cost extensions of time*—(1) *General.* Awardees may initiate a one-time no-cost extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply: the terms and conditions of the award prohibit the extension; the extension requires additional Federal funds; and the extension involves any change in the approved objectives or scope of the project. For the first no-cost extension, the awardee must notify NIFA in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award.

(2) *Additional requests for no-cost extensions of time before expiration date.* When more than one no-cost extension of time or an extension of more than 12 months is required, the extension(s) must be approved in writing by the ADO. The awardee should prepare and submit a written request (which must be received no later than 10 days prior to the expiration date of the award) to the ADO. The request must contain, at a minimum, the following information: the length of the additional time required to complete the project objectives and a justification for the extension; a summary of the progress to date; an estimate of the funds expected to remain unobligated on the scheduled expiration date; a projected timetable to complete the portion(s) of the project for which the extension is being requested; and signature of the AR and the PD.

(3) *Requests for no-cost extensions of time after expiration date.* NIFA may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be approved only for extenuating circumstances, as determined by NIFA. The awardee's AR must submit the requirements identified under paragraph (b)(2) of this section as well as an ''extenuating circumstance'' justification and a description of the actions taken by the awardee to minimize these requests in the future.

(4) *Other requirements.* No-cost extensions of time may not be exercised merely for the purpose of using unobligated balances. All extensions are subject to any statutory term limitations as well as any expiring appropriation limitations under § 3430.63.

§ 3430.59 Review of disallowed costs.

(a) *Notice.* If the NIFA determines that there is a basis for disallowing a cost, NIFA shall provide the awardee written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(b) *Awardee response.* Within 60 days of receiving written notice of NIFA's intent to disallow the cost, the awardee may respond with written evidence and arguments to show the cost is allowable, or that , for equitable, practical, or other reasons, shall not recover all or part of the amount, or that the recovery should be made in installments. The 60-day time period may be extended for an additional 30 days upon written request by the awardee; however, such request for an extension of

time must be made before the expiration of the 60-day time period specified in this paragraph. An extension of time will be granted only in extenuating circumstances.

(c) *Decision.* Within 60 days of receiving the awardee's written response to the notice of intent to disallow the cost, NIFA shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal that has been provided under this section. If the awardee does not respond to the written notice under paragraph (a) of this section within the time frame specified in paragraph (b) of this section, NIFA shall issue a management decision on the basis of the information available to it. The management decision shall constitute the final action with respect to whether the cost is allowed or disallowed. In the case of a questioned cost identified in the context of an audit2 CFR 200.521, the management decision will constitute the management decision under 7 CFR 3052.405(a).

(d) *Demand for payment.* If the management decision under paragraph (c) of this section constitutes a finding that the cost is disallowed and, therefore, that a debt is owed to the Government, NIFA shall provide the required demand and notice pursuant to 7 CFR 3.11.

(e) *Review process.* Within 60 days of receiving the demand and notice referred to in paragraph (d) of this section, the awardee may submit a written request to the NIFAOffice of Grants and Financial Management (OGFM) Deputy Director for a review of the final management decision that the debt exists and the amount of the debt. Within 60 days of receiving the written request for a review, the NIFA Deputy Administrator (or other senior NIFA official designated by the NIFA Office of Grants and Financial Management (OGFM) Deputy Director) will issue a final decision regarding the debt. Review by the NIFA Office of Grants and Financial Management (OGFM) Deputy Director or designee constitutes, and will be in accordance with, the administrative review procedures provided for debts under 7 CFR part 3, subpart F.

[74 FR 45740, Sept. 4, 2009, as amended at 79 FR 76001, Dec. 19, 2014]

§ 3430.60 Suspension, termination, and withholding of support.

(a) *General.* If an awardee has failed to materially comply with the terms and conditions of the award, NIFA may take certain enforcement actions, including, but not limited to, suspending the award pending corrective action, terminating the award for cause, and withholding of support.

(b) *Suspension.* NIFA generally will suspend (rather than immediately terminate) an award to allow the awardee an opportunity to take appropriate corrective action before NIFA makes a termination decision. NIFA may decide to terminate the award if the awardee does not take appropriate corrective action during the period of suspension. NIFA may terminate, without first suspending, the award if the deficiency is so serious as to warrant immediate termination. Termination for cause may be appealed under the NIFA award appeals procedures specified in § 3430.62.

(c) *Termination.* An award also may be terminated, partially or wholly, by the awardee or by NIFA with the consent of the awardee. If the awardee decides to terminate a portion of the award, NIFA may determine that the remaining portion of the award will not accomplish the purposes for which the award was originally made. In any such case, NIFA will advise the awardee of the possibility of termination of the entire award and allow the awardee to withdraw its termination request. If the awardee does not withdraw its request for partial termination, NIFA may initiate procedures to terminate the entire award for cause.

(d) *Withholding of support.* Withholding of support is a decision not to make a non-competing continuation award within the current competitive segment. Support may be withheld for one or more of the following reasons: Adequate Federal funds are not available to support the project; an awardee failed to show satisfactory progress in achieving the objectives of the project; an awardee failed to meet the terms and conditions of a previous award; or

for whatever reason, continued funding would not be in the best interests of the Federal Government. If a non-competing continuation award is denied (withheld) because the awardee failed to comply with the terms and conditions of a previous award, the awardee may appeal that determination under § 3430.62.

§ 3430.61 Debt collection.

The collection of debts owed to NIFA by awardees, including those resulting from cost disallowances, recovery of funds, unobligated balances, or other circumstances, are subject to the Department's debt collection procedures as set forth in 7 CFR part 3, and, with respect to cost disallowances, § 3430.59.

§ 3430.62 Award appeals procedures.

(a) *General.* NIFA permits awardees to appeal certain post-award adverse administrative decisions made by NIFA. These include: termination, in whole or in part, of an award for failure of the awardee to carry out its approved project in accordance with the applicable law and the terms and conditions of award or for failure of the awardee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the award; denial (withholding) of a non-competing continuation award for failure to comply with the terms of a previous award; and determination that an award is void (*i.e.,* a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained). Appeals of determinations regarding the allowability of costs are subject to the procedures in § 3430.59.

(b) *Appeal Procedures.* The formal notification of an adverse determination will contain a statement of the awardee's appeal rights. As the first level in appealing an adverse determination, the awardee must submit a request for review to the NIFA official specified in the notification, detailing the nature of the disagreement with the adverse determination and providing supporting documents in accordance with the procedures contained in the notification. The awardee's request to NIFA for review must be received within 60 days after receipt of the written notification of the adverse determination; however, an extension may be granted if the awardee can show good cause why an extension is warranted.

(c) *Decision.* If the NIFA decision on the appeal is adverse to the awardee or if an awardee's request for review is rejected, the awardee then has the option of submitting a request to the NIFA Office of Grants and Financial Management (OGFM) Deputy Director for further review. The decision of the NIFA Office of Grants and Financial Management (OGFM) Deputy Director is considered final.

[74 FR 45740, Sept. 4, 2009, as amended at 79 FR 76001, Dec. 19, 2014]

§ 3430.63 Expiring appropriations.

(a) *NIFA awards supported with agency appropriations.* Most NIFA awards are supported with annual appropriations. On September 30th of the 5th fiscal year after the period of availability for obligation ends, the funds for these appropriations accounts expire per 31 U.S.C. 1552 and the account is closed, unless otherwise specified by law. Funds that have not been drawn through DHHS–PMS, ASAP, or other electronic payment system by the awardee or disbursed through any other system or method by August 31st of that fiscal year are subject to be returned to the U.S. Department of the Treasury after that date. The August 31st requirement also applies to awards with a 90-day period concluding on a date after August 31st of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the NIFA award terms and conditions.

(b) *NIFA awards supported with funds from other Federal agencies (reimbursable funds).* NIFA may require that all draws and reimbursements for awards supported with reimbursable funds (from other Federal agencies) be completed prior to June 30th of the 5th fiscal year after the period of availability for obligation ends to allow for the proper billing, collection, and close-out of the associated interagency agreement before the appropriations expire. The June 30th requirement also applies to awards with a 90-day period concluding on a date after June 30th of

that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the NIFA award terms and conditions.

Subpart F—Specialty Crop Research Initiative

§ 3430.200 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7632).

§ 3430.201 Purpose.

(a) *Focus areas.* The purpose of this program is to address the critical needs of the specialty crop industry by developing and disseminating science-based tools to address needs of specific crops and their regions, including the following five focus areas:

(1) Research in plant breeding, genetics, genomics, and other methods to improve crop characteristics, such as—

(i) Product, taste, quality, and appearance;

(ii) Environmental responses and tolerances;

(iii) Nutrient management, including plant nutrient uptake efficiency;

(iv) Pest and disease management, including resistance to pests and diseases resulting in reduced application management strategies; and

(v) Enhanced phytonutrient content.

(2) Efforts to identify and address threats from pests and diseases, including threats to specialty crop pollinators.

(3) Efforts to improve production efficiency, handling and processing, productivity, and profitability over the long term (including specialty crop policy and marketing).

(4) New innovations and technology, including improved mechanization and technologies that delay or inhibit ripening.

(5) Methods to prevent, detect, monitor, control, and respond to potential food safety hazards in the production and processing of specialty crops, including fresh produce.

(b) *Other.* NIFA will award research and extension, including integrated, grants to eligible institutions listed in § 3430.203. In addition to the focus areas identified in this section, NIFA may include additional activities or focus areas that will further address the critical needs of the specialty crop industry. Some of these activities or focus areas may be identified by stakeholder groups or by NIFA in response to emerging critical needs of the specialty crop industry.

(c) In addition to SCRI grants, NIFA will make competitive research and extension grants under the Emergency Citrus Disease Research and Extension program (see § 3430.209).

[74 FR 45740, Sept. 4, 2009, as amended at 81 FR 6414, Feb. 8, 2016]

§ 3430.202 Definitions.

(a) The definitions applicable to the program under this subpart include:

Integrated project means a project that incorporates the research and extension components of the agricultural knowledge system around a problem area or activity.

Specialty crop means fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture).

Trans-disciplinary means a multi-discipline approach that brings biological and physical scientists together with economists and social scientists to address challenges in a holistic manner.

(b) The following definitions apply to § 3430.209:

Citrus means edible fruit of the family Rutaceae, including any hybrid of such fruits and products of such hybrids that are produced for commercial purposes in the United States.

Citrus producer means any person that is engaged in the domestic production and commercial sale of citrus in the United States.

[74 FR 45740, Sept. 4, 2009, as amended at 81 FR 6414, Feb. 8, 2016]

§ 3430.203 Eligibility.

Eligible applicants for the grant program implemented under this subpart include: Federal agencies, national laboratories; colleges and universities (offering associate's or higher degrees); research institutions and organizations; private organizations or corporations; State agricultural experiment

stations; individuals; and groups consisting of 2 or more entities identified in this sentence.

§ 3430.204 Project types and priorities.

(a) For each RFA, NIFA may develop and include the appropriate project types and focus areas (in addition to the five focus areas identified in § 3430.201) based on the critical needs of the specialty crop industry as identified through stakeholder input and deemed appropriate by NIFA. In making awards for this program, NIFA will give higher priority to projects that are multistate, multi-institutional, and multidisciplinary; and include explicit mechanisms to communicate the results to producers and the public.

(b) In awarding grants under § 3430.208, priority will be given to grants that address the research and extension priorities established pursuant to section 1408A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123a).

[74 FR 45740, Sept. 4, 2009, as amended at 81 FR 6414, Feb. 8, 2016]

§ 3430.205 Funding restrictions.

(a) *Prohibition against construction.* Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable.

§ 3430.206 Matching requirements.

(a) *Requirement.* Grantees are required to provide funds or in-kind support from non-Federal sources in an amount that is at least equal to the amount provided by the Federal government. The matching contribution must be provided from non-Federal sources except when authorized by statute. The matching requirements under this subpart cannot be waived.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52.

§ 3430.207 Duration of awards.

The term of a grant under this subpart shall not exceed 10 years.

[74 FR 45740, Sept. 4, 2009, as amended at 81 FR 6414, Feb. 8, 2016]

§ 3430.208 Review of applications.

In addition to the scientific peer review (*see* § 3430.33), NIFA will regularly conduct a panel of specialty crop industry representatives to review and rank applications for merit, relevance and impact.

[81 FR 6415, Feb. 8, 2016]

§ 3430.209 Emergency Citrus Disease Research and Extension Program.

The purpose of this program is to award competitive grants to:

(a) Conduct scientific research and extension activities, technical assistance, and development activities to combat citrus diseases and pests, both domestic and invasive, which pose imminent harm to the United States citrus production and threaten the future viability of the citrus industry, including huanglongbing and the Asian Citrus Psyllid; and

(b) Provide support for the dissemination and commercialization of relevant information, techniques, and technologies discovered pursuant to research and extension activities funded through—

(1) The emergency citrus disease research and extension program; or

(2) Other research and extension projects intended to solve problems caused by citrus production diseases and invasive pests.

[81 FR 6415, Feb. 8, 2016]

Subpart G—Agriculture and Food Research Initiative

SOURCE: 75 FR 54761, Sept. 9, 2010, unless otherwise noted.

§ 3430.300 Applicability of regulations.

The regulations in this subpart apply to the Agriculture and Food Research Initiative (AFRI) authorized under section 2(b) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)).

§ 3430.301 Purpose.

The purpose of this program is to make competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences, as defined under section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103).

§ 3430.302 Definitions.

The definitions applicable to the competitive grant programs under this subpart include:

Food and Agricultural Science Enhancement (FASE) awards means funding awarded to eligible applicants to strengthen science capabilities of Project Directors, to help institutions develop competitive scientific programs, and to attract new scientists into careers in high-priority areas of National need in agriculture, food, and environmental sciences. FASE awards may apply to any of the three agricultural knowledge components (*i.e.*, research, education, and extension). FASE awards include Pre- and Postdoctoral Fellowships, New Investigator grants, and Strengthening grants.

Limited institutional success means institutions that are not among the most successful universities and colleges for receiving Federal funds for science and engineering research. A list of successful institutions will be provided in the RFA.

Minority means Alaskan Native, American Indian, AsianAmerican, African-American, Hispanic American, Native Hawaiian, or Pacific Islander. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative, or in response to a written request with supporting explanation.

Minority-serving institution means an accredited academic institution whose enrollment of a single minority or a combination of minorities exceeds fifty percent of the total enrollment, including graduate and undergraduate and full- and part-time students. An institution in this instance is an organization that is independently accredited as determined by reference to the current version of the *Higher Education Directory*, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042.

Multidisciplinary project means a project on which investigators from two or more disciplines collaborate to address a common problem. These collaborations, where appropriate, may integrate the biological, physical, chemical, or social sciences.

Small and mid-sized institutions means academic institutions with a current total enrollment of 17,500 or less, including graduate and undergraduate as well as full- and part-time students. An institution, in this instance, is an organization that possesses a significant degree of autonomy. Significant degree of autonomy is defined by being independently accredited as determined by reference to the current version of the *Higher Education Directory*, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042 (703–532–2300).

Strengthening grants means funds awarded to institutions eligible for FASE grants to enhance institutional capacity, with the goal of leading to future funding in the project area, as well as strengthening the competitiveness of the investigator's research, education, and/or extension activities. Strengthening grants consist of standard and Coordinated Agricultural Project (CAP) grant types as well as seed grants, equipment grants, and sabbatical grants.

USDA EPSCoR States (Experimental Program for Stimulating Competitive Research) means States which have been less successful in receiving funding from AFRI, or its predecessor, the National Research Initiative (NRI), having a funding level no higher than the 38th percentile of all States based on a 3-year rolling average of AFRI and/or NRI funding levels, excluding FASE Strengthening funds granted to EPSCoR States, and small, mid-sized, and minority-serving degree-granting institutions. The most recent list of USDA EPSCoR States will be provided in the RFA.

§ 3430.303 Eligibility.

(a) *General.* Unless otherwise specified in the RFA or this subpart, eligible applicants for the grant program implemented under this subpart include:

(1) State agricultural experiment stations;

(2) Colleges and universities (including junior colleges offering an associate's degree);

(3) University research foundations;

(4) Other research institutions and organizations;

(5) Federal agencies;

(6) National laboratories;

(7) Private organizations or corporations;

(8) Individuals; and

(9) Any group consisting of 2 or more entities identified in paragraphs (a)(1) through (8) of this section.

(b) *Integrated projects.* Eligible entities for the integrated component under this subpart include:

(1) Colleges and universities;

(2) 1994 Institutions; and

(3) Hispanic-serving agricultural colleges and universities (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103).

(c) *FASE Grants*—(1) *New investigator awards.* To be eligible to apply, a new investigator must be in the beginning of his/her career, without an extensive publication record, and must have less than 5 years of postgraduate, career-track experience. To be eligible to receive a grant, the new investigator may not have received competitively awarded Federal funds, with the exception of pre- or postdoctoral awards or NRI/AFRI Seed Grants. The AFRI RFA will contain specific instructions for New Investigator Grant eligibility, restrictions, and application preparation.

(2) *Pre- and postdoctoral fellowships.* The following eligibility requirements apply to applicants for pre- and postdoctoral fellowships.

(i) The doctoral degree of the applicant must be received not earlier than January 1 of the calendar year three years prior to the submission of the proposal and not later than nine months after the proposal due date; and

(ii) For pre-doctoral applications, the applicant must have advanced to candidacy by the application deadline.

(3) *Strengthening grants.* Eligibility for all strengthening categories includes:

(i) Small and mid-sized academic institutions that have had limited institutional success;

(ii) Degree-granting institutions and State agricultural experiment stations (SAES) in USDA Experimental Program for Stimulating Competitive Research (EPSCoR) states; and

(iii) Minority-serving institutions with limited institutional success.

§ 3430.304 Project Types and priorities.

For each RFA, NIFA may develop and include the appropriate types of projects and focus areas to address the needs of scientists and educators in advanced or early stages of their careers and the differences in institutional capabilities. Types of projects will be revisited periodically based on stakeholder input and as deemed appropriate by NIFA. Types of projects under AFRI include, but are not limited to, the following.

(a) *Project Types*—(1) *Research projects.* Single-function fundamental and applied Research Projects are conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams.

(2) *Education projects.* Single-function Education Projects provide funding to conduct classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related educational matters. Projects may include faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methods.

(3) *Extension Projects.* Single-function Extension Projects provide funding for programs and activities that deliver science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

(4) *Integrated Projects.* Multifunction Integrated Projects bring together at least two of the three components of the agricultural knowledge system

(*i.e.*, research, education, and extension) around a problem or issue. The functions addressed in the project should be interwoven throughout the life of the project and act to complement and reinforce one another. The proposed research component of an Integrated Project should address knowledge gaps that are critical to the development of practices and programs to address the stated problem. The proposed education component of an Integrated Project should strengthen institutional capacities and result in curricula and related products that will be sustained beyond the life of the project. The proposed extension component of an Integrated Project should lead to measurable, documented changes in learning, actions, or conditions in an identified audience or stakeholder group. Appropriate project activities will be discussed in the RFA.

(b) *Grant Types*—(1) *Standard Grants.* Standard Grants support targeted, original scientific Research, Education, Extension, or Integrated Projects.

(2) *Coordinated Agricultural Project (CAP) Grants.* A CAP is a type of Research, Education, Extension, or Integrated Project that supports large-scale multi-million dollar projects that promote collaboration, open communication, and the exchange of information; reduce duplication of effort; and coordinate activities among individuals, institutions, States, and regions. Integrated CAP grants address problems through multi-function projects that incorporate at least two of the three components of the agricultural knowledge system (*i.e.*, research, extension and education). Please note that there occasionally may be programs in which an Integrated CAP Grant is required to address all three components of the agricultural knowledge system. In a CAP, participants serve as a team that conducts targeted research, education and/or extension in response to emerging or priority area(s) of national need. A CAP contains the needed science-based expertise in research, education, and/or extension, as well as expertise from principle stakeholders and partners, to accomplish project goals and objectives.

(3) *Planning/Coordination Grants.* Planning/Coordination Grants provide assistance to applicants in the development of quality future CAP applications. Applications must articulate benefits accrued from formal planning activities and provide evidence of a high likelihood that quality future applications will be submitted. These activities can take the form of workshops or symposia that bring together biological, physical, and social scientists and others as appropriate, including end-users and technology providers, to identify research, education, and/or extension needs, foster collaboration, and create networking opportunities. These events and the information they generate should be used to build teams that can develop applications to address priorities identified in the RFA.

(4) *Conference grants.* AFRI provides partial or total funding for a limited number of scientific meetings that bring together scientists to identify research, education, or extension needs within the scope of AFRI.

(5) *FASE Grants.*

(i) *General.* FASE Grants are designed to help institutions develop competitive Research, Education, Extension, and Integrated Projects and to attract new scientists into careers in high-priority areas in agriculture, food, and environmental sciences. The FASE grants provide funding for new investigators, pre- and postdoctoral fellowships, and strengthening grants. FASE grants will be awarded as follows:

(A) To an institution to allow for the improvement of the research, development, technology transfer, education, and extension capacity of the institution through the acquisition of special research equipment and the improvement of agricultural research, education, and extension;

(B) To single investigators or co-investigators who are beginning research, education, or extension careers and do not have an extensive publication record;

(C) To ensure that the faculty of small, mid-sized, and minority-serving institutions who have not previously been successful in obtaining competitive grants under this subsection receive a portion of the grants; and

(D) To improve research, extension, and education capabilities in USDA EPSCoR States, as defined in § 3430.302.

(ii) *Types of FASE Grants.*

(A) *New Investigator Grant.* These awards support Project Directors who meet the eligibility criteria of § 3430.303.

(B) *Pre- and Postdoctoral Fellowship Grants.* Doctoral candidates and individuals who recently have received or will soon receive their doctoral degree, and meet the eligibility criteria of § 3430.303, may submit proposals for pre- and postdoctoral fellowships.

(C) *Strengthening Grants.* Strengthening awards consist of the following four types of grants.

(*1*) *Strengthening Standard and CAP Grant.* These grants provide funding to eligible entities, as defined in § 3430.303, who submitted meritorious Standard Grant or CAP Grant applications that were highly ranked but were below the funding line.

(*2*) *Equipment Grant.* These grants provide funding for the purchase of one major piece of equipment. The amount requested shall not exceed 50 percent of the cost of the equipment. Unless eligible for a waiver (as described in § 3430.306(b)(2)), the Project Director is responsible for securing the required non-Federal funds. No installation, maintenance, warranty, or insurance expenses may be paid from these awards, nor may these costs be part of the matching funds.

(*3*) *Seed Grant.* A Seed grant is intended to provide funds to enable investigators to collect preliminary data in preparation for applying for a Standard Research, Standard Education, Standard Extension, or Integrated Grant. The grants are not intended to fund stand-alone projects, but rather projects that will lead to further work applicable to one of the priority areas in AFRI.

(*4*) *Sabbatical grants.* A Sabbatical grant is intended to provide an opportunity for faculty to enhance their capabilities through sabbatical leaves.

§ 3430.305 Funding restrictions.

(a) *Construction.* Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable. However, indirect costs are not allowed on pre- and postdoctoral grants, equipment grants, or conference grants.

§ 3430.306 Matching requirements.

(a) *General.* Matching funds are not required as a condition of receiving grants under this subpart except as provided in paragraphs (c) and (d) of this section.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

(c) *Equipment grants.*

(1) Except as provided in paragraph (c)(2) of this section, the amount of an equipment grant may not exceed 50 percent of the cost of the special research equipment or other equipment acquired using funds from the grant.

(2) *Waiver.* The Secretary may waive all or part of the matching requirement under paragraph (c)(1) of this section in the case of a college, university, or research foundation maintained by a college or university that ranks in the lowest ⅓ of such colleges, universities, and research foundations on the basis of Federal research funds received, if the equipment to be acquired using funds from the grant costs not more than $25,000, and has multiple uses within a single project or is usable in more than 1 project.

(d) *Applied research grants.* As a condition of making a grant for applied research, the Secretary shall require the funding of the grant to be matched with equal matching funds from a non-Federal source if the grant is for applied research that is:

(1) Commodity-specific; and

(2) Not of national scope.

§ 3430.307 Coordination and stakeholder input requirements.

(a) *Stakeholder input.* In making grants under this Part, NIFA shall solicit and consider input from persons who conduct or use agricultural research, extension, or education in accordance with section 102(b) of the Agricultural Research, Extension, and

Education Reform Act of 1998 (7 U.S.C. 7612(b)).

(b) *Allocation of funds to high-priority research.* To the maximum extent practicable, the Secretary, in coordination with the Under Secretary, shall allocate grants under this subpart to high-priority research as defined in section 1672 of Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 5925. NIFA shall take into consideration, when available, the determinations made by the Advisory Board.

§ 3430.308 Duration of awards.

The Secretary may set award limits up to 10 years based on priorities and stakeholder input, subject to other statutory limitations. The duration of individual awards may vary as specified in the RFA and is subject to the availability of appropriations.

§ 3430.309 Priority areas.

NIFA will award competitive grants in the following areas:

(a) Plant health and production and plant products. Plant systems, including:

(1) Plant genome structure and function;

(2) Molecular and cellular genetics and plant biotechnology;

(3) Conventional breeding, including cultivar and breed development, selection theory, applied quantitative genetics, breeding for improved food quality, breeding for improved local adaptation to biotic stress and abiotic stress, and participatory breeding;

(4) Plant-pest interactions and biocontrol systems;

(5) Crop plant response to environmental stresses;

(6) Unproved nutrient qualities of plant products; and

(7) New food and industrial uses of plant products.

(b) Animal health and production and animal products. Animal systems, including:

(1) Aquaculture;

(2) Cellular and molecular basis of animal reproduction, growth, disease, and health;

(3) Animal biotechnology;

(4) Conventional breeding, including breed development, selection theory, applied quantitative genetics, breeding for improved food quality, breeding for improved local adaptation to biotic stress and abiotic stress, and participatory breeding;

(5) Identification of genes responsible for improved production traits and resistance to disease;

(6) Improved nutritional performance of animals;

(7) Improved nutrient qualities of animal products and uses;

(8) The development of new and improved animal husbandry and production systems that take into account production efficiency, animal well-being, and animal systems applicable to aquaculture;

(9) The research and development of surveillance methods, vaccines, vaccination delivery systems, or diagnostic tests for pests and diseases, including—

(i) Epizootic diseases in domestic livestock (including deer, elk, bison, and other animals of the family Cervidae); and

(ii) Zoonotic diseases (including bovine brucellosis and bovine tuberculosis) in domestic livestock or wildlife reservoirs that present a potential concern to public health; and

(10) The identification of animal drug needs and the generation and dissemination of data for safe and effective therapeutic applications of animal drugs for minor species and minor uses of such drugs in major species.

(c) Food safety, nutrition, and health. Nutrition, food safety and quality, and health, including:

(1) Microbial contaminants and pesticides residue relating to human health;

(2) Links between diet and health;

(3) Bioavailability of nutrients;

(4) Postharvest physiology and practices; and

(5) Improved processing technologies.

(d) Bioenergy, natural resources, and environment. Natural resources and the environment, including:

(1) Fundamental structures and functions of ecosystems;

(2) Biological and physical bases of sustainable production systems;

(3) Minimizing soil and water losses and sustaining surface water and ground water quality;

(4) The effectiveness of conservation practices and technologies designed to address nutrient losses and improve water quality;

(5) Global climate effects on agriculture;

(6) Forestry; and

(7) Biological diversity.

(e) Agriculture systems and technology. Engineering, products, and processes, including:

(1) New uses and new products from traditional and nontraditional crops, animals, byproducts, and natural resources;

(2) Robotics, energy efficiency, computing, and expert systems;

(3) New hazard and risk assessment and mitigation measures; and

(4) Water quality and management.

(f) Agriculture economics and rural communities. Markets, trade, economics, and policy, including:

(1) Strategies for entering into and being competitive in domestic and overseas markets;

(2) Farm efficiency and profitability, including the viability and competitiveness of small and medium-sized dairy, livestock, crop and other commodity operations;

(3) New decision tools for farm and market systems;

(4) Choices and applications of technology;

(5) The economic costs, benefits, and viability of producers adopting conservation practices and technologies designed to improve water quality;

(6) Technology assessment; and

(7) New approaches to rural development, including rural entrepreneurship.

[75 FR 54761, Sept. 9, 2010, as amended at 81 FR 6415, Feb. 8, 2016]

§ 3430.310 Allocation of AFRI funds.

(a) *General.* The Secretary shall decide the allocation of funds among research, education, extension, and integrated multifunctional projects in an appropriate manner and in accordance with the allocation restrictions found in this section.

(b) *Integrated programs.* Not less than 30 percent of funds allocated to AFRI each fiscal year shall be used to fund integrated programs.

(c) *FASE awards.*

(1) Each fiscal year, a percentage of AFRI funding (no less than 10 percent of the available funding) will be awarded as FASE awards. This percentage requirement may be adjusted by the Secretary based upon priorities and stakeholder input.

(2) The Secretary shall use not less than 25 percent of the funds made available for FASE grants to provide fellowships to outstanding pre- and postdoctoral students for research in the agricultural sciences.

(d) *Rapid Response Food and Agricultural Science for Emergency Issues Awards.* The Secretary may allocate some funding to address emergency issues in the food and agricultural sciences as determined by the Secretary. Letters of intent and applications may be requested, as appropriate. Although the solicitation and award processes may be expedited for these awards, NIFA will adhere to AFRI peer review and competitive requirements of this subpart.

§ 3430.311 Allocation of research funds.

(a) *Fundamental research.* Of the amount allocated by the Director for research, not less than 60 percent shall be used to make grants for fundamental research (as defined in subsection (f)(1) of section 251 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971)).

(1) *Research by multidisciplinary teams.* Of the amount allocated by the Director for fundamental research under this paragraph (a), not less than 30 percent shall be made available to make grants for research to be conducted by multidisciplinary teams.

(2) *Equipment grants.* Of the amount allocated by the Director for fundamental research under this paragraph (a) not more than 2 percent shall be used for equipment grants.

(b) *Applied research.* Of the amount allocated by the Director for research, not less than 40 percent shall be made available to make grants for applied research.

§ 3430.312 Emphasis on sustainable agriculture.

NIFA shall ensure that grants made under this subpart are, where appropriate, consistent with the development of systems of sustainable agriculture as defined in section 1404 of NARETPA.

§ 3430.313 Inclusion of research topics proposed by national and state commodity boards in request for applications.

NIFA will solicit funding ideas under this subpart from statutorily defined national and state commodity boards for research topics that the commodity boards are willing to co-fund equally with NIFA under the AFRI competitive grant program. If the ideas are evaluated and found to be consistent with the AFRI statutory priorities and priorities noted in the President's budget request related to NIFA, the topics will be incorporated in existing program areas in the relevant AFRI Request for Applications (RFA(s)). Researchers wishing to submit a proposal on a topic suggested by a commodity board will be required to obtain a letter of support from the co-funding commodity board. The applications submitted in response to a commodity board co-funded topic will compete against all proposals submitted in the same RFA program area. Supported applications will receive no preference regarding the evaluation of their scientific merit. Letters of commodity board support will be used by NIFA solely to determine that the application fits within the commodity board co-funded topic and the commodity board is willing to co-fund that application, if it is evaluated by the review panel as being meritorious and recommended for award.

[81 FR 58810, Aug. 26, 2016]

Subpart H—Organic Agriculture Research and Extension Initiative

SOURCE: 75 FR 54761, Sept. 9, 2010, unless otherwise noted.

§ 3430.400 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 1672B of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246 (7 U.S.C. 5925b).

§ 3430.401 Purpose.

(a) The purpose of this program is to make competitive grants, in consultation with the Advisory Board, to support research, education and extension activities regarding organically grown and processed agricultural commodities.

(b) Grants may be made for the following purposes:

(1) Facilitating the development and improvement of organic agriculture production, breeding, and processing methods;

(2) Evaluating the potential economic benefits of organic agricultural production and methods to producers, processors, and rural communities;

(3) Exploring international trade opportunities for organically grown and processed agricultural commodities;

(4) Determining desirable traits for organic commodities;

(5) Identifying marketing and policy constraints on the expansion of organic agriculture;

(6) Conducting advanced on-farm research and development that emphasizes observation of, experimentation with, and innovation for working organic farms, including research relating to production, marketing, food safety, socioeconomic conditions, and farm business management;

(7) Examining optimal conservation and environmental outcomes relating to organically produced agricultural products; and

(8) Developing new and improved seed varieties that are particularly suited for organic agriculture.

[75 FR 54761, Sept. 9, 2010, as amended at 81 FR 6415, Feb. 8, 2016]

§ 3430.402 [Reserved]

§ 3430.403 Eligibility.

Unless otherwise specified in the RFA, eligible applicants for the grant program implemented under this subpart include:

(a) State agricultural experiment stations;

(b) Colleges and universities (including junior colleges offering an associate's degree);
(c) University research foundations;
(d) Other research institutions and organizations;
(e) Federal agencies;
(f) National laboratories;
(g) Private organizations or corporations;
(h) Individuals; and
(i) Any group consisting of 2 or more entities identified in paragraphs (a) through (i) of this section.

§ 3430.404 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and priority areas based on stakeholder input and as deemed appropriate by NIFA. Duration and amount of grants may vary depending on the type of project.

§ 3430.405 Funding restrictions.

(a) *Construction.* Funds made available for grants under this subsection shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).
(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable.
(c) *Start-up businesses.* NIFA does not fund start-up businesses under this subpart.

§ 3430.406 Matching requirements.

(a) *In general.* NIFA requires the recipient of a grant under this section to provide funds or in-kind support from non-Federal sources in an amount at least equal to the amount provided by the Federal Government.
(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).
(c) *Waiver authority.* NIFA may waive the matching requirement specified in paragraph (a) of this section with respect to a grant if NIFA determines that:
(1) The results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or
(2) When all three of the following conditions are present:
(i) The project involves a minor commodity,
(ii) The project deals with scientifically important research, and
(iii) The grant recipient is unable to satisfy the matching funds requirement.

§ 3430.407 Program requirements.

Following the completion of a peer review process for grant proposals received under this subpart, the Director may provide a priority for those proposals, found in the peer review process to be scientifically meritorious, that involve the cooperation of multiple entities.

Subpart I—Integrated Research, Education, and Extension Competitive Grants Program

SOURCE: 75 FR 54761, Sept. 9, 2010, unless otherwise noted.

§ 3430.500 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), 7 U.S.C. 7626, as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246.

§ 3430.501 Purpose.

The purpose of this subpart is to make competitive grants for integrated, multifunctional agricultural research, extension, and education activities.

§ 3430.502 Definitions.

The definitions applicable to the competitive grant programs under this subpart include:
Integrated program means a program that brings the three agricultural knowledge components (*i.e.*, research, extension, and education) together around a problem or activity through the award of integrated projects and single component projects.
Integrated project means a project that brings at least two out of three agricultural knowledge components

(*i.e.*, research, extension, and education) together around a problem or activity.

§ 3430.503 Eligibility.

The following entities are eligible to apply for and receive a grant under this subpart:

(a) Colleges and universities;

(b) 1994 Institutions; and

(c) Hispanic-serving agricultural colleges and universities (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103), and in the RFA).

§ 3430.504 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and priority areas based on stakeholder input and as deemed appropriate by NIFA, in consultation with the Advisory Board, and that involve integrated research, extension, and education activities. Duration and amount of grants may vary depending on the type of project.

§ 3430.505 Funding restrictions.

(a) *Construction.* Funds made available for grants under this subsection shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect Costs.* Subject to § 3430.54, indirect costs are allowable.

§ 3430.506 Matching requirements.

(a) *General requirement.* If a grant under this subpart provides a particular benefit to a specific agricultural commodity, the recipient of the grant is required to provide funds or in-kind support to match the amount of funds provided by NIFA.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

(c) *Waiver authority.* NIFA may waive the matching requirement specified in paragraph (a) of this section with respect to a grant if NIFA determines that:

(1) The results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or

(2) When all three of the following conditions are present:

(i) The project involves a minor commodity,

(ii) The project deals with scientifically important research, and

(iii) The grant recipient is unable to satisfy the matching funds requirement.

§ 3430.507 Program requirements.

(a) *General.* Grants under this subpart shall address priorities in the United States agriculture that involve integrated research, extension, and education activities as determined by the Secretary through Agency stakeholder input processes and in consultation with the Advisory Board.

(b) *Duration of awards.* The term of a grant under this subpart may not exceed 5 years.

Subpart J—Beginning Farmer and Rancher Development Program

SOURCE: 74 FR 45970, Sept. 4, 2009, unless otherwise noted.

§ 3430.600 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 7405 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3319f).

§ 3430.601 Purpose.

The purpose of the Beginning Farmer and Rancher Development Program (BFRDP) is to establish a beginning farmer and rancher development program that provides local and regional training, education, outreach, and technical assistance initiatives for beginning farmers and ranchers.

§ 3430.602 Definitions.

The definitions applicable to the program under this subpart include:

Beginning farmer or rancher means a person that has not operated a farm or ranch or has operated a farm or ranch for not more than 10 years, and meets such other criteria as the Secretary may establish.

Clearinghouse means an online repository that will make available to beginning farmers or ranchers education curricula and training materials and programs, and which may include online courses for direct use by beginning farmers or ranchers.

Limited resource beginning farmers or ranchers means beginning farmers or ranchers who have: (1) direct or indirect gross farm sales not more than the sales amount established by the USDA Natural Resources Conservation Service (NRCS) in each of the previous two years (in current dollars, adjusted for inflation each year, based on the October 2002 Prices Paid by Farmer Index compiled and updated annually by the USDA National Agricultural Statistics Service (NASS), and (2) a total household income at or below the National Poverty Level for a family of four or less than 50 percent of county median household income in each of the previous 2 years as determined by the U.S. Department of Health and Human Services (DHHS), using the Census Poverty Data.

Outcome-based reporting means reporting that includes an outcome statement with performance targets, necessary milestones, beneficiary engagement, key individuals, and verification.

[74 FR 45970, Sept. 4, 2009, as amended at 76 FR 35323, June 17, 2011]

§ 3430.603 Eligibility.

To be eligible to receive an award under this subpart, the recipient shall be a collaborative State, tribal, local, or regionally-based network or partnership of public or private entities, including:

(a) A State cooperative extension service;

(b) A Federal, State, or tribal agency;

(c) A community-based or nongovernmental organization;

(d) A college or university (including a junior college offering an associate's degree) or foundation maintained by a college or university;

(e) A private for-profit organization; or

(f) Any other appropriate partner, as determined by the Secretary.

[74 FR 45970, Sept. 4, 2009, as amended at 81 FR 6415, Feb. 8, 2016]

§ 3430.604 Project types and priorities.

(a) *Standard BFRDP projects.* For standard BFRDP projects, competitive grants will be awarded to support programs and services, as appropriate, relating to the following focus areas and activities:

(1) Basic livestock, forest management, and crop farming practices;

(2) Innovative farm, ranch, and private, nonindustrial forest land transfer strategies;

(3) Entrepreneurship and business training;

(4) Financial and risk management training (including the acquisition and management of agricultural credit);

(5) Natural resource management and planning;

(6) Diversification and marketing strategies;

(7) Curriculum development;

(8) Mentoring, apprenticeships, and internships;

(9) Resources and referral;

(10) Farm financial benchmarking;

(11) Assisting beginning farmers or ranchers in acquiring land from retiring farmers and ranchers;

(12) Agricultural rehabilitation and vocational training for veterans;

(13) Farm safety and awareness; and

(14) Other similar subject areas of use to beginning farmers or ranchers.

(15) Basic livestock and crop farming practices, forestry and range management.

(16) Acquisition and management of agricultural credit.

(17) Environmental compliance.

(18) Information processing.

(19) Tax management, including record keeping and tax form preparation.

(20) Basic agricultural law.

(21) Other similar subject areas of use to beginning farmers or ranchers.

NIFA may include additional activities or focus areas that further address the critical needs of beginning farmers and ranchers as defined in this subpart. Some of these activities or focus areas may be identified by stakeholder groups or by NIFA in response to

emerging critical needs of the Nation's farmers and ranchers.

(b) *Other BFRDP Projects.* In addition to the competitive grants made under paragraph (a) of this section, competitive awards (grants or cooperative agreements) will be made:

(1) to establish beginner farmer and rancher educational enhancement projects that develop curricula and conduct educational programs and workshops for beginning farmers or ranchers in diverse geographical areas of the Unites States; and

(2) to establish and maintain an online clearinghouse.

[74 FR 45970, Sept. 4, 2009, as amended at 76 FR 35323, June 17, 2011; 81 FR 6415, Feb. 8, 2016]

§ 3430.605 Funding restrictions.

(a) *Facility costs.* Funds made available under this subpart shall not be used for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable.

(c) *Participation by other farmers and ranchers.* Projects may allow farmers and ranchers who are not beginning farmers and ranchers to participate in the programs funded under this subpart if their participation is appropriate and will not detract from the primary purpose of educating beginning farmers and ranchers as defined under this subpart.

[74 FR 45970, Sept. 4, 2009, as amended at 81 FR 6415, Feb. 8, 2016]

§ 3430.606 Matching requirements.

(a) *Requirement.* Awardees are required to provide a match in the form of cash or in-kind contributions in an amount at least equal to 25 percent of the Federal funds provided by the award. The matching funds must be from non-Federal sources except when authorized by statute. The matching requirements under this subpart cannot be waived.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52.

§ 3430.607 Stakeholder input.

NIFA shall seek and obtain stakeholder input through a variety of forums (e.g., public meetings, request for input and/or via Web site), as well as through a notice in the FEDERAL REGISTER, from the following entities:

(a) Beginning farmers and ranchers.

(b) National, State, tribal, and local organizations, community-based organizations, and other persons with expertise in operating beginning farmer and rancher programs.

(c) The Advisory Committee on Beginning Farmers and Ranchers established under section 5 of the Agricultural Credit Improvement Act of 1992 (7 U.S.C. 1929 note; Pub. L. 102–554).

§ 3430.608 Review criteria.

(a) *Evaluation criteria.* NIFA shall evaluate project proposals according to the following factors:

(1) Relevancy.

(2) Technical merit.

(3) Achievability.

(4) The expertise and track record of one or more applicants.

(5) The adequacy of plans for the participatory evaluation process, outcome-based reporting, and the communication of findings and results beyond the immediate target audience.

(6) Other appropriate factors, as determined by the Secretary.

(b) *Partnership and collaboration.* In making awards under this subpart, NIFA shall give priority to partnerships and collaborations that are led by or include nongovernmental, and community-based organizations, and school-based agricultural educational organizations with expertise in new agricultural producer training and outreach.

(c) *Regional balance.* In making awards under this subpart, NIFA shall, to the maximum extent practicable, ensure geographical diversity.

[74 FR 45970, Sept. 4, 2009, as amended at 81 FR 6415, Feb. 8, 2016]

§ 3430.609 Other considerations.

(a) *Set aside.* (1) Not less than 5 percent of the funds used to carry out this subsection for a fiscal year shall be used to support programs and services that address the needs of—

(i) Limited resource beginning farmers or ranchers (see 3430.602);

(ii) Socially disadvantaged farmers or ranchers (as defined in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)) who are beginning farmers or ranchers; and

(iii) Farmworkers desiring to become farmers or ranchers.

(2) Each fiscal year, NIFA shall set aside not less than 5 percent of the funds to support the standard BFRDP projects under this subpart to support programs and services that address the needs of veteran farmers and ranchers (as defined in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)). Recipients of these funds may coordinate with a recipient of an award under section 1680 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5933) in addressing the needs of veteran farmers and ranchers with disabilities.

(b) *Consecutive awards.* An eligible recipient may receive a consecutive grant for a standard BFRDP project under this subpart.

(c) *Duration of awards.* The term of a grant for a standard BFRDP project under this subpart shall not exceed 3 years. Awards for all other projects under this subpart shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

(d) *Amount of grants.* A grant for a standard BFRDP project under this subpart shall not be in an amount that is more than $250,000 for each year.

[74 FR 45970, Sept. 4, 2009, as amended at 76 FR 35323, June 17, 2011; 81 FR 6416, Feb. 8, 2016]

Subpart K—Biomass Research and Development Initiative

SOURCE: 75 FR 33498, June 14, 2010, unless otherwise noted.

§ 3430.700 Applicability of regulations.

The regulations in this subpart apply to the Federal assistance awards made under the program authorized under section 9008 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8108), as amended by section 9001 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

[76 FR 38549, July 1, 2011]

§ 3430.701 Purpose.

In carrying out the program, NIFA, in cooperation with the Department of Energy, is authorized to make competitive awards under section 9008(e) of FSRIA (7 U.S.C. 8108(e)) to develop:

(a) Technologies and processes necessary for abundant commercial production of biofuels at prices competitive with fossil fuels;

(b) High-value biobased products—

(1) To enhance the economic viability of biofuels and power,

(2) To serve as substitutes for petroleum-based feedstocks and products, and

(3) To enhance the value of coproducts produced using the technologies and processes; and

(c) A diversity of economically and environmentally sustainable domestic sources of renewable biomass for conversion to biofuels, bioenergy, and biobased products.

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.702 Definitions.

The definitions specific to BRDI are from the authorizing legislation, the National Program Leadership of NIFA, and the Department of Energy. The definitions applicable to the program under this subpart include:

Advanced Biofuel means fuel derived from renewable biomass other than corn kernel starch, including:

(1) Biofuel derived from cellulose, hemicellulose, or lignin;

(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(4) Diesel-equivalent fuel derived from renewable biomass, including algael oils, oil seed crops, re-claimed vegetable oils and animal fat;

(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and

(7) Other fuel derived from cellulosic biomass.

Advisory Committee means the Biomass Research and Development Technical Advisory Committee established by section 9008(d) of FSRIA (7 U.S.C. 8108(d)).

Biobased Product means:

(1) An industrial product (including chemicals, materials, and polymers) produced from biomass; or

(2) A commercial or industrial product (including animal feed and electric power) derived in connection with the conversion of biomass to fuel.

Bioenergy means power generated in the form of electricity or heat using biomass as a feedstock.

Biofuel means a fuel derived from renewable biomass.

Biomass Conversion Facility means a facility that converts or proposes to convert renewable biomass into:

(1) Heat;

(2) Power;

(3) Biobased products; or

(4) Advanced biofuels.

Biorefinery means a facility (including equipment and processes) that—

(1) Converts renewable biomass into biofuels and biobased products; and

(2) May produce electricity.

Board means the Biomass Research and Development Board established by section 9008(c) of the FSRIA of 2002 (7 U.S.C. 8108(c)).

BRDI means the Biomass Research and Development Initiative.

Cellulosic Biofuel means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the Administrator of the Environmental Protection Agency, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

Demonstration means demonstration of technology in a pilot plant or semi-works scale facility, including a plant or facility located on a farm. A biorefinery demonstration is a system capable of processing a minimum of 50 tons/day of biomass feedstock.

DOE means the Department of Energy.

Institutions of higher education has the meaning given the term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002(a)).

Intermediate Ingredient or Feedstock means a material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product.

Life cycle assessment means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

Life cycle cost means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

Pilot Plant is an integrated chemical processing system that includes the processing units necessary to convert biomass feedstock into biofuels/bioenergy/biobased products at a minimum feed rate of 1 ton/day of biomass feedstock.

Private sector entities include companies, corporations, farms, ranches, cooperatives, and others that compete in the marketplace.

Recovered materials means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

Renewable Biomass means:

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land (as defined

in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)) and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that—

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

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

(iii) Are harvested in accordance with applicable law and land management plans; and the requirements for—

(A) Old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); and

(B) Large-tree retention of subsection (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

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

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

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

Research and development (R&D) projects means a research project only, a development project only, or a combination of research and development project; however, an R&D project may not be submitted including a demonstration project or vice versa.

Semi-works is a combination of chemical processing units that constitute a subset of the fully integrated system and are used to develop process flow diagrams and mass and energy balances for the purposes of scaling up to a demonstration scale facility.

Transportation fuel means fuel for use in motor vehicles, motor vehicle engines, non-road vehicles, or non-road engines (except for ocean-going vessels).

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.703 Eligibility.

To be eligible to receive an award under this subpart, the recipient shall be—

(a) An institution of higher education (as defined in § 3430.702);

(b) A National Laboratory;

(c) A Federal research agency;

(d) A State research agency;

(e) A private sector entity (as defined in § 3430.702 of this part);

(f) A nonprofit organization; or

(g) A consortium of two or more entities listed in paragraphs (a) through (f) of this section.

§ 3430.704 Project types and priorities.

(a) *Technical Topic Areas.* Biomass Research and Development Initiative (BRDI) awards shall be directed (in consultation with the Biomass Research and Development Board, the Administrator of the Environmental Protection Agency and heads of other appropriate departments and agencies) in the following three primary technical topic areas:

(1) *Feedstocks Development.* Research, development, and demonstration activities regarding feedstocks and feedstock logistics (including the harvest, handling, transport, preprocessing, and storage) relevant to production of raw materials for conversion to biofuels and biobased products.

(2) *Biofuels and Biobased Products Development.* Research, development, and demonstration activities to support—

(i) The development of diverse cost-effective technologies for the use of cellulosic biomass in the production of biofuels and biobased products; and

(ii) Product diversification through technologies relevant to production of a range of biobased products (including chemicals, animal feeds, and cogenerated power) that potentially can increase the feasibility of fuel production in a biorefinery.

(3) *Biofuels Development Analysis*—(i) *Strategic Guidance.* The development of

analysis that provides strategic guidance for the application of renewable biomass technologies to improve sustainability and environmental quality, cost effectiveness, security, and rural economic development.

(ii) *Energy and Environmental Impact.* Development of systematic evaluations of the impact of expanded biofuel production on the environment (including forest land) and on the food supply for humans and animals, including the improvement and development of tools for life cycle analysis of current and potential biofuels.

(iii) *Assessment of Federal Land.* Assessments of the potential of Federal land resources to increase the production of feedstocks for biofuels and biobased products, consistent with the integrity of soil and water resources and with other environmental considerations.

(b) *Additional considerations.* Within the technical topic areas described in paragraph (a) of this section, NIFA, in cooperation with DOE, shall support research and development to—

(1) Create continuously expanding opportunities for participants in existing biofuels production by seeking synergies and continuity with current technologies and practices;

(2) Maximize the environmental, economic, and social benefits of production of biofuels and derived biobased products on a large scale; and

(3) Facilitate small-scale production and local and on-farm use of biofuels, including the development of smallscale gasification technologies for production of biofuel from cellulosic feedstocks.

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.705 Funding restrictions.

(a) *Facility costs.* Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable for Federal assistance awards made by NIFA.

(c) *Minimum allocations.* After consultation with the Board, NIFA in cooperation with DOE, shall require that each of the three technical topic areas described in § 3430.704(a) receives not less than 15 percent of funds made available to carry out BRDI.

[76 FR 38549, July 1, 2011]

§ 3430.706 Matching requirements.

(a) *Requirement for Research and/or Development Projects.* The non-Federal share of the cost of a research or development project under BRDI shall be not less than 20 percent. NIFA may reduce the non-Federal share of a research or development project if the reduction is determined to be necessary and appropriate.

(b) *Requirement for Demonstration and Commercial Projects.* The non-Federal share of the cost of a demonstration or commercial project under BRDI shall be not less than 50 percent.

(c) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52 of this part.

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.707 Administrative duties.

(a) After consultation with the Board, NIFA, in cooperation with DOE, shall:

(1) Publish annually one or more joint requests for proposals for Federal assistance under BRDI; and

(2) Require that Federal assistance under BRDI be awarded based on a scientific peer review by an independent panel of scientific and technical peers.

(b) NIFA, in cooperation with DOE, shall ensure that applicable research results and technologies from the BRDI are:

(1) Adapted, made available, and disseminated, as appropriate; and

(2) Included in the best practices database established under section 1672C(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925e(e)).

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.708 Review criteria.

(a) *General.* BRDI peer reviews of applications are conducted in accordance

with requirements found in section 9008 of FSRIA (7 U.S.C. 8108); section 103 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613); and regulations found in title 7 of the Code of Federal Regulations, sections 3430.31 through 3430.37.

(b) *Additional Considerations.* Special consideration will be given to applications that—

(1) Involve a consortium of experts from multiple institutions;

(2) Encourage the integration of disciplines and application of the best technical resources; and

(3) Increase the geographic diversity of demonstration projects.

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.709 Duration of awards.

The term of a Federal assistance award made for a BRDI project shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

Subpart L—Capacity Building Grants for Non-Land Grant Colleges of Agriculture Program

AUTHORITY: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

SOURCE: 81 FR 6416, Feb. 8, 2016, unless otherwise noted.

§ 3430.800 Applicability.

The regulations in this subpart apply to the program authorized under section 1473F of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as added by section 7138 of the Food, Conservation, and Energy Act of 2008, (7 U.S.C. 3319i).

§ 3430.801 Purpose.

The purpose of this program is to make competitive grants to Non Land Grant Colleges of Agriculture (NLGCA) Institutions to assist the NLGCA Institutions in maintaining and expanding the capacity to conduct education, research, and outreach activities relating to agriculture, renewable resources, and other similar disciplines.

§ 3430.802 Definitions.

The definitions applicable to the program under this subpart include:

Capacity building means enhancing and strengthening the quality and depth of an institution's research and academic programs as evidenced by its: faculty expertise, scientific and technical resources, research environment, curriculum, student experiential learning opportunities, scientific instrumentation, library resources, academic standing and racial, ethnic, or gender diversity of its faculty and student body, faculty and student recruitment and retention programs, and organizational structures and reward systems for attracting and retaining first-rate research and teaching faculty or students.

Citizen or national of the United States means:

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a) (22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

Eligible participant means an individual who is a citizen or national of the United States as defined in this section.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in food and fiber, agricultural, renewable energy and natural resources, forestry, and physical and social sciences, including activities relating to the following:

(1) Animal health, production, and well-being.

(2) Plant health and production.

(c) Animal and plant germ plasm collection and preservation.

(3) Aquaculture.

(4) Food safety.

(5) Soil, water, and related resource conservation and improvement.

(6) Forestry, horticulture, and range management.

(7) Nutritional sciences and promotion.

(8) Farm enhancement, including financial management, input efficiency, and profitability.

(9) Home economics (Family and Consumer Sciences).

(10) Rural human ecology.

(11) Youth development and agricultural education, including 4–H clubs.

(12) Expansion of domestic and international markets for agricultural commodities and products, including agricultural trade barrier identification and analysis.

(13) Information management and technology transfer related to agriculture.

(14) Biotechnology related to agriculture.

(15) The processing, distributing, marketing, and utilization of food and agricultural products. (7 U.S.C. Section 3103).

Joint project proposal means:

(1) An application for a project:

(i) Which will involve the applicant institution working in cooperation with one or more other entities not legally affiliated with the applicant institution, including other schools, colleges, universities, community colleges, junior colleges, units of State government, private sector organizations, or a consortium of institutions; and

(ii) Where the applicant institution and each cooperating entity will assume a significant role in the conduct of the proposed project.

(2) To demonstrate a substantial involvement with the project, the applicant institution/organization submitting a joint project proposal must retain at least 30 percent but not more than 70 percent of the awarded funds and no cooperating entity may receive less than 10 percent of awarded funds. Only the applicant institution must meet the definition of an eligible institution/organization as specified in this RFA; other entities participating in a joint project proposal are not required to meet the definition of an eligible institution/organization.

Large-scale, Comprehensive Initiative (LCI) project proposal means:

(1) An application for a project:

(i) Which will involve the applicant institution/organization working in cooperation with two or more other entities not legally affiliated with the applicant institution, including other schools, colleges, universities, community colleges, junior colleges, units of State government, private sector organizations, or a consortium of institutions; and

(ii) Where the applicant institution and each cooperating entity will assume a significant role in the conduct of the proposed project.

(2) To demonstrate a substantial involvement with the project, the applicant institution/organization submitting a LCI proposal must retain at least 30 percent but not more than 70 percent of the awarded funds and no cooperating entity may receive less than 10 percent of awarded funds. Only the applicant institution must meet the definition of an eligible institution as specified in this RFA; other entities participating in a joint project proposal are not required to meet the definition of an eligible institution. LCI Project Proposals must support a multi-partner approach to solving a major state or regional challenge in agricultural sciences education at the postsecondary level. LCI Project Proposals are characterized by multiple partners (each providing a specific expertise) organized and led by a strong applicant with documented project management ability to organize and carry out the initiative.

Non-land-grant college of agriculture (NLGCA) means a public college or university offering a baccalaureate or higher degree in the study of agriculture or forestry. The terms ''NLGCA Institution'' and ''non-land-grant college of agriculture'' do not include:

(1) Hispanic-serving agricultural colleges and universities; or

(2) Any institution designated under: a. the Act of July 2, 1862 (commonly known as the ''First Morrill Act''; 7 U.S.C. 301 *et seq.*, or the '1862 Land Grants');

(3) The Act of August 30, 1890 (commonly known as the ''Second Morrill Act'') (7 U.S.C. 321 *et seq.*, or the '1890 Land Grants');

(4) The Equity in Educational Land-Grant Status Act of 1994 (Public Law 103–382; 7 U.S.C. 301 note, or the '1994 or Tribal Colleges Land Grants'); or

(5) Public Law 87–788 (commonly known as the ''McIntire-Stennis Cooperative Forestry Act'') (16 U.S.C. 582a *et seq.*).

Outcomes means specific, measurable project results and benefits that, when

assessed and reported; indicate the project's plan of operation has been achieved. Measurable outcomes include:

(1) Results are intended or unintended consequences of the project, (*e.g.*, ''. . . additional course materials now available online to reinforce student learning during non-classroom hours'');

(2) Products may be actual items or services acquired with funds, (*e.g.*, ''. . . mechanisms and content to transition existing course(s) or elements of course(s) for Web-based access'' or ''created new and innovative prevention and intervention initiatives''); and

(3) Impacts are a measure of the results by comparing what might have happened in the absence of the funded project, (*e.g.*, ''. . . an observed, overall increase in student learning based upon 8% higher average test scores of those students who both attended class and used the supplemental, Web-based course materials''.)

Regular project proposal means a proposal for a project:

(1) Where the applicant institution will be the sole entity involved in the execution of the project; or

(2) Which will involve the applicant institution and one or more other entities, but where the involvement of the other entity(ies) does not meet the requirements for a joint project proposal as defined in this section.

Sustainable Agriculture means an integrated system of plant and animal production practices having a site-specific application that will, over the long-term—

(1) Satisfy human food and fiber needs;

(2) Enhance environmental quality and the natural resource base upon which the agriculture economy depends;

(3) Make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;

(4) Sustain the economic viability of farm operations; and

(5) Enhance the quality of life for farmers and society as a whole.

Teaching and *education* mean formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters relating thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

§ 3430.803 Eligibility.

(a) *Institution eligibility*. Applications may only be submitted by a NLGCA institution. For the purposes of this program, the individual branches of a State college or university that are separately accredited as degree-granting institutions are treated as separate institutions, and are therefore eligible to apply for NLGCA Program awards. Separate branches or campuses of a college or university that are not individually accredited as degree-granting institutions are not treated as separate institutions, and are therefore not eligible to submit an application. Accreditation must be conferred by an agency or association recognized by the Secretary of the U.S. Department of Education.

(b) *Teacher or student eligibility*. A teacher or student recipient receiving Federal funds from this grants program must be an *eligible participant*. Where eligibility is claimed under 8 U.S.C. 1101(a)(22), documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to NIFA upon request.

§ 3430.804 Project types and priorities.

(a) For each RFA, NIFA may develop and include the appropriate project types and focus areas based on the critical needs identified through stakeholder input and deemed appropriate by NIFA.

(b) The RFA will specify which of the following project types applicants may submit applications:

(1) Regular project proposal (the applicant executes the project without the requirement of sharing grant funds with other project partners);

(2) Conference/planning grant to facilitate strategic planning session(s);

(3) Joint project proposal (the applicant executes the project with assistance from at least one additional partner and must share grant funds with the additional partner(s)); and

(4) Large-scale (state or region) comprehensive initiatives (LCI) (Applicant + Two or more Partners).

§ 3430.805 Funding restrictions.

(a) Prohibition against construction. Grant funds awarded under this authority may not be used for the renovation or refurbishment of research, education, or extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

(b) Prohibition on tuition remission. Tuition remission, on-campus room and board, academic fees or other financial assistance (scholarships or fellowships) are not allowed.

(c) Promotional items (*e.g.,* T-shirts and other giveaways) and food functions (*e.g.,* cookouts or other social or meal gatherings) are considered 'entertainment' expenses, and are, therefore, also not allowed under this grants program.

§ 3430.806 Matching requirements.

There are no matching requirements for grants under this subpart.

§ 3430.807 Duration of grant.

The term of a Federal assistance award made for a NLGCA project shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

Subpart M—New Era Rural Technology Competitive Grants Program

SOURCE: 74 FR 45973, Sept. 4, 2009, unless otherwise noted.

§ 3430.900 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 1473E of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3319e), as amended.

§ 3430.901 Purpose.

The purpose of this program is to make grants available for technology development, applied research, and training, with a focus on rural communities, to aid in the development of workforces for bioenergy, pulp and paper manufacturing, and agriculture-based renewable energy workforce.

§ 3430.902 Definitions.

The definitions applicable to the program under this subpart include:

Advanced Technological Center refers to a post-secondary, degree-granting institution that provides students with technology-based education and training, preparing them to work as technicians or at the semi-professional level, and aiding in the development of an agriculture-based renewable energy workforce. For this program, such Centers must be located within a rural area.

Bioenergy means biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

Biomass means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.

Community College means

(1) An institution of higher education that:

(i) Admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(ii) Does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(iii) (A) Provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(B) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician

or at the semi-professional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge (20 U.S.C. 1101a(a)(6)).

(2) For this grants program, such Community Colleges must be located within a *rural area*.

Conference/Planning Grants means the limited number of RTP grants that will fund strategic planning meetings necessary to establish and organize proposed technology development, applied research and/or training projects.

Eligible institution/organization means a *community college*, or an *advanced technological center*, that meets eligibility criteria of this program, and is located in a *rural area*.

Eligible participant means an individual who is a *citizen or non-citizen national of the United States*, as defined in 7 CFR 3430.2, or lawful permanent resident of the United States.

Fiscal agent means a third party designated by an authorized representative of an eligible institution/organization which would receive and assume financial stewardship of Federal grant funds and perform other activities as specified in the agreement between it and the eligible institution/organization.

Joint project proposal means

(1) An application for a project:

(i) Which will involve the applicant institution/organization working in cooperation with one or more other entities not legally affiliated with the applicant institution/organization, including other schools, colleges, universities, community colleges, units of State government, private sector organizations, or a consortium of institutions; and

(ii) Where the applicant institution/organization and each cooperating entity will assume a significant role in the conduct of the proposed project.

(2) To demonstrate a substantial involvement with the project, the applicant institution/organization submitting a joint project proposal must retain at least 30 percent but not more than 70 percent of the awarded funds, and no cooperating entity may receive less than 10 percent of awarded funds. Only the applicant institution/organization must meet the definition of an eligible institution/organization as specified in this RFA; other entities participating in a joint project proposal are not required to meet the definition of an eligible institution/organization.

Outcomes means specific, measurable project results and benefits that, when assessed and reported, indicate the project's *plan of operation* has been achieved.

Plan of Operation means a detailed, step-by-step description of how the applicant intends to accomplish the project's *outcomes*. At a minimum, the plan should include a timetable indicating how outcomes are achieved, a description of resources to be used or acquired, and the responsibilities expected of all project personnel.

Regular project proposal means an application for a project:

(1) Where the applicant institution/organization will be the sole entity involved in the execution of the project; or

(2) Which will involve the applicant institution/organization and one or more other entities, but where the involvement of the other entity(ies) does not meet the requirements for a joint proposal as defined in this section.

Rural Area means any area other than a city or town that has a population of 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Technology Development means the practical application of knowledge to address specific State, regional, or community opportunities in the bioenergy, pulp and paper manufacturing, or agriculture-based renewable energy occupations.

NOTE: In general, technology is more than the development of a single product, but is instead a system of related products, procedures and services to ensure a systems approach to address a specific issue.

Training means the planned and systematic acquisition of practical knowledge, skills or competencies required for a trade, occupation or profession

delivered by formal classroom instruction, laboratory instruction, or practicum experience.

[74 FR 45973, Sept. 4, 2009, as amended at 75 FR 59060, Sept. 27, 2010]

§ 3430.903 Eligibility.

Applications may be submitted by either:

(a) Public or private nonprofit community colleges, or

(b) Advanced technological centers, *either of which must:*

(1) Be located in a *rural area* (*see* definition in § 3430.902);

(2) Have been in existence as of June 18, 2008;

(3) Participate in agricultural or bioenergy research and applied research;

(4) Have a proven record of development and implementation of programs to meet the needs of students, educators, and business and industry to supply the agriculture-based, renewable energy or pulp and paper manufacturing fields with certified technicians, as determined by the Secretary; and

(5) Have the ability to leverage existing partnerships and occupational outreach and training programs for secondary schools, 4-year institutions, and relevant nonprofit organizations.

§ 3430.904 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and focus areas based on the critical needs identified through stakeholder input and deemed appropriate by NIFA.

(a) In addition, priority in funding shall be given to eligible entities working in partnerships to:

(1) Improve information-sharing capacity;

(2) Maximize the ability to meet the requirements of the RFA; and

(3) To address the following two RTP goals:

(i) To increase the number of students encouraged to pursue and complete a 2-year postsecondary degree, or a certificate of completion, within an occupational focus of this grant program; and

(ii) To assist rural communities by helping students achieve their career goals to develop a viable workforce for bioenergy, pulp and paper manufacturing, or agriculture-based renewable energy.

(b) Applicants may submit applications for one of the three project types:

(1) Regular project proposal (the applicant executes the project without the requirement of sharing grant funds with other project partners);

(2) Joint project proposal (the applicant executes the project with assistance from at least one additional partner and must share grant funds with the additional partner(s)); and

(3) Conference/planning grant to facilitate strategic planning session(s).

§ 3430.905 Funding restrictions.

(a) *Prohibition against construction.* Grant funds awarded under this authority may not be used for the renovation or refurbishment of research, education, or extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

(b) *Prohibition on tuition remission.* Tuition remission (e.g., scholarships, fellowships) is not allowed.

(c) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable with the exception of indirect costs for Conference/Planning grants, which are not allowed.

§ 3430.906 Matching requirements.

There are no matching requirements for grants under this subpart.

§ 3430.907 Stakeholder input.

NIFA shall seek and obtain stakeholder input through a variety of forums (e.g., public meetings, requests for input and/or Web site), as well as through a notice in the FEDERAL REGISTER, from the following entities:

(a) Community college(s).

(b) Advanced technological center(s), located in rural area, for technology development, applied research, and/or training.

§ 3430.908 Review criteria.

Evaluation criteria. NIFA shall evaluate project proposals according to the following factors:

(a) Potential for Advancing Quality of Technology Development, Applied

Research, and/or Training/Significance of the Program.

(b) Proposed Approach and Cooperative Linkages.

(c) Institution Organization Capability and Capacity Building.

(d) Key Personnel.

(e) Budget and Cost-Effectiveness.

§ 3430.909 Other considerations.

(a) *Amount of grants.* An applicant for a regular project proposal (single institution/organization) under this subpart may request up to $125,000 (total project, not per year). An applicant for a joint project proposal (applicant plus one or more partners) under this subpart may request up to $300,000 (total project, not per year). A conference/planning grant applicant may request up to $10,000 (total project/not per year).

(b) *Duration of grants.* The term of a grant for a standard RTP project under this subpart shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

Subpart N [Reserved]

Subpart O—Sun Grant Program

SOURCE: 75 FR 70580, Nov. 18, 2010, unless otherwise noted.

§ 3430.1000 Applicability of regulations.

The regulations in this subpart apply to the Federal assistance awards made under the program authorized under section 7526 of the Food, Conservation, and Energy Act of 2008 (FCEA), Pub. L. 110–246 (7 U.S.C. 8114).

§ 3430.1001 Purpose.

In carrying out the program, NIFA is authorized to make awards under section 7526 of the FCEA to eligible entities (as designated in section 7526(b)(1)(A)–(F) of the FCEA) to fund subgrants and activities that:

(a) Enhance national energy security through the development, distribution, and implementation of biobased energy technologies;

(b) Promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;

(c) Promote economic diversification in rural areas of the United States through biobased energy and product technologies; and

(d) Enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration among the Department, other appropriate Federal agencies (as determined by the Secretary), and land-grant colleges and universities.

[75 FR 70580, Nov. 18, 2010, as amended at 81 FR 6418, Feb. 8, 2016]

§ 3430.1002 Definitions.

The definitions specific to the Sun Grant Program are from the authorizing legislation, the National Program Leadership of NIFA, and the Department of Energy. The definitions applicable to the program under this subpart include:

Biobased product means:

(1) An industrial product (including chemicals, materials, and polymers) produced from biomass; or

(2) A commercial or industrial product (including animal feed and electric power) derived in connection with the conversion of biomass to fuel.

Bioenergy means power generated in the form of electricity or heat using biomass as a feedstock.

Center means a Sun Grant Center identified in § 3430.1003(a)(1) through (5).

Subcenter means the Sun Grant Subcenter identified in § 3430.1003(a)(6).

Technology development means the process of research and development of technology.

Technology implementation means the introduction of new technologies to either an existing organization, or to a larger community, such as a type of business.

[75 FR 70580, Nov. 18, 2010, as amended at 81 FR 6418, Feb. 8, 2016]

§ 3430.1003 Eligibility.

(a) *Sun Grant Centers and Subcenter.* NIFA will use amounts appropriated for the Sun Grant Program to provide grants to the following five Centers and one Subcenter:

(1) A North-Central Center for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming;

(2) A Southeastern Center for the region composed of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia, the Commonwealth of Puerto Rico, and the United States Virgin Islands;

(3) A South-Central Center for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas;

(4) A Northeastern Center for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia;

(5) A Western Center for the region composed of the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington, and insular areas (other than the Commonwealth of Puerto Rico and the United States Virgin Islands); and

(6) A Western Insular Pacific Subcenter (that receives Federal funds through the Western Center rather than directly from NIFA, in accordance with § 3430.1004(b)) for the region of Alaska, Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(b) *Subawardees of the Centers and Subcenter*. To be eligible for a subaward from a Center or Subcenter pursuant to § 3430.1004(a)(1), an applicant:

(1) Must be located in the region covered by the applicable Center or Subcenter; and

(2) Must be one of the following:

(i) State agricultural experiment station;

(ii) College or university;

(iii) University research foundation;

(iv) Other research institution or organization;

(v) Federal agency;

(vi) National laboratory;

(vii) Private organization or corporation;

(viii) Individual; or

(ix) Any group consisting of 2 or more entities described in paragraphs (b)(2)(i) through (viii) of this section.

(c) *Ineligibility*. A Center or Subcenter will be ineligible for funding under the Sun Grant Program if NIFA determines on the basis of an audit or a review of a report submitted under § 3430.1009 that the Center or Subcenter has not complied with the requirements of section 7526 of the FCEA (7 U.S.C. 8114). A Center or Subcenter determined to be ineligible pursuant to this paragraph will remain ineligible for such period of time as deemed appropriate by NIFA. This ineligibility requirement is in addition to the enforcement actions that NIFA may take pursuant to § 3430.60.

[75 FR 70580, Nov. 18, 2010, at 81 FR 6418, Feb. 8, 2016]

§ 3430.1004 Project types and priorities.

(a) *Project types*. The Sun Grant Program provides funds for two distinct project types. Subject to paragraph (b), of the funds provided by NIFA to the Centers and Subcenter, the required use of funds by each of the Centers and the Subcenter is as follows:

(1) *Regional competitive research, extension, and education grant programs*. Seventy-five percent must be used for regional competitively awarded research, extension, and education subgrants to eligible entities (described in § 3430.1003(b)) to conduct, in a manner consistent with the purposes described in § 3430.1001, multi-institutional and integrated, multistate research, extension, and education programs on technology development and technology implementation. Regional competitive grants programs will target specific elements of the purposes described in § 3430.1001, implementing national priorities in the context of regional scale biogeographic and climatic conditions.

(i) *Requests for applications*. The Centers and Subcenter must develop regional requests for applications (RFAs) utilizing guidance from regional advisory panels created and administered by the Centers and Subcenter for purposes of addressing region-specific

issues, and which include representation from academia, the national laboratories, Federal and State agencies, the private sector, and public interest groups. Advisory panel members will have appropriate expertise and experience in the areas of biomass and bioenergy.

(ii) *Peer review of proposals.* Each region will announce RFAs and solicit proposals. These proposals must be peer reviewed by panels in a manner similar to the system of peer review required by section 103 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613), and may include representation from Federal and State laboratories, the national laboratories, and private and public interest groups, as appropriate. The Centers and Subcenter may use implementing regulations found in §§ 3430.31 through 3430.37 as a guideline for appropriate peer review standards. Additional guidance may be provided by NIFA. To ensure consistency across the regions, prior to announcing the regional RFAs that will be used to solicit proposals, the Centers and Subcenter must provide NIFA the RFAs for approval by the designated NIFA program contact, as identified in the NIFA program solicitation. The Centers and Subcenter shall award subgrants on the basis of merit, quality, and relevance to advancing the purposes of the Sun Grant Program.

(2) *Research, extension, and education activities conducted at the Centers and Subcenter.* Except for funds available for administrative expenses as provided in § 3430.1005(b), the remainder of the funds must be used for multi-institutional and multistate research, extension, and education programs on technology development and multi-institutional and multistate integrated research, extension, and education programs on technology implementation, in a manner consistent with the purposes described in § 3430.1001.

(b) *Special provisions for the Western Center and Western Insular Pacific Subcenter.* Funds provided by NIFA to the Western Insular Pacific Subcenter shall come from an allocation of a portion of the funds received by the Western Center, as directed by NIFA in the program solicitation, rather than directly from NIFA. For the Center, the phrase ''funds provided by NIFA'' in paragraph (a) of this section refers to those funds provided by NIFA for the Sun Grant Program that are not allocated to the Subcenter. For the Subcenter, the phrase ''funds provided by NIFA'' in paragraph (a) of this section refers to those funds that are allocated to the Subcenter.

(c) *Priorities.* For the regional competitive grants program under paragraph (a)(1) of this section, the Centers and Subcenter shall use the plan approved by NIFA under § 3430.1007 in making subawards and shall give a higher priority to proposals that are consistent with the plan.

[75 FR 70580, Nov. 18, 2010, as amended at 81 FR 6418, Feb. 8, 2016]

§ 3430.1005 Funding restrictions.

(a) *Facility costs.* Funds made available under the Sun Grant Program shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect cost provisions for regional competitive research, extension, and education grant programs.* Funds provided by NIFA to the Centers and Subcenter for the regional competitive grants program under § 3430.1004(a)(1) may not be used for the indirect costs of awarding the competitive grants. However, up to 4 percent of the total funds provided by NIFA to the Centers and the Subcenter under § 3430.1004 for the Sun Grant Program may be budgeted for administrative costs incurred in awarding the competitive grants.

(c) *Indirect cost provisions for research, extension, and education activities conducted at the Centers and Subcenter.* Subject to § 3430.54, indirect costs are allowable for the funds provided by NIFA to the Centers and the Subcenter for the research, extension, and education programs under § 3430.1004(a)(2).

(d) *Required allocations.* Each Center and Subcenter must fund subgrants in a proportion that is a minimum 30 percent for conducting multi-institutional and multistate research, extension, and education programs on technology development; and a minimum 30 percent

for conducting integrated multi-institutional and multistate research, extension, and education programs on technology implementation. Each Sun Grant Center must clearly demonstrate a common procedure for ensuring the required allocations are met, and for maintaining documentation of these required percentages for audit purposes.

[75 FR 70580, Nov. 18, 2010, as amended at 81 FR 6418, Feb. 8, 2016]

§ 3430.1006 Matching requirements.

(a) *Matching provisions for the Centers and Subcenter.* The Centers and the Subcenter are not required to match Federal funds.

(b) *Matching provisions for subawards.* For subawards made by the Centers or Subcenter through the competitive grants process, not less than 20 percent of the cost of an activity must be matched with funds, including in-kind contributions, from a non-Federal source, by the subawardee.

(1) *Exception for fundamental research.* This matching requirement does not apply to fundamental research (as defined in § 3430.2).

(2) *Special matching provisions for applied research.* With prior approval by the NIFA authorized departmental officer (ADO), the Center or Subcenter may reduce or eliminate the matching requirement for applied research (as defined in § 3430.2) if the Center or Subcenter determines that the reduction is necessary and appropriate pursuant to guidance issued by NIFA.

§ 3430.1007 Planning activities.

(a) *Required plan.* The Centers and Subcenter shall jointly develop and submit to NIFA for approval a plan for addressing the bioenergy, biomass, and bioproducts research priorities of the Department and the other appropriate Federal agencies at the State and regional levels. Proposals submitted to the Sun Grant Program must be sufficiently detailed and of high enough quality and demonstrate adequate evidence of collaboration to meet this requirement. Funds available for administrative costs (see § 3430.1005(b)) may be used to meet this requirement.

(b) [Reserved]

[75 FR 70580, Nov. 18, 2010, as amended at 81 FR 6418, Feb. 8, 2016]

§ 3430.1008 Sun Grant Information Analysis Center.

The Centers and Subcenter shall maintain, at the North-Central Center, a Sun Grant Information Analysis Center to provide the Centers and Subcenter with analysis and data management support. Each Center and Subcenter shall allocate a portion of the funds available for administrative or indirect costs under § 3430.1005 to maintain the Sun Grant Information Analysis Center.

§ 3430.1009 Administrative duties.

In addition to other reporting requirements agreed to in the terms and conditions of each award, not later than 90 days after the end of each Federal fiscal year, each Center and Subcenter shall submit to NIFA a report that describes the policies, priorities, and operations of the program carried out by the Center or Subcenter during the fiscal year, including the results of all peer and merit review procedures conducted as part of administering the regional competitive research, extension, and educational grant programs; and a description of progress made in facilitating the plan described in § 3430.1007.

§ 3430.1010 Review criteria.

Panel reviewers conducting merit reviews on proposals submitted by the Centers will be instructed to ensure that proposals adequately address the plan developed in accordance with § 3430.1007 for consideration of the relevance and merit of proposals.

§ 3430.1011 Duration of awards.

The term of a Federal assistance award made under the Sun Grant Program shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

Subpart P—Food Insecurity Nutrition Incentive Program

SOURCE: 80 FR 64310, Oct. 23, 2015, unless otherwise noted.

§ 3430.1100 Applicability of regulations.

The regulations in this subpart apply to the Food Insecurity Nutrition Incentive (FINI) grants program authorized under section 4405 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7517), as added by section 4208 of the Agricultural Act of 2014 (Pub. L. 113–79).

§ 3430.1101 Purpose.

The primary goal of the FINI grants program is to fund and evaluate projects intended to increase the purchase of fruits and vegetables by low-income consumers participating in Supplemental Nutrition Assistance Program (SNAP) by providing incentives at the point of purchase.

§ 3430.1102 Definitions.

The definitions applicable to the FINI grants program under this subpart include:

Community food assessment means a collaborative and participatory process that systematically examines a broad range of community food issues and assets, so as to inform change actions to make the community more food secure.

Emergency feeding organization means a public or nonprofit organization that administers activities and projects (including the activities and projects of a charitable institution, a food bank, a food pantry, a hunger relief center, a soup kitchen, or a similar public or private nonprofit eligible recipient agency) providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. (See 7 U.S.C. 7501).

Exemplary practices means high quality community food security work that emphasizes food security, nutritional quality, environmental stewardship, and economic and social equity.

Expert reviewers means individuals selected from among those recognized as uniquely qualified by training and experience in their respective fields to give expert advice on the merit of grant applications in such fields who evaluate eligible proposals submitted to this program in their respective area(s) of expertise.

Food security means access to affordable, nutritious, and culturally appropriate food for all people at all times.

Fruits and vegetables means, for the purposes of the incentives provided under these grants, any variety of fresh, canned, dried, or frozen whole or cut fruits and vegetables without added sugars, fats or oils, and salt (*i.e.* sodium).

Logic model means a systematic and visual way to present and share an understanding of the relationships among resources available to operate a program, and includes: Planned activities and anticipated results; and the presentation of the resources, inputs, activities, outputs, outcomes and impacts.

Outcomes means the changes in the wellbeing of individuals that can be attributed to a particular project, program, or policy, or that a program hopes to achieve over time. They indicate a measurable change in participant knowledge, attitudes, or behaviors.

Process evaluation means examining program activities in terms of:

(1) The age, sex, race, occupation, or other demographic variables of the target population;

(2) The program's organization, funding, and staffing; and

(3) The program's location and timing. Process evaluation focuses on program activities rather than outcomes.

PromiseZone refers to designated high-poverty communities ''where the federal government will partner with and invest in communities to create jobs, leverage private investment, increase economic activity, expand educational opportunities, and improve public safety.'' See *https://www.hudexchange.info/programs/promise-zones/*.

Nonprofit organization means a special type of organizationthat has been organized to meet specific tax-exempt purposes. To qualify for nonprofit status, your organizationmust be formed to benefit:

(1) The public;
(2) A specific group of individuals; or
(3) The membership of the nonprofit.

StrikeForce means the ''USDA's StrikeForce Initiative for Rural Growth and Opportunity, which works to address the unique set of challenges faced by many of America's rural communities. Through StrikeForce, USDA is leveraging resources and collaborating with partners and stakeholders to improve economic opportunity and quality of life in these areas. See *http://www.usda.gov/wps/portal/usda/usdahome?navid=STRIKE_FORCE* for more information.

Supplemental Nutrition Assistance Program (SNAP) means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*).

Value chain means adding value to a product, including production, marketing, and the provision of after-sales service and incorporating fair pricing to farms. It also involves keeping the final pricing to customers within competitive range. Value chain development, therefore, is a process of building relationships between supplier and buyer that are reciprocal and win-win; instead of always striving to buy at lowest cost.

§ 3430.1103 Eligibility.

(a) *In general.* Eligibility to receive a grant under this subpart is limited to government agencies and nonprofit organizations. All applicants must demonstrate in their application that they are a government agency or nonprofit organization. Eligible government agencies and nonprofit organizations may include:

(1) An emergency feeding organization;
(2) An agricultural cooperative;
(3) A producer network or association;
(4) A community health organization;
(5) A public benefit corporation;
(6) An economic development corporation;
(7) A farmers' market;
(8) A community-supported agriculture program;
(9) A buying club;
(10) A SNAP-authorized retailer; and
(11) A State, local, or tribal agency.

(b) *Further eligibility requirements*—(1) *Related to projects.* To be eligible to receive a grant under this subpart, applicants must propose projects that:

(i) Have the support of the State SNAP agency;

(ii) Would increase the purchase of fruits and vegetables by low-income consumers participating in SNAP by providing incentives at the point of purchase;

(iii) Operate through authorized SNAP retailers and comply with all relevant SNAP regulations and operating requirements;

(iv) Agree to participate in the FINI comprehensive program evaluation;

(v) Ensure that the same terms and conditions apply to purchases made by individuals with SNAP benefits and with incentives under the FINI grants program as apply to purchases made by individuals who are not members of households receiving benefits as provided in § 278.2(b) of this title; and

(vi) Include effective and efficient technologies for benefit redemption systems that may be replicated in other States and communities.

(2) *Related to experience and other competencies.* To be eligible to receive a grant under this subpart, applicants must meet the following requirements:

(i) Have experience:

(A) In efforts to reduce food insecurity in the community, including food distribution, improving access to services, or coordinating services and programs; or

(B) With the SNAP program;

(ii) Demonstrate competency to implement a project, provide fiscal accountability, collect data, and prepare reports and other necessary documentation;

(iii) Secure the commitment of the State SNAP agency to cooperate with the project; and

(iv) Possess a demonstrated willingness to share information with researchers, evaluators (including the independent evaluator for the program), practitioners, and other interested parties, including a plan for dissemination of results to stakeholders.

(c) *Other, non-eligibility considerations.* Applicants are encouraged:

(1) To propose projects that will provide employees with important job skills; and

(2) To have experience the following areas:

(i) Community food work, particularly concerning small and medium-size farms, including the provision of food to people in low-income communities and the development of new markets in low-income communities for agricultural producers; and

(ii) Job training and business development activities for food-related activities in low-income communities.

(d) *Partnerships.* Applicants for a grant under this subpart are encouraged to seek and create partnerships with public or private, nonprofit or for-profit entities, including links with academic institutions (including minority-serving colleges and universities) or other appropriate professionals; community-based organizations; local government entities; PromiseZone lead applicant/organization or implementation partners; and StrikeForce area coordinators or partnering entities for the purposes of providing additional Federal resources and strengthening under-resourced communities. Only the applicant must meet the requirements specified in this section for grant eligibility. Project partners and collaborators need not meet the eligibility requirements.

§ 3430.1104 Project types and priorities.

(a) *FINI Pilot Projects (FPP).* FPPs are aimed at new entrants seeking funding for a project in the early stages of incentive program development.

(b) *FINI Projects (FP).* FPs are aimed at mid-sized groups developing incentive programs at the local or State level.

(c) *FINI Large Scale Projects (FLSP).* FLSPs are aimed at groups developing multi-county, State, and regional incentive programs with the largest target audience of all FINI projects.

§ 3430.1105 Funding restrictions.

(a) *Construction.* Funds made available for grants under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable.

§ 3430.1106 Matching requirements.

(a) *In general.* Recipients of a grant under this subpart must provide matching contributions on a dollar-for-dollar basis for all Federal funds awarded.

(b) *Source and type.* The non-Federal share of the cost of a project funded by a grant under this subpart may be provided by a State or local government or a private source. The matching requirement in this section may be met through cash or in-kind contributions, including third-party in-kind contributions fairly evaluated, including facilities, equipment, or services.

(c) *Limitation.* If an applicant partners with a for-profit entity, the non-Federal share that is required to be provided by the applicant may not include the services of an employee of that for-profit entity, including salaries paid or expenses covered by that employer.

(d) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

§ 3430.1107 Program requirements.

The term of a grant under this subpart may not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

§ 3430.1108 Priorities.

(a) *In general.* Except as provided in paragraph (b) of this section, in awarding grants under this subpart, NIFA will give priority to projects that:

(1) Maximize the share of funds used for direct incentives to participants;

(2) Use direct-to-consumer sales marketing;

(3) Demonstrate a track record of designing and implementing successful nutrition incentive programs that connect low-income consumers and agricultural producers;

(4) Provide locally or regionally produced fruits and vegetables;

(5) Are located in underserved communities; or

(6) Address other criteria as established by NIFA and included in the requests for applications.

(b) *Exception.* The priorities in paragraph (a) of this section that are given by NIFA will depend on the project type identified in § 3430.1104. Applicants should refer to the requests for applications to determine which priorities will be given to which project types.

Subpart Q—Veterinary Services Grant Program

SOURCE: 82 FR 15114, Mar. 27, 2017, unless otherwise noted.

§ 3430.1200 Applicability of regulations.

The regulations in this subpart apply to the Veterinary Services Grant Program authorized under section 7104 of the Agricultural Act of 2014 (Pub. L. 113–79).

§ 3430.1201 Purpose.

The purpose of VSGP is to administer a competitive grant program to develop, implement, and sustain veterinary services and relieve veterinarian shortage situations (see § 3430.1202 for definition) in the U.S., which includes insular areas (see § 3430.1202 for a definition of ''insular area''). A qualified entity may use funds provided by a grant awarded under this section to relieve veterinarian shortage situations and support veterinary services for any of the following purposes:

(a) To promote recruitment (including for programs in secondary schools), placement, and retention of veterinarians, veterinary technicians, students of veterinary medicine, and students of veterinary technology.

(b) To allow veterinary students, veterinary interns, externs, fellows, and residents, and veterinary technician students to cover expenses (other than the types of expenses described in 7 U.S.C. 3151a(c)(5)) to attend training programs in food safety or food animal medicine.

(c) To establish or expand accredited veterinary education programs (including faculty recruitment and retention), veterinary residency and fellowship programs, or veterinary internship and externship programs carried out in coordination with accredited colleges of veterinary medicine.

(d) To provide continuing education and extension, including veterinary telemedicine and other distance-based education, for veterinarians, veterinary technicians, and other health professionals needed to strengthen veterinary programs and enhance food safety.

(e) To provide technical assistance for the preparation of applications submitted to the Secretary for designation as a veterinarian shortage situation under 7 U.S.C. 3151a.

§ 3430.1202 Definitions.

The definitions applicable to the VSGP grants under this subpart include:

Citizen or national of the United States which means:

(1) A citizen or national of the United States, as defined in 8 U.S.C. 1401; or,

(2) A national of the United States, as defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

Practice of veterinary medicine means to diagnose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode including:

(1) The prescription, dispensing, administration, or application of any drug, medicine, biologic, apparatus, anesthetic, or other therapeutic or diagnostic substance or medical or surgical technique, or

(2) The use of complementary, alternative, and integrative therapies, or

(3) The use of any manual or mechanical procedure for reproductive management, or

(4) The rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to any of paragraphs (1), (2), (3), or (4) of this definition.

Qualified entity means an eligible entity (see § 3430.1203 for a list of eligible applicants for each project type) that carries out programs or activities that the Secretary determines will:

(1) Substantially relieve veterinarian shortage situations;

(2) Support or facilitate private veterinary practices engaged in public health activities; or

(3) Support or facilitate the practices of veterinarians who are providing or have completed providing services under an agreement entered into with the Secretary under 7 U.S.C. 3151a(a)(2).

Rural area is defined in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

Veterinarian means a U.S. citizen or national who has received a professional veterinary medicine degree from a college of veterinary medicine accredited by the AVMA Council on Education.

Veterinarian Shortage Situation means any of the following situations in which the Secretary, in accordance with the process in 7 CFR part 3431 subpart A, determines has a shortage of veterinarians:

(1) Geographical areas that the Secretary determines have a shortage of food supply veterinarians; and

(2) Areas of veterinary practice that the Secretary determines have a shortage of food supply veterinarians, such as food animal medicine, public health, animal health, epidemiology, and food safety.

Veterinary medicine means all branches and specialties included within the practice of veterinary medicine.

Veterinary Medicine Loan Repayment Program or VMLRP means the Veterinary Medicine Loan Repayment Program authorized by the National Veterinary Medical Service Act (7 U.S.C. 3151a).

§ 3430.1203 Eligibility.

(a) For Education, Extension, and Training projects, eligible entities are:

(1) A State, national, allied, or regional veterinary organization or specialty board recognized by the American Veterinary Medical Association;

(2) A college or school of veterinary medicine accredited by the American Veterinary Medical Association;

(3) A university research foundation or veterinary medical foundation;

(4) A department of veterinary science or department of comparative medicine accredited by the Department of Education;

(5) A State agricultural experiment station; or

(6) A State, local, or tribal government agency.

(b) For Rural Practice Enhancement projects, eligible entities are:

(1) A for-profit or nonprofit entity located in the United States that, or individual who, operates a veterinary clinic providing veterinary services, in a rural area, as defined in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)), and in a veterinarian shortage situation designated under the VMLRP. Eligible veterinarian shortage situation years will be specified in the request for application (RFA).

(2) [Reserved].

§ 3430.1204 Project types and priorities.

(a) *Education, Extension, and Training.* The purpose of the proposed activities must be to substantially relieve rural veterinarian shortage situations, or facilitate or support veterinary practices engaged in public health activities, in the U.S.

(b) *Rural practice enhancement.* The purpose will be to support the development and provision of veterinary services to substantially relieve designated rural veterinarian shortage situations in the U.S. Funds may be used to establish or expand veterinary practices, including:

(1) Equipping veterinary offices;

(2) Sharing in the reasonable overhead costs of such veterinary practices, as determined by the Secretary; or

(3) Establishing mobile veterinary facilities in which a portion of the facilities will address education or extension needs.

§ 3430.1205 Funding restrictions.

(a) *Construction.* Funds made available for grants under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility, including site grading and improvement, and architect fees.

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable for Education, Extension and Training grants. For Rural Practice Enhancement grants, indirect costs are not allowable; however, overhead costs may be requested, not to exceed 50 percent of the award.

§ 3430.1206 Matching requirements.

There are no matching requirements for grants under this subpart.

§ 3430.1207 Coordination preference.

In selecting recipients of Education, Extension and Training grants, preference will be given to applications providing documentation of coordination with other qualified entities.

§ 3430.1208 Special requirements for Rural Practice Enhancement grants.

(a) *Terms of service requirement.* Regardless of award amount, Rural Practice Enhancement (RPE) grant recipients must commit to spending three years mitigating the veterinarian service shortage applied for, at the full time equivalent percentage described in the shortage nomination forms corresponding to each designated shortage situation. Except in certain extenuating circumstances which NIFA determines to be beyond a grant recipient's control, the three-year term of service must be completed in accordance with all terms and conditions of the award agreement. In the event a recipient feels extenuating circumstances are preventing, or will prevent, him/her from meeting the service obligation, the grantee must contact NIFA for guidance.

(b) *Breach.* If a RPE grant recipient fails to complete the period of obligated service incurred under the service agreement, that recipient may be subject to repayment or partial repayment of the grant funds, with interest, to the United States.

(c) *Waiver.* The Secretary may grant a waiver of the repayment obligation for breach of contract if the Secretary determines that such qualified entity demonstrates extreme hardship or extreme need.

§ 3430.1209 Duration of awards.

The term of a grant under this subpart may not exceed 5 years. The duration of individual awards may vary as specified in the RFA and is subject to the availability of appropriations.

PART 3431—VETERINARY MEDICINE LOAN REPAYMENT PROGRAM

Subpart A—Designation of Veterinarian Shortage Situations

Sec.

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AUTHORITY: 7 U.S.C. 3151a; Pub. L. 106–107 (31 U.S.C. 6101 note).

SOURCE: 75 FR 20243, Apr. 19, 2010, unless otherwise noted.

Subpart A—Designation of Veterinarian Shortage Situations

§ 3431.1 Applicability of regulations.

This part establishes the process and procedures for designating veterinarian

shortage situations as well as the administrative provisions for the Veterinary Medicine Loan Repayment Program (VMLRP) authorized by the National Veterinary Medical Service Act (NVMSA), 7 U.S.C. 3151a.

§ 3431.2 Purpose.

The Secretary will follow the processes and procedures established in subpart A of this part to designate veterinarian shortage situations for the VMLRP. Applications for the VMLRP will be accepted from eligible veterinarians who agree to serve in one of the designated shortage situations in exchange for the repayment of an amount of the principal and interest of the veterinarian's qualifying educational loans. The administrative provisions for the VMLRP, including the application process, are established in subpart B of this part.

§ 3431.3 Definitions and acronyms.

(a) *General definitions.* As used in this part:

Act means the National Veterinary Medical Service Act, as amended.

Agency or NIFA means the National Institute of Food and Agriculture.

Department means the United States Department of Agriculture.

Food animal means the following species: Bovine, porcine, ovine/camelid, cervid, poultry, caprine, and any other species as determined by the Secretary.

Food supply veterinary medicine means all aspects of veterinary medicine's involvement in food supply systems, from traditional agricultural production to consumption.

Insular area means the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands of the United States.

NVMSA means the National Veterinary Medicine Service Act.

Practice of food supply veterinary medicine includes corporate/private practices devoted to food animal medicine, mixed animal medicine located in a rural area (at least 30 percent of practice devoted to food animal medicine), food safety, epidemiology, public health, animal health, and other public and private practices that contribute to the production of a safe and wholesome food supply.

Practice of veterinary medicine means to diagnose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode; including:

(1) The prescription, dispensing, administration, or application of any drug, medicine, biologic, apparatus, anesthetic, or other therapeutic or diagnostic substance or medical or surgical technique, or

(2) The use of complementary, alternative, and integrative therapies, or

(3) The use of any manual or mechanical procedure for reproductive management, or

(4) The rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to any of paragraphs (1), (2), (3), or (4) of this definition.

Rural area means any area other than a city or town that has a population of 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved has been delegated.

Service area means geographic area in which the veterinarian will be providing veterinary medical services.

State means any one of the fifty States, the District of Columbia, and the insular areas of the United States.

State animal health official or SAHO means the State veterinarian, or equivalent, who will be responsible for nominating and certifying veterinarian shortage situations within the State.

Veterinarian means a person who has received a professional veterinary medicine degree from a college of veterinary medicine accredited by the AVMA Council on Education.

Veterinarian shortage situation means any of the following situations in which the Secretary, in accordance with the process in subpart A of this part, determines has a shortage of veterinarians:

(1) Geographical areas that the Secretary determines have a shortage of food supply veterinarians; and

(2) Areas of veterinary practice that the Secretary determines have a shortage of food supply veterinarians, such as food animal medicine, public health, animal health, epidemiology, and food safety.

Veterinary medicine means all branches and specialties included within the practice of veterinary medicine.

Veterinary Medicine Loan Repayment Program or VMLRP means the Veterinary Medicine Loan Repayment Program authorized by the National Veterinary Medical Service Act.

(b) *Definitions applicable to Subpart B.*

Applicant means an individual who applies to and meets the eligibility criteria for the VMLRP.

Breach of agreement results when a participant fails to complete the service agreement obligation required under the terms and conditions of the agreement and will be subject to assessment of monetary damages and penalties as determined in the service agreement, unless a waiver has been granted or an exception applies.

Current payment status means that a qualified educational loan is not past due in its payment schedule as determined by the lending institution.

Debt threshold means the minimum amount of qualified student debt an individual must have, on their program eligibility date, in order to be eligible for program benefits, as determined by the Secretary.

Program eligibility date means the date on which an individual's VMLRP agreement is executed by the Secretary.

Program participant means an individual whose application to the VMLRP has been approved and whose service agreement has been accepted and signed by the Secretary.

Qualifying educational expenses means the costs of attendance of the applicant at a college of veterinary medicine accredited by the AVMA Council on Education, exclusive of the tuition and reasonable living expenses. Educational expenses may include fees, books, laboratory expenses and materials, as required by an accredited college or school of veterinary medicine as part of a Doctor of Veterinary Medicine degree program, or the equivalent. The program participant must submit sufficient documentation, as required by the Secretary, to substantiate the school requirement for the educational expenses incurred by the program participant.

Qualifying educational loans means loans that are issued by any Federal, State, or local government entity, accredited academic institution(s), and/or commercial lender(s) that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or the State in which the lender has its principal place of business. Loans must have been made for one or more of the following: School tuition, other qualifying educational expenses, or reasonable living expenses relating to the obtainment of a degree of Doctor of Veterinary Medicine from a college or school of veterinary medicine accredited by the AVMA Council on Education. Such loans must have documentation which is contemporaneous with the training received in a college or school of veterinary medicine. If qualifying educational loans are refinanced, the original documentation of the loan(s) will be required to be submitted to the Secretary to establish the contemporaneous nature of such loans.

Reasonable living expenses means the ordinary living costs incurred by the program participant while attending the college of veterinary medicine, exclusive of tuition and educational expenses. Reasonable living expenses must be incurred during the period of attendance and may include food and lodging expenses, insurance, commuting and transportation costs. Reasonable living expenses must be equal to or less than the sum of the school's estimated standard student budgets for living expenses for the degree of veterinary medicine for the year(s) during which the program participant was enrolled in the school. However, if the school attended by the program participant did not have a standard student budget or if a program participant requests repayment for living expenses which are in excess of the standard student budgets described in the preceding

sentence, the program participant must submit documentation, as required by the Secretary, to substantiate the reasonableness of living expenses incurred. To the extent that the Secretary determines, upon review of the program participant's documentation, that all or a portion of the living expenses are reasonable, these expenses will qualify for repayment.

Service agreement means the agreement, which is signed by an applicant and the Secretary for the VMLRP wherein the applicant agrees to accept repayment of qualifying educational loans and to serve in accordance with the provisions of NVMSA for a prescribed period of obligated service.

Termination means a waiver of the service obligation granted by the Secretary when compliance by the participant is impossible, would involve extreme hardship, or where enforcement with respect to the individual would be unconscionable (*see* breach of agreement).

Withdrawal means a request by a participant for withdrawal from participation in the VMLRP after signing the service agreement, but prior to VMLRP making the first quarterly payment on behalf of the participant. A withdrawal is without penalty to the participant and without obligation to the Program.

§ 3431.4 Solicitation of stakeholder input.

The Secretary will solicit stakeholder input on the process and procedures used to designate veterinarian shortage situations prior to the publication of the solicitation for nomination of veterinarian shortage situations. A notice may be published in the FEDERAL REGISTER, on the Agency's Web site, or other appropriate format or forum. This request for stakeholder input may include the solicitation of input on the administration of VMLRP and its impact on meeting critical veterinarian shortage situations. All comments will be made available and accessible to the public.

§ 3431.5 Solicitation of veterinarian shortage situations.

(a) *General.* The Secretary will follow the procedures described in this part to solicit veterinarian shortage situations as the term is defined in § 3431.3.

(b) *Solicitation.* The Secretary will publish a solicitation for nomination of veterinarian shortage situations in the FEDERAL REGISTER, on the Agency's Web site, or other appropriate format or forum.

(c) *Frequency.* Contingent on the availability of funds, the Secretary will normally publish a solicitation on an annual basis. However, the Secretary reserves the right to solicit veterinarian shortage situations every two or three years, as appropriate.

(d) *Content.* The solicitation will describe the nomination process, the review criteria and process, and include the form used to submit a nomination. The solicitation may specify the maximum number of nominations that may be submitted by each State animal health official.

(e) *Nominations.* Nominations shall identify the veterinarian shortage situation and address the criteria in the nomination form which may include the objectives of the position, the activities of the position, and the risk posed if the position is not secured.

(f) *Nominating Official.* The State animal health official in each State is the person responsible for submitting and certifying veterinarian shortage situations within the State to NIFA officials. It is strongly recommended that the State animal health official of each State involve the leading health animal experts in the State in the nomination process.

§ 3431.6 Review of nominations.

(a) *Peer panel.* State shortage situations nominations will be evaluated by a peer panel of experts in animal health convened by the Secretary. The panel will evaluate nominations according to the criteria identified in the solicitation. The panel will consider the objectives and activities of the veterinarian position in the veterinary service shortage situation and the risks associated with not securing or retaining the position and make a recommendation regarding each nomination.

(b) *Agency review.* The Secretary will evaluate the recommendations of the

peer panel and designate shortage situations for the VMLRP.

§ 3431.7 Notification and use of designated veterinarian shortage situations.

The Secretary will publish the designated veterinarian shortage situations on the Agency's Web site and will use the designated veterinarian shortage situations to solicit VMLRP loan repayment applications from individual veterinarians in accordance with subpart B of this part.

Subpart B—Administration of the Veterinary Medicine Loan Repayment Program

§ 3431.8 Purpose and scope.

(a) *Purpose.* The regulations of this subpart apply to the award of veterinary medicine loan repayments under the Veterinary Medicine Loan Repayment Program (VMLRP) authorized by the National Veterinary Medicine Service Act, 7 U.S.C. 3151a.

(b) *Scope.* Under the VMLRP, the Secretary enters into service agreements with veterinarians to pay principal and interest on education loans of veterinarians who agree to work in veterinary shortage situations for a prescribed period of time. In addition, program participants may enter into an agreement to provide services to the Federal government in emergency situations in exchange for salary, travel, per diem expenses, and additional amounts of loan repayment assistance. The purpose of the program is to assure an adequate supply of trained food animal veterinarians in shortage situations and provide USDA with a pool of veterinary specialists to assist in the control and eradication of animal disease outbreaks.

§ 3431.9 Eligibility to apply.

(a) *General.* To be eligible to apply to the VMLRP an applicant must:

(1) Have a degree of Doctor of Veterinary Medicine (DVM), or the equivalent, from a college of veterinary medicine accredited by the AVMA Council on Education;

(2) Have qualifying educational loan debt as defined in § 3431.3;

(3) Secure an offer of employment or establish and/or maintain a practice in a veterinary shortage situation, as determined by the Secretary in accordance with the procedures in subpart A of this part, within the time period specified in the VMLRP service agreement offer; and

(4) Provide certifications and verifications in accordance with § 3431.16.

(b) *Non-eligibility.* The following individuals are ineligible to apply to the VMLRP:

(1) An individual who owes an obligation for veterinary service to the Federal government, a State, or other entity under an agreement with such Federal, State, or other entity are ineligible for the VMLRP unless such obligation will be completely satisfied prior to the beginning of service under the VMLRP;

(2) An individual who has a Federal judgment lien against his/her property arising from Federal debt; and

(3) An individual who has total qualified debt that does not meet the debt threshold.

§ 3431.10 Eligibility to participate.

To be eligible to participate in the VMLRP, a participant must meet the following criteria:

(a) Meet the eligibility criteria of § 3431.9 for applying to the VMLRP;

(b) Be selected for participation by the Secretary pursuant to § 3431.12.

(c) Comply with all State and local regulations (including appropriate licensure where required) in the jurisdiction in which he or she proposes to practice;

(d) Be a citizen, national, or permanent resident of the United States;

(e) Sign a service agreement to provide veterinary services in one of the veterinarian shortage situations; and

(f) Comply with the terms and conditions of the Service Agreement.

§ 3431.11 Application.

Individuals who meet the eligibility criteria of § 3431.9 may submit an online program application or any other application process provided by the Secretary.

§ 3431.12 Selection of applicants.

(a) *Review of applications.* Upon receipt, applications for the VMLRP will be reviewed for eligibility and completeness by the appropriate staff as determined by the Secretary. Incomplete or ineligible applications will not be processed or reviewed.

(b) *Peer review.* (1) Applications for the VMLRP that are deemed eligible and complete will be referred to the VMLRP peer panel for peer review. In evaluating the application, reviewers are directed to consider the following components, as well as any other criteria identified in the RFA, and how they relate to the likelihood that the applicant will meet the terms and conditions of the VMLRP agreement, continue to serve in a veterinary shortage situation, or pursue a career in food supply veterinary medicine:

(i) Major or emphasis area(s) during formal post-secondary training (e.g., bachelors degree major, minor);

(ii) Major or emphasis area(s) during formal training for DVM/VMD degree;

(iii) Specialty training area/discipline (e.g., board certification or graduate degree);

(iv) Non-degree/non-board certification training or certifications (e.g., animal agrosecurity coursework and certifications);

(v) Applicant's personal statement;

(vi) Awards;

(vii) Letters or recommendation, if applicable; and

(viii) Other documentation or criteria, as specified in the RFA.

(2) Applicants will then be ranked based on their qualifications relative to the attributes of the shortage situation applied for.

§ 3431.13 Terms of loan repayment and length of service requirements.

(a) *Loan repayment.* For each year of obligated service in a veterinary shortage situation, as determined by the Secretary, with a minimum of 3 years (and maximum of 4 years) of obligated service, the Secretary may pay:

(1) An amount not exceeding $25,000 per year of a program participant's qualifying loans; and

(2) An additional amount not exceeding $5,000 per year of a program participant's qualifying loans, if the program participant has already been selected for participation in the VMLRP and agrees to enter into a one-year agreement for each year of service to provide up to 60 days of obligated service to the Federal government in animal health emergency situations, as determined by the Secretary, provided the shortage situation in which the participant has agreed to serve has been designated as suitable for the Federal obligated service.

(b) To maximize the number of agreements and to encourage qualified veterinarians to participate in the VMLRP, the Secretary may establish a loan repayment cap that differs from the cap established under paragraph (a)(1) and (a)(2) of this section when it is in the best interest of VMLRP. This will be identified in the RFA.

(c) The Secretary will determine the debt threshold in the RFA.

(d) Loan repayments will be made directly to the loan provider on a quarterly basis, starting with the end of the first quarter after the program eligibility date of the service agreement. Tax payments equal to 39 percent of the loan repayments will be credited directly to the participant's IRS (Federal tax) account simultaneously with each loan repayment.

(e) Once a service agreement has been signed by both parties, the Secretary will obligate such funds as will be necessary to ensure that sufficient funds will be available to make loan repayments and tax payments, as specified in the service agreement, for the duration of the period of obligated service. Reimbursements for tax liabilities in excess of the amount provided (not to exceed 39 percent of the amount of loan repayment or any other cap established by the Secretary) will be subject to the availability of funds. These additional tax payments, if available to the VMLRP participants, will be identified in the RFA and in the participant service agreement.

(f) Participants are required to keep payments current on all qualifying VMLRP loans.

(g) *Travel expenditures.* The VMLRP will not reimburse a program participant for expenses associated with traveling from the program participant's residence to the prospective practice

site for the purpose of evaluating such site or the expenses of relocating from the program participant's temporary or permanent residence to a practice site.

§ 3431.14 Priority.

Pursuant to NVMSA, the Secretary will give priority to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations, as determined by the Secretary. The Secretary may establish additional criteria in the RFA for assigning priority levels to veterinarian shortage situations nominated for award.

§ 3431.15 Qualifying loans.

(a) *General.* Loan repayments provided under the VMLRP may consist of payments on behalf of participating individuals of the principal and interest on qualifying educational loans received by the individual for attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine, or the equivalent, which loans were made for one or more of the following:

(1) Tuition expenses;

(2) All other reasonable educational expenses, as defined in this part and as determined by the Secretary; and

(3) Reasonable living expenses, as defined in this part and as determined by the Secretary.

(b) *Non-eligible loans.* The following loans are ineligible for repayment under the VMLRP:

(1) Loans not obtained from a bank, credit union, savings and loan association, not-for-profit organization, insurance company, school, and other financial or credit institution which is subject to examination and supervision in its capacity as lending institution by an agency of the United States or of the State in which the lender has its principal place of business;

(2) Loans for which supporting documentation is not available;

(3) Loans that have been consolidated with loans of other individuals, such as spouses or children;

(4) Loans or portions of loans obtained for educational or living expenses which exceed the standard of reasonableness as determined by the participant's standard school budget for the year in which the loan was made, and are not determined by the Secretary, to be reasonable based on additional documentation provided by the individual;

(5) Loans, financial debts, or service obligations incurred under another loan repayment or scholarship program, or similar programs, which provide loans, scholarships, loan repayments, or other awards in exchange for a future service obligation;

(6) Non-educational loans, including home equity loans; and

(7) Any loan in default, delinquent, or not in a current payment status.

§ 3431.16 Certifications and verifications.

(a) The application for the loan repayment program shall include a personal statement describing how the applicant would meet the requirements of:

(1) The veterinary service shortage situations as defined in the RFA;

(2) The eligibility criteria for application of section § 3431.9 of this part; and

(3) The selection priority of § 3431.14 of this part.

(b) The applicant shall provide sufficient documentation to establish that the applicant has qualifying loans as described in § 3431.15 of this part.

(c) The applicant shall provide sufficient documentation to establish that the applicant has the capacity to secure an offer of employment or establish and/or maintain a veterinary practice in a veterinary service shortage situation as defined in subpart A of this part.

(d) The applicant shall provide, if applicable, sufficient documentation to establish that the applicant is licensed to practice veterinary medicine in the jurisdiction in which the applicant has an offer of employment.

(e) The applicant shall provide, if applicable, the required documentation to establish whether the applicant receives payments under any other Federal, State, institutional, or private loan repayment programs.

(f) The applicant shall provide the required documentation to show that he/

she has completed, or is in the process of completing, the National Veterinary Accreditation Program (NVAP) if national accreditation is required for the veterinary shortage position for which the applicant has an offer of employment.

(g) The applicant shall provide authorization to the appropriate staff as designated by the Secretary to obtain a copy of the participant's credit report.

§ 3431.17 VMLRP service agreement offer.

The Secretary will make an offer to successful applicants to enter into an agreement with the Secretary to provide veterinary services under the VMLRP. As part of the offer, successful VMLRP applicants will be provided a specific period of time, as defined in the RFA, to secure an offer of employment or establish and/or maintain a veterinary practice in a veterinary shortage situation.

§ 3431.18 Service agreement.

(a) The service agreement shall be signed by the program participant and the Secretary after acceptance of the terms and conditions of the loan repayment program by the program participant.

(b) The service agreement shall specify the period of obligated service.

(c) The service agreement shall specify the amount of loan repayment to be paid for each year of obligated service.

(d) The service agreement shall contain a provision defining when a breach of the agreement by the program participant has occurred.

(e) The service agreement shall provide remedies for the breach of a service agreement by a program participant, including repayment or partial repayment of financial assistance received, with interest.

(f) The service agreement shall include provisions addressing the granting of a waiver by the Secretary in case of hardship.

(g) Payments under the service agreement do not exempt a program participant from the responsibility and/or liability for any loan(s) for which he or she is obligated, as the Secretary is not obligated to the lender/note holder for its commitment to the program participant.

(h) During the term of the service agreement, the program participant shall agree that the Secretary or the designated VMLRP service provider is authorized to verify the status of each loan for which the Secretary will be reimbursing the participant.

(i) The service agreement shall contain certifications, as determined by the Secretary.

(j) The service agreement shall contain provisions addressing the income tax liability of the program participant and the availability of reimbursement of taxes incurred as a result of an individual's participation in the VMLRP.

(k) *Renewal.* The service agreement will indicate whether the existing service agreement may be renewed. However, renewal applications are subject to peer review and approval, acceptance is not guaranteed, and the position must still be considered a veterinarian shortage situation at the time of application for renewal. The Secretary may request additional documentation in connection with the review and approval of a renewal application. The Secretary reserves the right not to offer renewals. Any requests for renewal applications will be solicited via the RFA.

(l) The service agreement shall contain participant reporting requirements (e.g., quarterly, annual, and/or close-out) to allow for program monitoring and evaluation.

§ 3431.19 Payment and tax liability.

(a) *Loan repayment.* Loan repayments pursuant to a service agreement are made directly to a participant's lender(s) by the Secretary or the VMLRP service provider. If there is more than one outstanding qualified educational loan, the Secretary will repay the loans in the following order, unless the Secretary determines significant savings to the program would result from paying loans in a different order of priority:

(1) Loans guaranteed by the U.S. Department of Education;

(2) Loans made or guaranteed by a State;

(3) Loans made by a School; and

(4) Loans made by other entities, including commercial loans.

(b) *Tax Liability Payments.* Tax payments equal to 39 percent of the total loan repayment amount will be credited directly to the participant's IRS (Federal tax) account simultaneously with each loan payment. The Secretary may make payments of an amount not to exceed 39 percent of the actual annual loan repayments made in a calendar year for all or part of the increased Federal, State, and local tax liability resulting from loan repayments received under the VMLRP. However, the Secretary may increase the cap, if appropriate. Supplementary payments for increased tax liability may be made for the actual amount of tax liability associated with the receipt of loan repayments under the VMLRP. Availability of these additional tax liability payments (*i.e.,* in excess of 39 percent or other approved cap) will be identified in the RFA and in the participant service agreement. Program participants wishing to receive tax liability payments will be required to submit their requests for such payments in a manner prescribed by the Secretary and must provide the Secretary with any documentation the Secretary determines is necessary to establish a program participant's increased tax liability. Tax liability payments in excess of 39 percent or other approved cap will be made on a reimbursement basis only.

(c) Under § 3431.19(a) and (b), the Secretary will make loan and tax liability payments to the extent appropriated funds are available for these purposes.

§ 3431.20 Administration.

The VMLRP will be administered by NIFA. NIFA may carry out this program directly or enter into agreements with another Federal agency or other service provider to assist in the administration of the VMLRP. However, the determination of the veterinarian shortage areas, peer review of individual VMLRP applications, and the overall VMLRP oversight and coordination will reside with the Secretary.

[75 FR 20243, Apr. 19, 2010, as amended at 79 FR 76001, Dec. 19, 2014]

§ 3431.21 Breach.

(a) *General.* If a program participant fails to complete the period of obligated service incurred under the service agreement, including failing to comply with the applicable terms and conditions of a waiver granted by the Secretary, the program participant must pay to the United States an amount as determined in the service agreement. Payment of this amount shall be made within 90 days of the date that the program participant failed to complete the period of obligated service, as determined by the Secretary.

(b) *Exceptions.* (1) A termination of service for reasons that are beyond the control of the program participant will not be considered a breach.

(2) A transfer of service from one shortage situation to another, if approved by the Secretary, will not be considered a breach.

(3) A call or order to active duty will not be considered a breach.

(c) The Secretary may renegotiate the terms of a participant's service agreement in the event of a transfer, termination or call to active duty pursuant to paragraph (b) of this section.

(d) *Amount of repayment.* The service agreement shall provide the method for the calculation of the amount owed by a program participant who has breached a service agreement.

(e) *Debt Collection.* Individuals in breach of a service agreement entered into under this part are considered to owe a debt to the United States for the amount of repayment. Any such debt will be collected pursuant to the Department's Debt Management regulations at 7 CFR part 3.

§ 3431.22 Waiver.

(a) A program participant may seek a waiver or suspension of the service or payment obligations incurred under this part by written request to the Secretary setting forth the bases, circumstances, and causes which support the requested action.

(b) The Secretary may waive any service or payment obligation incurred by a program participant whenever compliance by the program participant is impossible or would involve extreme hardship to the program participant

and if enforcement of the service or payment obligation would be against equity and good conscience.

(1) Compliance by a program participant with a service or repayment obligation will be considered impossible if the Secretary determines, on the basis of information and documentation as may be required:

(i) That the program participant suffers from a physical or mental disability resulting in the permanent inability of the program participant to perform the service or other activities which would be necessary to comply with the obligation; or

(ii) That the employment of the program participant has been terminated involuntarily for reasons unrelated to job performance.

(2) In determining whether compliance by a program participant with the terms of a service or repayment obligation imposes an extreme hardship, the Secretary may, on the basis of information and documentation as may be required, take into consideration the nature of the participant's personal problems and the extent to which these affect the participant's ability to perform the obligation.

(c) All requests for waivers must be submitted to the Secretary in writing.

(d) A program participant who is granted a waiver in accordance with this section will be notified by the Secretary in writing.

(e) Any obligation of a program participant for service or payment will be canceled upon the death of the program participant.

§ 3431.23 Service to Federal government in emergency situations.

(a) The Secretary may enter into agreements of 1 year duration with veterinarians who have service agreements for such veterinarians to provide services to the Federal Government in emergency situations, as determined by the Secretary, under terms and conditions specified in the agreement.

(b) Pursuant to a service agreement under this section, the Secretary shall pay an amount, in addition to the amount paid, as determined by the Secretary and specified in the agreement, of the principal and interest of qualifying educational loans of the veterinarians. This amount will be provided in the RFA.

(c) Agreements entered into under this paragraph shall include the following:

(1) A veterinarian shall not be required to serve more than 60 working days per year of the agreement.

(2) A veterinarian who provides service pursuant to the agreement shall receive a salary commensurate with the duties and shall be reimbursed for travel and per diem expenses as appropriate for the duration of the service.

§ 3431.24 Reporting requirements, monitoring, and close-out.

VMLRP participants will be required to submit periodic reports per the terms and conditions of their service agreements. In addition, the Secretary is responsible for ensuring that a VMLRP participant is complying with the terms and conditions of their service agreement, including any additional reporting or close-out requirements.

PART 3434—HISPANIC-SERVING AGRICULTURAL COLLEGES AND UNIVERSITIES CERTIFICATION PROCESS

Sec.

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APPENDIX A TO PART 3434—LIST OF AGRICULTURE-RELATED FIELDS
APPENDIX B TO PART 3434—LIST OF HSACU INSTITUTIONS, 2024–2025

AUTHORITY: 7 U.S.C. 3103.

SOURCE: 77 FR 25040, Apr. 27, 2012, unless otherwise noted.

§ 3434.1 Applicability of regulations.

This part establishes the process to certify and designate a group of eligible educational institutions as Hispanic-Serving Agricultural Colleges and Universities, as authorized by Section 7101 of the Food, Conservation,

and Energy Act of 2008 (FCEA), 7 U.S.C. 3103; Public Law 110–246.

§ 3434.2 Purpose.

The Secretary will follow the processes and criteria established in this regulation to certify and designate qualifying colleges and universities as HSACUs. Institutions designated as HSACUs will be eligible for five new programs authorized by Congress in section 7129 of the FCEA as well as for other ongoing NIFA programs for which HSACUs are now eligible (*e.g.*, integrated programs authorized by section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998). The five new programs include the HSACU Endowment Fund (formula-based), HSACU Institutional Capacity Building Grants Program (competitive), HSACU Extension Grants Program (competitive), HSACU Applied and Fundamental Research Grants Program (competitive), and HSACU Equity Grants Program (formula-based). The administrative provisions, including reporting requirements, for the HSACU Endowment Fund will be established in a separate part (7 CFR part 3437). The administrative provisions and reporting requirements for the other four new HSACU programs will be established as subparts in 7 CFR part 3430.

§ 3434.3 Definitions.

As used in this part:

Agency or NIFA means the National Institute of Food and Agriculture.

Agriculture-related fields means a group of instructional programs that are determined to be agriculture-related fields of study for HSACU eligibility purposes by a panel of National Program Leaders at the National Institute of Food and Agriculture.

Department means the United States Department of Agriculture.

Hispanic-serving Institution means an institution of higher education that:

(1) Is an eligible institution, as that term is defined at 20 U.S.C. 1101a; and

(2) Has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students, as reported to the U.S. Department of Education's Integrated Postsecondary Education Data System during the fall semester of the previous academic year.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved has been delegated.

§ 3434.4 Eligibility.

(a) *General.* To be eligible to receive designation as a HSACU, colleges and universities must:

(1) Qualify as Hispanic-serving Institutions; and

(2) Offer associate, bachelors, or other accredited degree programs in agriculture-related fields pursuant to § 3434.5.

(b) *Non-eligibility.* The following colleges and universities are ineligible for HSACU certification:

(1) 1862 land-grant institutions, as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601);

(2) Institutions that appear in the Lists of Parties Excluded from Federal financial and nonfinancial assistance and benefits programs (Excluded Parties List System);

(3) Institutions that are not accredited by a nationally recognized accredited agency or association; and

(4) Institutions with Hispanic students receiving less than 15% of the degrees awarded in agriculture-related programs over the two most recent completed academic years.

§ 3434.5 Agriculture-related fields.

(a) The Secretary shall use the Classification of Instructional Programs (CIP) coding system developed by the U.S. Department of Education's National Center for Education Statistics as the source of information for all existing instructional programs. This source is located at *http://nces.ed.gov/ipeds/cipcode*.

(b) A complete list of instructional programs deemed to be agriculture-related fields by the Secretary is provided in Appendix A to this part. This list will include the full six-digit CIP code and program title (or major) for each agriculture-related instructional program.

(c) The list of agriculture-related fields will be updated every five years

starting in 2015. However, the Secretary reserves the right to make changes at any time, if deemed appropriate and necessary.

(d) Any changes made in the CIP coding system by the U.S. Department of Education may result in a review or reevaluation of the list of agriculture-related fields by the Secretary.

§ 3434.6 Certification.

(a) Except as provided in paragraph (c) of this section, institutions that meet the eligibility criteria set forth in § 3434.4 and offer agriculture-related programs in accordance to the criteria set forth in § 3434.5 (see list in Appendix A to this part) shall be granted HSACU certification by the Secretary.

(b) A complete list of institutions with HSACU certification shall be provided in Appendix B to this part and posted on the NIFA Web site at *http://www.nifa.usda.gov*.

(c) Institutions with Hispanic students receiving less than 15% of degrees awarded in agriculture-related programs during the two most recent completed academic years shall not be granted HSACU certification by the Secretary.

(d) The list of HSACU institutions will be updated annually. However, the Secretary reserves the right to make changes at any time, when deemed appropriate and necessary.

§ 3434.7 Duration of certification.

(a) Except as provided in paragraphs (b) and (c) of this section, HSACU certification granted to an institution by the Secretary under this part shall remain valid for a period of one year.

(b) Failure to maintain eligibility status at any time during the HSACU certification period shall result in an immediate revocation of HSACU certification.

(c) Failure to remain in compliance with reporting requirements or adherence to any administrative or national policy requirements listed in award terms and conditions for any of the HSACU programs may result in a suspension or an immediate revocation of HSACU certification.

§ 3434.8 Appeals.

(a) An institution not listed as a HSACU in Appendix B to this part may submit an appeal to address denial of a certification made pursuant to this part. Such appeals must be in writing and received by the HSACU Appeals Officer, Policy and Oversight Division, National Institute of Food and Agriculture, U.S. Department of Agriculture, 800 9th Street SW., Washington, DC 20024 within 30 days following an announcement of institutions designated for certification. The Appeals Officer will consider the record of the decision in question, any further written submissions by the institution, and other available information and shall provide the appellant a written decision as promptly as circumstances permit. Such appeals constitute an administrative review of the decision appealed from and are not conducted as an adjudicative proceeding.

(b) Appeals involving an agriculture-related field of study must include the CIP code and program title of the field of study (or major).

(c) Appeals from non-HSI schools will not be considered.

(d) The NIFA Assistant Director of the Institute of Youth, Family, and Community shall serve as the Appeals Officer.

(e) In considering such appeals or administrative reviews, the Appeals Officer shall take into account alleged errors in professional judgment or alleged prejudicial procedural errors by NIFA officials. The Appeals Officer's decision may:

(1) Reverse the appealed decision;

(2) Affirm the appealed decision;

(3) Where appropriate, withhold a decision until additional materials are provided. The Appeals Officer may base his/her decision in whole or part on matters or factors not discussed in the decision appealed from.

(f) If the NIFA decision on the appeal is adverse to the appellant or if an appellant's request for review is rejected, the appellant then has the option of submitting a request to the NIFA Deputy Director for Food and Community Resources for further review.

(g) The request for further review must be submitted to Policy and Oversight Division, National Institute of

Food and Agriculture, U.S. Department of Agriculture, 800 9th Street SW., Washington, DC 20024 within 30 days following the Appeals Officer's decision.

(h) No institution shall be considered to have exhausted its administrative remedies with respect to the certification or decision described in this part until the NIFA Deputy Director for Food and Community Resources has issued a final administrative decision pursuant to this section. The decision of the NIFA Deputy Director for Food and Community Resources is considered final.

(i) Appellants shall be notified in writing of any decision made by NIFA in regards to the appeal.

§ 3434.9 Recertification.

(a) The recertification process for a HSACU remains the same as the process outlined in § 3434.6.

(b) There is no limit to the number of times an institution may be recertified as a HSACU.

(c) In the event an institution is not granted recertification due to noncompliance with reporting requirements for a HSACU program, the institution shall be notified in writing and given a period of 90 days from the date of notification to be in compliance.

§ 3434.10 Reporting requirements.

(a) The certification process does not involve any reporting requirements.

(b) Reporting requirements for HSACU programs (*e.g.*, HSACU Endowment Fund) shall be established in separate parts.

Appendix A to Part 3434—List of Agriculture-Related Fields

The instructional programs listed in this appendix are observed to be agriculture-related fields for HSACU eligibility purposes. Programs are listed in numerical order by their six-digit CIP code followed by the full title of the instructional program, as listed by the U.S. Department of Education.

01.0000, Agriculture, General
01.0101, Agricultural Business and Management, General
01.0102, Agribusiness/Agricultural Business Operations
01.0103, Agricultural Economics
01.0104, Farm/Farm and Ranch Management
01.0105, Agricultural/Farm Supplies Retailing and Wholesaling
01.0106, Agricultural Business Technology
01.0199, Agricultural Business and Management, Other
01.0201, Agricultural Mechanization, General
01.0204, Agricultural Power Machinery Operation
01.0205, Agricultural Mechanics and Equipment/Machine Technology
01.0299, Agricultural Mechanization, Other
01.0301, Agricultural Production Operations, General
01.0302, Animal/Livestock Husbandry and Production
01.0303, Aquaculture
01.0304, Crop Production
01.0306, Dairy Husbandry and Production
01.0307, Horse Husbandry/Equine Science and Management
01.0308, Agroecology and Sustainable Agriculture
01.0309, Viticulture and Enology
01.0399, Agricultural Production Operations, Other
01.0401, Agricultural and Food Products Processing
01.0504, Dog/Pet/Animal Grooming
01.0505, Animal Training
01.0507, Equestrian/Equine Studies
01.0508, Taxidermy/Taxidermist
01.0599, Agricultural and Domestic Animal Services, Other
01.0601, Applied Horticulture/Horticultural Operations, General
01.0603, Ornamental Horticulture
01.0604, Greenhouse Operations and Management
01.0605, Landscaping and Groundskeeping
01.0606, Plant Nursery Operations and Management
01.0607, Turf and Turfgrass Management
01.0608, Floriculture/Floristry Operations and Management
01.0699, Applied Horticulture/Horticultural Business Services, Other
01.0701, International Agriculture
01.0801, Agricultural and Extension Education Services
01.0802, Agricultural Communication/Journalism
01.0899, Agricultural Public Services, Other
01.0901, Animal Sciences, General
01.0902, Agricultural Animal Breeding
01.0903, Animal Health
01.0904, Animal Nutrition
01.0905, Dairy Science
01.0906, Livestock Management
01.0907, Poultry Science
01.0999, Animal Sciences, Other
01.1001, Food Science
01.1002, Food Technology and Processing
01.1099, Food Science and Technology, Other
01.1101, Plant Sciences, General
01.1102, Agronomy and Crop Science
01.1103, Horticultural Science

01.1104, Agricultural and Horticultural Plant Breeding
01.1105, Plant Protection and Integrated Pest Management
01.1106, Range Science and Management
01.1199, Plant Sciences, Other
01.1201, Soil Science and Agronomy, General
01.1202, Soil Chemistry and Physics
01.1203, Soil Microbiology
01.1299, Soil Sciences, Other
01.9999, Agriculture, Agriculture Operations, and Related Sciences, Other
03.0101, Natural Resources/Conservation, General
03.0103, Environmental Studies
03.0104, Environmental Science
03.0199, Natural Resources Conservation and Research, Other
03.0201, Natural Resources Management and Policy
03.0204, Natural Resources Economics
03.0205, Water, Wetlands, and Marine Resources Management
03.0206, Land Use Planning and Management/Development
03.0207, Natural Resources Recreation and Tourism
03.0208, Natural Resources Law Enforcement and Protective Services
03.0299, Natural Resources Management and Policy, Other
03.0301, Fishing and Fisheries Sciences and Management
03.0501, Forestry, General
03.0502, Forest Sciences and Biology
03.0506, Forest Management/Forest Resources Management
03.0508, Urban Forestry
03.0509, Wood Science and Wood Products/Pulp and Paper Technology
03.0510, Forest Resources Production and Management
03.0511, Forest Technology/Technician
03.0599, Forestry, Other
03.0601, Wildlife and Wildlands Science and Management
03.9999, Natural Resources and Conservation, Other
13.1301, Agricultural Teacher Education
14.0301, Agricultural/Biological Engineering and Bioengineering
19.0501, Foods, Nutrition, and Wellness Studies, General
19.0504, Human Nutrition
19.0505, Foodservice Systems Administration/Management
19.0599, Foods, Nutrition, and Related Services, Other
30.1901, Nutrition Sciences
30.3301, Sustainability Studies
51.0808, Veterinary/Animal Health Technology/Technician and Veterinary Assistant

APPENDIX B TO PART 3434—LIST OF HSACU INSTITUTIONS, 2024–2025

The institutions listed in this appendix are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting July 1, 2024 and ending July 1, 2025. Institutions are listed alphabetically under the state of the school's location, with the campus indicated where applicable.

ARKANSAS (1)

Cossatot Community College of the University of Arkansas

ARIZONA (12)

Arizona State University Campus Immersion
Arizona Western College
Chandler-Gilbert Community College
Cochise County Community College District
Estrella Mountain Community College
GateWay Community College
Glendale Community College
Mesa Community College
Phoenix College
Rio Salado College
Scottsdale Community College
South Mountain Community College

CALIFORNIA (97)

Allan Hancock College
American River College
Antelope Valley Community College District
Bakersfield College
Butte College
Cabrillo College
California Baptist University
California Lutheran University
California State Polytechnic University—Humboldt
California State Polytechnic University—Pomona
California State University—Bakersfield
California State University—Channel Islands
California State University—Chico
California State University—East Bay
California State University—Fresno
California State University—Fullerton
California State University—Long Beach
California State University—Los Angeles
California State University—Monterey Bay
California State University—Northridge
California State University—Sacramento
California State University—San Bernardino
California State University—San Marcos
California State University—Stanislaus
Chabot College
Chaffey College
Citrus College
Clovis Community College
College of San Mateo
College of the Canyons
College of the Desert
College of the Sequoias
Cosumnes River College

Crafton Hills College
Cuesta College
Cypress College
Diablo Valley College
East Los Angeles College
El Camino Community College District
Evergreen Valley College
Foothill College
Fresno City College
Fresno Pacific University
Fullerton College
Glendale Community College
Hartnell College
Imperial Valley College
Lake Tahoe Community College
Las Positas College
Long Beach City College
Los Angeles City College
Los Angeles Harbor College
Los Angeles Mission College
Los Angeles Pierce College
Los Angeles Southwest College
Los Angeles Trade Technical College
Madera Community College
Merced College
MiraCosta College
Modesto Junior College
Monterey Peninsula College
Moorpark College
Mt San Antonio College
Mt San Jacinto Community College District
Orange Coast College
Oxnard College
Palomar College
Pasadena City College
Porterville College
Reedley College
Rio Hondo College
Riverside City College
Saddleback College
Saint Mary's College of California
San Bernardino Valley College
San Diego Mesa College
San Diego Miramar College
San Diego State University
San Francisco State University
San Joaquin Delta College
San Jose City College
San Jose State University
Santa Barbara City College
Santa Monica College
Santa Rosa Junior College
Southwestern College
University of California-Irvine
University of California-Riverside
University of California-Santa Barbara
University of California-Santa Cruz
University of La Verne
University of Redlands
Ventura College
Victor Valley College
West Hills College-Coalinga
West Los Angeles College
Yuba College

COLORADO (6)

Colorado State University Pueblo
Community College of Denver
Metropolitan State University of Denver
Regis University
Trinidad State College
University of Northern Colorado

CONNECTICUT (2)

Gateway Community College
Norwalk Community College

FLORIDA (12)

Ana G. Mendez University
Broward College
Florida Atlantic University
Florida International University
Hillsborough Community College
Indian River State College
Miami Dade College
Nova Southeastern University
Palm Beach State College
Seminole State College of Florida
University of Central Florida
Valencia College

GEORGIA (2)

Dalton State College
Lanier Technical College

IDAHO (1)

College of Southern Idaho

ILLINOIS (6)

City Colleges of Chicago—Richard J Daley College
College of Lake County
Dominican University
Northeastern Illinois University
Triton College
University of Illinois Chicago

KANSAS (1)

Seward County Community College

NEVADA (4)

College of Southern Nevada
Nevada State College
Truckee Meadows Community College
University of Nevada-Las Vegas

NEW JERSEY (9)

Atlantic Cape Community College
Bergen Community College
Hudson County Community College
Kean University
Middlesex College
Montclair State University
New Jersey Institute of Technology
Passaic County Community College
William Paterson University of New Jersey

NEW MEXICO (9)

Central New Mexico Community College
Eastern New Mexico University—Main Campus

Eastern New Mexico University—Roswell Campus
New Mexico Highlands University
Northern New Mexico College
Santa Fe Community College
University of New Mexico—Los Alamos Campus
University of New Mexico—Main Campus
Western New Mexico University

NEW YORK (12)

CUNY City College
CUNY Hostos Community College
CUNY Hunter College
CUNY LaGuardia Community College
CUNY Lehman College
CUNY Queens College
CUNY Queensborough Community College
Manhattan College
Manhattanville College
Mercy College
Nassau Community College
Suffolk County Community College

NORTH CAROLINA (1)

Sampson Community College

OREGON (1)

Chemeketa Community College

PUERTO RICO (20)

Dewey University—Juana Díaz
Instituto Tecnologico de Puerto Rico—Recinto de Manati
Inter American University of Puerto Rico—Aguadilla
Inter American University of Puerto Rico—Arecibo
Inter American University of Puerto Rico—Barranquitas
Inter American University of Puerto Rico—Bayamon
Inter American University of Puerto Rico—Guayama
Inter American University of Puerto Rico—Ponce
Inter American University of Puerto Rico—San German
Pontifical Catholic University of Puerto Rico—Arecibo
Pontifical Catholic University of Puerto Rico—Ponce
Universal Technology College of Puerto Rico
Universidad Ana G. Mendez—Carolina Campus
Universidad Ana G. Mendez—Cupey Campus
Universidad Ana G. Mendez—Gurabo Campus
University of Puerto Rico—Arecibo
University of Puerto Rico—Humacao
University of Puerto Rico—Medical Sciences
University of Puerto Rico—Rio Piedras
University of Puerto Rico—Utuado

RHODE ISLAND (1)

Rhode Island College

TENNESSEE (1)

Southern Adventist University

TEXAS (35)

Amarillo College
Angelo State University
Austin College
Austin Community College District
Concordia University Texas
Dallas College
Houston Community College
Huston-Tillotson University
Lee College
Lone Star College System
Odessa College
Palo Alto College
Saint Edward's University
Sam Houston State University
South Plains College
Southwest Texas Junior College
Southwestern University
St. Mary's University
Sul Ross State University
Tarrant County College District
Texas A & M University-Corpus Christi
Texas A & M University-Kingsville
Texas State University
Texas Woman's University
The University of Texas at Arlington
The University of Texas at Austin
The University of Texas at El Paso
The University of Texas at San Antonio
The University of Texas Rio Grande Valley
Tyler Junior College
University of Houston
University of Houston-Clear Lake
University of North Texas
University of the Incarnate Word
Wayland Baptist University

VIRGINIA (1)

Northern Virginia Community College

WASHINGTON (6)

Big Bend Community College
Columbia Basin College
Heritage University
Perry Technical Institute
Wenatchee Valley College
Yakima Valley College

[89 FR 81293, Oct. 8, 2024]

PARTS 3435–3499 [RESERVED]

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

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PARTS 3500–3549 [RESERVED]

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 1480.

SOURCE: 61 FR 59779, Nov. 22, 1996, unless otherwise noted.

Subpart A—General

§ 3550.1 Applicability.

This part sets forth policies for the direct single family housing loan programs operated by the Rural Housing Service (RHS) of the U.S. Department of Agriculture (USDA). It addresses the requirements of sections 502 and 504 of the Housing Act of 1949, as amended, and includes policies regarding both loan and grant origination and servicing. Procedures for implementing these regulations can be found in program handbooks, available in any Rural Development office. Any provision on the expenditure of funds under this part is contingent upon the availability of funds.

§ 3550.2 Purpose.

The purpose of the direct RHS single family housing loan programs is to provide low- and very low-income people who will live in rural areas with an opportunity to own adequate but modest, decent, safe, and sanitary dwellings and related facilities. The section 502 program offers persons who do not currently own adequate housing, and who cannot obtain other credit, the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas. The section 504 program offers loans to very low-income homeowners who cannot obtain other credit to repair or rehabilitate their properties. The section 504 program also offers grants to homeowners age 62 or older who cannot obtain a loan to correct health and safety hazards or to make the unit accessible to household members with disabilities.

§ 3550.3 Civil rights.

RHS will administer its programs fairly, and in accordance with both the letter and the spirit of all equal opportunity and fair housing legislation and applicable executive orders. Loans, grants, services, and benefits provided under this part shall not be denied to any person based on race, color, national origin, sex, religion, marital status, familial status, age, physical or mental disability, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). All activities under this part shall be accomplished in accordance with the Fair Housing Act (42 U.S.C. 3601–3620), Executive Order 11246, and Executive Order 11063, as amended by Executive Order 12259, as applicable. The civil rights compliance requirements for RHS are in 7 CFR part 1901, subpart E.

§ 3550.4 Reviews and appeals.

Whenever RHS makes a decision that is adverse to a participant, RHS will provide the participant with written notice of such adverse decision and the participant's rights to a USDA National Appeals Division hearing in accordance with 7 CFR part 11. Any adverse decision, whether appealable or non-appealable may be reviewed by the next-level RHS supervisor.

§ 3550.5 Environmental requirements.

(a) *Policy*. RHS will consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes. RHS will take into account potential environmental impacts of proposed projects by working with RHS applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program's goals in a manner that will protect, enhance, and restore environmental quality.

(b) *Regulatory references.* Processing or servicing actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970, and 7 CFR part 1924, which addresses lead-based paint.

[61 FR 59779, Nov. 22, 1996, as amended at 81 FR 11048, Mar. 2, 2016]

§ 3550.6 State law or State supplement.

State and local laws and regulations, and the laws of federally recognized Indian tribes, may affect RHS implementation of certain provisions of this regulation, for example, with respect to the treatment of liens, construction, or environmental policies. Supplemental

guidance may be issued in the case of any conflict or significant differences.

§ 3550.7 Demonstration programs.

From time to time, RHS may authorize limited demonstration programs. The purpose of these demonstration programs is to test new approaches to offering housing under the statutory authority granted to the Secretary. Therefore, such demonstration programs may not be consistent with some of the provisions contained in this part. However, any program requirements that are statutory will remain in effect. Demonstration programs will be clearly identified as such.

§ 3550.8 Exception authority.

An RHS official may request, and the Administrator or designee may make, an exception to any requirement or provision of this part or address any omission of this part that is consistent with the applicable statute if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

§ 3550.9 Conflict of interest.

(a) *Objective.* It is the objective of RHS to maintain the highest standards of honesty, integrity, and impartiality by employees. To reduce the potential for employee conflict of interest, all processing, approval, servicing, or review activity will be conducted in accordance with 7 CFR part 1900, subpart D by RHS employees who:

(1) Are not themselves the applicant or borrower;

(2) Are not members of the family or close known relatives of the applicant or borrower;

(3) Do not have an immediate working relationship with the applicant or borrower, the employee related to the applicant or borrower, or the employee who would normally conduct the activity; or

(4) Do not have a business or close personal association with the applicant or borrower.

(b) *Applicant or borrower responsibility.* The applicant or borrower must disclose any known relationship or association with an RHS employee when such information is requested.

(c) *RHS employee responsibility.* An RHS employee must disclose any known relationship or association with a recipient, regardless of whether the relationship or association is known to others. RHS employees or members of their families may not purchase a Real Estate Owned (REO) property, security property from a borrower, or security property at a foreclosure sale. Loan closing agents who have been involved with a particular property, as well as members of their families, are also precluded from purchasing such properties.

[61 FR 59779, Nov. 22, 1996; 61 FR 65266, Dec. 11, 1996; 75 FR 59060, Sept. 27, 2010]

§ 3550.10 Definitions.

Acceleration. Demand for immediate repayment of the entire balance of a debt if the security instruments are breached.

Adjusted income. Used to determine whether an applicant is income-eligible. Adjusted income provides for deductions to account for varying household circumstances and expenses. See § 3550.54 for a complete description of adjusted income.

Adjustment. An agreement to release a debtor from liability generally upon receipt of an initial lump sum representing the maximum amount the debtor can afford to pay and periodic additional payments over a period of up to 5 years.

Agency-approved intermediary. An affordable housing nonprofit, public agency, or State Housing Finance Agency approved by RHS to perform quality assurance reviews on packages prepared by Agency-certified loan application packagers through their qualified employers. See § 3550.75 for further details.

Agency-certified loan application packager. An individual certified by RHS under this subpart to package section 502 loan applications while employed (either as an employee or as an independent contractor) by a qualified employer. See § 3550.75 for further details.

Amortized payment. Equal monthly payments under a fully amortized mortgage loan that provides for the

scheduled payment of interest and principal over the term of the loan.

Applicant. An adult member of the household who will be responsible for repayment of the loan.

Assumption. The procedure whereby the transferee becomes liable for all or part of the debt of the transferor.

Borrower. A recipient who is indebted under the section 502 or 504 programs.

Cancellation. A decision to cease collection activities and release the debtor from personal liability for any remaining amounts owed.

Compromise. An agreement to release a debtor from liability upon receipt of a specified lump sum that is less than the total amount due.

Conditional commitment. A determination that a proposed dwelling will qualify as a program-eligible property. The conditional commitment does not reserve funds, nor does it ensure that a program-eligible applicant will be available to buy the dwelling.

Cosigner. An individual or an entity that joins in the execution of a promissory note to compensate for any deficiency in the applicant's repayment ability. The cosigner becomes jointly liable to comply with the terms of the promissory note in the event of the borrower's default, but is not entitled to any interest in the security or borrower rights.

Cross-collateralized loan. A situation in which a single property secures both RHS and Farm Service Agency loans.

Custodial property. Borrower-owned real property that serves as security for a loan that has been taken into possession by the Agency to protect the Government's interest.

Daily simple interest. A method of establishing borrower payments based on daily interest charged on the outstanding principal balance of the loan. Principal is reduced by the amount of payment in excess of the accrued interest.

Dealer-contractor. A person, firm, partnership, or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes. A person, firm, partnership, or corporation not capable of providing the complete service is not eligible to be a dealer-contractor.

Debt instrument. A collective term encompassing obligating documents for a loan, including any applicable promissory note, assumption agreement, or grant agreement.

Deferred mortgage payments. A subsidy available to eligible, very low-income borrowers of up to 25 percent of their principal and interest payments at 1 percent for up to 15 years. The deferred amounts are subject to recapture on sale or nonoccupancy.

Deficient housing. A dwelling that lacks complete plumbing; lacks adequate heating; is dilapidated or structurally unsound; has an overcrowding situation that will be corrected with loan funds; or that is otherwise uninhabitable, unsafe, or poses a health or environmental threat to the occupant or others.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a family and who is 62 years of age or older, or who is disabled, and is an applicant or borrower;

(2) Two or more persons who are living together, at least 1 of whom is age 62 or older, or disabled, and who is an applicant or borrower; or

(3) In the case of a family where the deceased borrower or spouse was at least 62 years old or disabled, the surviving household member shall continue to be classified as an elderly family for the purpose of determining adjusted income, even though the surviving members may not meet the definition of elderly family on their own, *provided:*

(i) They occupied the dwelling with the deceased family member at the time of the death;

(ii) If one of the surviving family members is the spouse of the deceased family member, the family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of the death of the deceased family member, the dwelling was financed under title V of the Housing Act of 1949, as amended.

Escrow account. An account to which the borrower contributes monthly payments to cover the anticipated costs of

real estate taxes, hazard and flood insurance premiums, and other related costs.

Existing dwelling or unit. A dwelling or unit that has either been previously owner-occupied or has been completed for more than 1 year as evidenced by an occupancy permit, certificate of occupancy or similar document issued by the local authority.

False information. Information that the recipient knew was incorrect or should have known was incorrect that was provided or omitted for the purposes of obtaining assistance for which the recipient was not eligible.

Full-time student. A person who carries at least the minimum number of credit hours considered to be full-time by college or vocational school in which the person is enrolled.

Hazard. A condition of the property that jeopardizes the health or safety of the occupants or members of the community, that does not make it unfit for habitation. (See also the definition of major hazard in this section.)

Household. All persons expected to be living in the dwelling, except for live-in aids, foster children, and foster adults.

Housing Act of 1949, as amended. The Act which provides the authority for the direct single family housing programs. It is codified at 42 U.S.C. 1471 *et seq.*

HUD. The U.S. Department of Housing and Urban Development.

Inaccurate information. Incorrect information inadvertently provided, used, or omitted without the intent to obtain benefits for which the recipient was not eligible.

Indian reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments, the titles to which have not been extinguished, if such allotments are subject to the jurisdiction of a federally recognized Indian tribe.

Interest credit. A payment subsidy available to certain eligible section 502 borrowers that reduces the effective interest rate of a loan (see 3550.68(d)). Borrowers receiving interest credit will continue to receive it on all current and future loans for as long as they remain eligible for and continue to receive a subsidy. Borrowers who cease to be eligible for interest credit can never receive interest credit again, but may receive payment assistance if they again qualify for a payment subsidy.

Junior lien. A security instrument or a judgment against the security property to which the RHS debt instrument is superior.

Legal alien. For the purposes of this part, legal alien refers to any person lawfully admitted to the country who meets the criteria in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

Leveraged loan. An affordable housing product loan or grant to an Agency borrower property, closed simultaneously with an RHS loan. Affordable leveraged loans are characterized by long term (not less than 30 years), amortized payments with a note interest rate equal to or less than 3 percent .

Live-in aide. A person who lives with an elderly or disabled person and is essential to that person's care and well-being, not obligated for the person's support, and would not be living in the unit except to provide the support services.

Low income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

Major hazard. A condition so severe that it makes the property unfit for habitation. (See also the definition of hazard in this section.)

Manufactured home. A structure that is built to Federal Manufactured Home Construction and Safety Standards established by HUD and found at 24 CFR part 3280. It is transportable in 1 or more sections, which in the traveling mode is 10-body feet (3.048 meters) or more in width, and when erected on site is 400 or more square feet (37.16 square meters), and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed

and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping, and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. A permanent foundation is required.

Market value. The value of the property as determined by a current appraisal, RHS may authorize the use of a Broker's Price Opinion or similar instrument to determine market value in limited servicing situations.

Mobile home. A manufactured unit often referred to as a ''trailer,'' designed to be used as a dwelling, but built prior to the enactment of the Housing and Community Development Act of 1980 (Pub. L. 96–399) enacted October 8, 1980.

Moderate income. An adjusted income that does not exceed the moderate income limit for the guaranteed single family housing loan program authorized by Section 502(h) of the Housing Act of 1949, as amended.

Modest housing. A property that is considered modest for the area, has a market value that does not exceed the applicable maximum loan limit as established by RHS in accordance with § 3550.63, and is not designed for income producing activities. Existing properties with in-ground pools may be considered modest; however, in-ground pools with new construction or with properties which are purchased new are prohibited.

Modular or panelized home. Housing, constructed of one or more factory-built sections or panels, which, when completed, meets or exceeds the requirements of the recognized development standards (model building codes) for site built housing, and which is designed to be permanently connected to a site-built foundation.

Moratorium. A period of up to 2 years during which scheduled payments are not required, but are subject to repayment at a later date.

Mortgage. A form of security instrument or consensual lien on real property including a real estate mortgage or a deed of trust.

National average area loan limit. Across the nation, the average area loan limit as specified in § 3550.63(a). The national average is considered when determining the maximum packaging fee permitted under the certified loan application packaging process under the section 502 program.

Net family assets. The value of assets available to a household that could be used towards housing costs. Net family assets are considered in the calculation of annual income and are used to determine whether the household must make additional cash contributions to improve or purchase the property.

Net recovery value. The market value of the security property minus anticipated expenses of liquidation, acquisition, and sale as determined by RHS.

New dwelling or unit. A dwelling that is to be constructed, or a dwelling that is less than 1 year old as evidenced by an occupancy permit, certificate of occupancy or similar document issued by the local authority and has never been occupied.

Nonprogram (NP) interest rate. The interest rate offered by RHS for loans made on NP terms.

NP property. Property that does not meet the program eligibility requirements outlined in §§ 3550.56 and 3550.57.

NP terms. Credit terms available from RHS when the applicant or property is not program-eligible.

Offset. Deductions to pay a debt owed to RHS from a borrower's retirement benefits, salary, income tax refund, or payments from other federal agencies to the borrower. Deductions from retirement benefits and salary generally apply only to current and former federal employees.

Participant. For the purpose of reviews and appeals, a participant is any individual or entity who has applied for, or whose right to participate in or receive a payment, loan, or other benefit is affected by an RHS decision.

Payment assistance. A payment subsidy available to eligible section 502 borrowers that reduces the effective interest rate of a loan (see § 3550.68(c)). Borrowers eligible for a payment subsidy receive payment assistance unless they are currently eligible for and receive interest credit. There are two methods of payment assistance. Payment assistance method 1 is found at 3550.68(c)(2). Payment assistance method 2 is found at 3550.68(c)(1).

Payment subsidy. A general term for subsidies which reduce the borrower's scheduled payment. It refers to either payment assistance or interest credit.

Person with disability. Any person who has a physical or mental impairment that substantially limits one or more major life activities, including functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, has a record of such an impairment, or is regarded as having such an impairment.

PITI ratio. The amount paid by the borrower for principal, interest, taxes, and insurance (PITI), divided by repayment income.

Principal reduction attributed to subsidy (PRAS). Accelerated principal reduction that can occur when a borrower receives a reduced interest rate through a payment subsidy.

Principal residence. The home domicile physically occupied by the owner on a permanent basis (*i.e.*, lives there for the majority of the year and is the address of record for such activities as Federal income tax reporting, voter registration, occupational licensing, etc.).

Prior lien. A security instrument or a judgment against the security property that is superior to the RHS debt instrument.

Program-eligible applicant. Any applicant meeting the eligibility requirements described in § 3550.53.

Program-eligible property. A property eligible to be financed under this part, as determined by the criteria listed in §§ 3550.56 through 3550.59.

Program terms. Credit terms that are available only to program-eligible applicants for program-eligible properties.

Property. The land, dwelling, and related facilities for which the applicant will use RHS assistance.

Protective advances. Costs incurred by the Agency to protect the security interest of the Government that are charged to the borrower's account.

Qualified employer. An affordable housing nonprofit organization, public agency, tribal housing authority, or State Housing Finance Agency that meets the requirements outlined in § 3550.75(b)(2) and is involved in the certified loan application packaging process under the section 502 program.

Real estate taxes. Taxes and the annual portion of assessments estimated to be due and payable on the property, reduced by any available tax exemption.

Recapture amount. An amount of subsidy to be repaid by the borrower upon disposition or nonoccupancy of the property.

Recipient. Any applicant, borrower, or grant recipient who applies for or receives assistance under the section 502 or 504 programs.

REO. The acronym for ''Real Estate Owned.'' It refers to property for which RHS holds title.

Repayment income. Used to determine whether an applicant has the ability to make monthly loan payments. Repayment income includes amounts excluded for the purpose of determining adjusted income. See § 3550.54 for a complete description.

RHS. The Rural Housing Service of the U.S. Department of Agriculture, or its successor agency, formerly the Rural Housing and Community Development Service (RHCDS), a successor agency to the Farmers Home Administration (FmHA).

RHS employee. Any employee of RHS, or any employee of the Rural Development mission area who carries out grant or loan origination or servicing functions for the section 502 or 504 programs.

RHS interest rate. The unsubsidized interest rate offered by RHS for loans made on program terms.

Rural area. An area defined in section 520 of the Housing Act of 1949, as amended.

Rural Development. A mission area within USDA which includes RHS, Rural Utilities Service (RUS), and Rural Business-Cooperative Service (RBS).

Scheduled payment. The monthly or annual installment on a promissory note plus escrow (if required), as modified by any payment subsidy agreement, delinquency workout agreement, other documented agreements between RHS and the borrower, or protective advances.

Secured loan. A loan that is collateralized by property so that in

the event of a default on the loan, the property may be sold to satisfy the debt.

Security property. All the property that serves as collateral for an RHS loan.

Subsidy. Interest credit, payment assistance, or deferred mortgage assistance received by a borrower under the section 502 or 504 programs.

Total debt ratio. The amount paid by the borrower for PITI and any recurring monthly debt, divided by repayment income.

Unauthorized assistance. Any loan, payment subsidy, deferred mortgage payment, or grant for which there was no regulatory authorization or for which the recipient was not eligible.

U.S. citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

Unsecured loan. A loan evidenced only by the borrower's promissory note.

Value appreciation. The current market value of the property minus: the balance due prior lienholders, the unpaid balance of the RHS debt, unreimbursed closing costs (if any), principal reduction, the original equity (if any) of the borrower, and the value added by capital improvements.

Very low-income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

Veterans' preference. A preference extended to a veteran applying for a loan or grant under this part, or the families of deceased servicemen, who meet the criteria in 42 U.S.C. 1477.

[61 FR 59779, Nov. 22, 1996; 61 FR 65266, Dec. 11, 1996, as amended at 67 FR 78329, Dec. 24, 2002; 70 FR 6552, Feb. 8, 2005; 72 FR 73255, Dec. 27, 2007; 73 FR 49592, Aug. 22, 2008; 79 FR 74016, Dec. 15, 2014; 80 FR 23678, Apr. 29, 2015; 84 FR 29038, June 21, 2019; 87 FR 6770, Feb. 7, 2022; 90 FR 203, Jan. 3, 2025]

§ 3550.11 State Director assessment of homeownership education.

(a) State Directors will assess the availability of certified homeownership education in their respective states on an as-needed basis but at a minimum every three years and maintain an updated listing of providers and their reasonable costs.

(b) The order of preference for homeownership education formats will be determined by the Agency based on factors such as industry practice and availability.

(c) Homeownership education must include a letter or certificate of completion and be provided by homeownership education counselors that are certified by any of the following:

(1) The Department of Housing and Urban Development (HUD);

(2) NeighborWorks America (NWA);

(3) The National Federation of Housing Counselors (NFHC);

(4) National American Indian Housing Council (NAIHC); or

(5) The State Housing Finance Agency or other qualified organization approved by the State Director.

(d) The provider will issue a letter or certificate of completion to document that the borrower has satisfactory knowledge of these minimum topics:

(1) Preparing for homeownership (evaluate readiness to go from rental to homeownership),

(2) Budgeting (pre and post-purchase),

(3) Credit counseling,

(4) Shopping for a home,

(5) Lender differences (predatory lending),

(6) Obtaining a mortgage (mortgage process, different types of mortgages),

(7) Loan closing (closing process, documentation, closing costs),

(8) Post-occupancy counseling (delinquency and foreclosure prevention),

(9) Life as a homeowner (homeowner warranties, maintenance and repairs),

(e) The provider may tailor the homeownership education training to the needs of the borrower to ensure satisfactory knowledge of the topics listed in paragraph (d) of this section.

[72 FR 5156, Feb. 5, 2007, as amended at 87 FR 6770, Feb. 7, 2022]

§§ 3550.12–3550.49 [Reserved]

§ 3550.50 OMB control number.

The information collection requirements contained in this regulation

have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002]

Subpart B—Section 502 Origination

§ 3550.51 Program objectives.

Section 502 of the Housing Act of 1949, as amended authorizes the Rural Housing Service (RHS) to provide financing to help low- and very low-income persons who cannot obtain credit from other sources obtain adequate housing in rural areas. Resources for the section 502 program are limited, and therefore, applicants are required to use section 502 funds in conjunction with funding or financing from other sources, if feasible. Sections 3550.52 through 3550.73 set forth the requirements for originating loans on program terms. Section 3550.74 describes the differences for originating loans on non-program (NP) terms.

§ 3550.52 Loan purposes.

Section 502 funds may be used to buy, build, rehabilitate, improve, or relocate an eligible dwelling and provide related facilities for use by the borrower as a permanent residence. In limited circumstances section 502 funds may be used to refinance existing debt.

(a) *Purchases from existing RHS borrowers.* To purchase a property currently financed by an RHS loan, the new borrower will assume the existing RHS indebtedness or receive new loan funds as determined by the Agency. The Agency will periodically determine whether assumptions or new loans are appropriate on a program wide basis based on the best interest of the government, taking into account factors such as funding availability and staff resources. Regardless of the method, loan funds may be used for eligible costs as defined in paragraph (d) of this section or to permit a remaining borrower to purchase the equity of a departing co-borrower.

(b) *Refinancing non-RHS loans.* Debt from an existing non-RHS loan may be refinanced if the existing debt is secured by a lien against the property, RHS will have a first lien position on the security property after refinancing, and:

(1) In the case of loans for existing dwellings, if:

(i) Due to circumstances beyond the applicant's control, the applicant is in danger of losing the property, the debt is over $5,000, and the debt was incurred for eligible program purposes prior to loan application or was a protective advance made by the mortgagee for items covered by the loan to be refinanced, including accrued interest, insurance premiums, real estate tax advances, or preliminary foreclosure costs; or

(ii) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies and make the dwelling decent, safe and sanitary and refinancing is necessary for the borrower to show repayment ability, regardless of the delinquency.

(2) In the case of loans for a building site without a dwelling, if:

(i) The debt to be refinanced was incurred for the sole purpose of purchasing the site;

(ii) The applicant is unable to acquire adequate housing without refinancing; and

(iii) The RHS loan will include funds to construct an appropriate dwelling on the site for the applicant's use.

(3) Debts incurred after the date of RHS loan application but before closing may be refinanced if the costs are incurred for eligible loan purposes and any construction work conforms to the standards specified in this part.

(c) *Refinancing RHS debt.* An existing RHS loan may be refinanced in accordance with § 3550.204 to allow the borrower to receive payment assistance. In addition, depending on the availability of funds and program priorities

as determined by RHS, an existing RHS loan and the related subsidy recapture may be refinanced as allowed under § 3550.201.

(d) *Eligible costs.* Improvements financed with loan funds must be on land which, after closing, is part of the security property. In addition to acquisition, construction, repairs, or the cost of relocating a dwelling, loan funds may be used to pay for:

(1) Reasonable expenses related to obtaining the loan, including legal, architectural and engineering, technical, title clearance, and loan closing fees; and appraisal, surveying, environmental, tax monitoring, and other technical services; and personal liability insurance fees for Mutual Self-Help borrowers.

(2) The cost of providing special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(3) Reasonable connection fees, assessments, or the pro rata installment costs for utilities such as water, sewer, electricity, and gas for which the borrower is liable and which are not paid from other funds.

(4) Reasonable and customary lender charges and fees if the RHS loan is being made in combination with a leveraged loan.

(5) Real estate taxes that are due and payable on the property at the time of closing and for the establishment of escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(6) Packaging fees resulting from the certified loan application packaging process outlined in § 3550.75. The Agency will determine the limit, based on factors such as the level of service provided and the prevailing cost to provide the service, and such cap will not exceed two percent of the national average area loan limit. Nominal packaging fees not resulting from the certified loan application process are an eligible cost provided the fee does not exceed a limit determined by the Agency based on the level and cost of service factors, but no greater than one half percent of the national average area loan limit; the loan application packager is a nonprofit, tax exempt partner that received an exception to all or part of the requirements outlined in § 3550.75 from the applicable Rural Development State Director; and the packager gathers and submits the information needed for the Agency to determine if the applicant is eligible along with a fully completed and signed uniform residential loan application.

(7) Purchasing and installing essential equipment in the dwelling, including ranges, refrigerators, washers or dryers, if these items are normally sold with dwellings in the area and if the purchase of these items is not the primary purpose of the loans.

(8) Purchasing and installing approved energy savings measures and approved furnaces and space heaters that use fuel that is commonly used, economical, and dependably available.

(9) Providing site preparation, including grading, foundation plantings, seeding or sodding, trees, walks, yard fences, and driveways to a building site.

(10) Reasonable fees for homeownership education as determined by the State Director under § 3550.11 of this subpart. Such fees may be added to the loan amount in excess of the area loan limit and appraised value of the house.

(e) *Loan restrictions.* Loan funds may not be used to:

(1) Purchase an existing manufactured home (unless the unit was constructed in conformance with Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by both an affixed HUD Certification label and HUD Data Plate on or after a date determined by the Agency, considering factors such as industry standards and practices; and has not been previously installed on a different homesite or had any alterations since construction in the factory (except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials), or for any other purposes prohibited in § 3550.73(b).

(2) Purchase or improve income-producing land or buildings to be used principally for income-producing purposes.

(3) Pay fees, commissions, or charges to for-profit entities related to loan

packaging or referral of prospective applicants to RHS.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002; 72 FR 5157, Feb. 5, 2007; 80 FR 23678, Apr. 29, 2015; 87 FR 6771, Feb. 7, 2022; 90 FR 203, Jan. 3, 2025]

§ 3550.53 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable low-income limit for the area, and at closing, must not exceed the applicable moderate-income limit for the area (see § 3550.54). When an existing RHS loan is being refinanced as a special servicing action under § 3550.201), the household's adjusted income must not exceed the applicable moderate-income limit for the area at the time of loan approval and closing.

(b) *Citizenship status.* The applicant must be a United States citizen or a noncitizen who qualifies as a legal alien as defined in § 3550.10.

(c) *Principal residence.* Applicants must agree to and have the ability to occupy the dwelling in accordance with the definition found in § 3550.10. If the dwelling is being constructed or renovated, an adult member of the household must be available to make inspections and authorize progress payments as the dwelling is constructed.

(d) *Eligibility of current homeowners.* Current homeowners are not eligible for initial loans except as follows:

(1) Current homeowners may receive RHS loan funds to:

(i) Refinance an existing loan under the conditions outlined in § 3550.52(b);

(ii) Purchase a new dwelling if the current dwelling is deficient housing as defined in § 3550.10; or

(iii) Make necessary repairs to the property which is financed with an affordable non- RHS loan.

(2) Current homeowners with an RHS loan may receive a subsequent loan.

(e) *Legal capacity.* Applicants must have the legal capacity to incur the loan obligation, or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(f) *Suspension or debarment.* Applications from applicants who have been suspended or debarred from participation in Federal programs will be handled in accordance with 2 CFR parts 180 and 417.

(g) *Repayment ability.* Repayment ability means applicants must demonstrate adequate and dependably available income. The determination of income dependability will include consideration of the applicant's history of annual income.

(1) An applicant is considered to have repayment ability when the monthly amount required for payment of principal, interest, taxes, and insurance (PITI), does not exceed thirty-three percent of the applicant's repayment income (PITI ratio). In addition, the monthly amount required to pay PITI plus recurring monthly debts must not exceed forty-one percent of the applicant's repayment income (total debt ratio).

(2) If the applicant's PITI ratio and total debt ratio exceed the percentages specified by the Agency by a minimal amount, compensating factors may be considered. Examples of compensating factors include payment history (if applicant has historically paid a greater share of income for housing with the same income and debt level), savings history, job prospects, and adjustments for nontaxable income.

(3) If an applicant does not meet the repayment ability requirements in this paragraph (g), the applicant can have another party join the application as a cosigner, have other household members join the application, or both.

(h) *Credit qualifications.* Applicants must be unable to secure the necessary credit from other sources on terms and conditions that the applicant could reasonably be expected to fulfill. Applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. An applicant with an outstanding judgment obtained by the United States in a federal court, other than the United States Tax Court, is not eligible for a loan or grant from RHS.

(1) Indicators of unacceptable credit include:

(i) Payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months.

(ii) Payments on any account which was delinquent for more than 30 days

on two or more occasions within a 12-month period.

(iii) A foreclosure which has been completed within the last 36 months.

(iv) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens with no satisfactory arrangement for payment.

(v) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded in paragraph (i)(2) of this section.

(vi) Two or more rent payments paid 30 or more days late within the last 2 years. If the applicant has experienced no other credit problems in the past 2 years, only 1 year of rent history will be evaluated. Rent payment history requirements may be waived if the RHS loan will reduce shelter costs significantly and contribute to an improved repayment ability.

(vii) Outstanding collection accounts with a record of irregular payment with no satisfactory arrangements for repayment, or collection accounts that were paid in full within the last 6 months.

(viii) Non-agency debts written off within the last 36 months unless paid in full at least 12 months ago.

(ix) Agency debts that were debt settled within the last 36 months or are being considered for debt settlement.

(x) Delinquency on a federal debt.

(2) The following will not be considered indicators of unacceptable credit:

(i) A bankruptcy in which debts were discharged more than 36 months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meeting obligations when due for the 12 months prior to the date of application.

(ii) A judgment satisfied more than 12 months before the date of application.

(3) When an application is rejected because of unacceptable credit, the applicant will be informed of the reason and source of information.

(i) *Homeownership education.* Applicants who are first-time homebuyers must agree to provide documentation, in the form of a completion certificate or letter from the provider, that a homeownership education course from a certified provider under § 3550.11 has been successfully completed as defined by the provider. Requests for exceptions to the homeownership education requirement in this paragraph (i) will be reviewed and granted on an individual case-by-case basis. The State Director may grant an exception to the homeownership education requirement for individuals in geographic areas within the State where the State Director verifies that certified homeownership education is not reasonably available in the local area in any of the formats listed in § 3550.11(b).

Whether such homeownership education is reasonably available will be determined based on factors including, but not limited to: Distance, travel time, geographic obstacles, and cost. On a case-by-case basis, the State Director also may grant an exception, provided the applicant borrower documents a special need, such as a disability, that would unduly impede completing a homeownership course in a reasonably available format.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002; 72 FR 5157, Feb. 5, 2007; 84 FR 29038, June 21, 2019; 87 FR 6771, Feb. 7, 2022]

§ 3550.54 Calculation of income and assets.

(a) *Repayment income.* Repayment income is the annual amount of income from all sources that are expected to be received by those household members who are parties to the promissory note, except for any student financial aid received by these household members for tuition, fees, books, equipment, materials, and transportation. Repayment income is used to determine the household's ability to repay a loan.

(b) *Annual income.* Annual income is the income of all household members from all sources except those listed in (b)(1) through (b)(12) of this section:

(1) Earned income of persons under the age of 18 unless they are a borrower or a spouse of a member of the household;

(2) Payments received for the care of foster children or foster adults;

(3) Amounts granted for or in reimbursement of the cost of medical expenses;

(4) Earnings of each full-time student 18 years of age or older, except the head of household or spouse, that are in excess of any amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended;

(5) Temporary, nonrecurring, or sporadic income (including gifts);

(6) Lump sum additions to family assets such as inheritances; capital gains; insurance payments under health, accident, or worker's compensation policies; settlements for personal or property losses; and deferred periodic payments of supplemental security income and Social Security benefits received in a lump sum;

(7) Any earned income tax credit;

(8) Adoption assistance in excess of any amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended;

(9) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling;

(10) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(11) The full amount of any student financial aid; and

(12) Any other revenue exempted by a Federal statute; a list of which is available from any Rural Development office.

(c) *Adjusted income.* Adjusted income is used to determine program eligibility for sections 502 and 504 and the amount of payment subsidy for which the household qualifies under section 502. Adjusted income is annual income as defined in paragraph (b) of this section less any of the following deductions for which the household is eligible.

(1) For each household member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(2) A deduction of reasonable expenses for the care of minor 12 years of age or under that:

(i) Enable a family member to work or to further a member's education;

(ii) Are not reimbursed or paid by another source; and

(iii) In the case of expenses to enable a family member to work do not exceed the amount of income earned by the family member enabled to work.

(3) Expenses related to the care of household members with disabilities that:

(i) Enable a family member to work;

(ii) Are not reimbursed from insurance or another source; and

(iii) Are in excess of three percent of the household's annual income.

(4) For any elderly family, a deduction in the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(5) For elderly households only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which in combination with any expenses related to the care of household members with disabilities described in paragraph (c)(3) of this section, are in excess of three percent of the household's annual income.

(d) *Net family assets.* Income from net family assets must be included in the calculation of annual income. Net family assets also are considered in determining whether a down payment is required.

(1) Net family assets include, but are not limited to:

(i) Equity in real property or other capital investments, other than the dwelling or site;

(ii) Cash on hand and funds in savings or checking accounts;

(iii) Amounts in trust accounts that are available to the household;

(iv) Stocks, bonds, and other forms of capital investments that are accessible without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, inheritances; and

(vi) Personal property held as an investment.

(2) Net family assets do not include:

(i) Interest in American Indian restricted land;

(ii) Cash on hand which will be used to reduce the amount of the loan;

(iii) The value of necessary items of personal property;

(iv) Assets that are part of the business, trade, or farming operation of any member of the household who is actively engaged in such operation;

(v) Amounts in voluntary retirement plans such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts (except at the time interest assistance is initially granted);

(vi) The value of an irrevocable trust fund or any other trust over which no member of the household has control;

(vii) Cash value of life insurance policies;

(viii) The value of tax advantaged college savings plans (529 plan, Coverdell Education Savings Account, etc.);

(ix) The value of tax advantaged health or medical savings or spending accounts; and

(x) Other amounts deemed by the Agency not to constitute net family assets.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002; 84 FR 29038, June 21, 2019]

§ 3550.55 Applications.

(a) *Application submissions.* All persons applying for RHS loans must file a complete written application in a format specified by RHS. Applications will be accepted even when funds are not available.

(b) *Application processing.* (1) Incomplete applications will be returned to the applicant specifying in writing the additional information that is needed to make the application complete.

(2) An applicant may voluntarily withdraw an application at any time.

(3) RHS may periodically request in writing that applicants reconfirm their interest in obtaining a loan. RHS may withdraw the application of any applicant who does not respond within the specified timeframe.

(4) Applicants who are eligible will be notified in writing. If additional information becomes available that indicates that the original eligibility determination may have been incorrect, or that circumstances have changed, RHS may reconsider the application and the applicant may be required to submit additional information.

(5) Applicants who are ineligible will be notified in writing and provided with the specific reasons for the rejection.

(c) *Selection for processing and funding.* Applications will be selected for processing using the priorities specified in this paragraph (c). Within priority categories, applications will be processed in the order that the completed applications are received. In the case of applications with equivalent priority status that are received on the same day, preference will first be extended to applicants qualifying for a veterans' preference. When funds are limited and eligible applicants will be placed on the waiting list, the priorities specified in this paragraph (c) will be used to determine the selection of applications for available funds.

(1) First priority will be given to existing customers who request subsequent loans to correct health and safety hazards.

(2) Second priority will be given to loans related to the sale of an REO property or the transfer of an exisiting RHS financed property.

(3) Third priority will be given to applicants facing housing related hardships including applicants who have been living in deficient housing for more than 6 months, current homeowners in danger of losing a property through foreclosure, and other circumstances determined by RHS on a case-by-case basis to constitute a hardship.

(4) Fourth priority will be given to applicants seeking loans for the construction of dwellings in an RHS-approved Mutual Self-Help project, loan application packages funneled through an Agency-approved intermediary under the certified loan application packaging process, and loans that will leverage funding or financing from other sources at a level published in the program handbook.

(5) Applications from applicants who do not qualify for priority consideration in paragraph (c)(1), (2), (3), or (4) of this section will be selected for processing after all applications with priority status have been processed.

(d) *Applicant timeframe.* RHS will specify a reasonable timeframe within which eligible applicants selected for processing must provide the information needed to underwrite the loan.

[61 FR 59779, Nov. 22, 1996, as amended at 80 FR 23678, Apr. 29, 2015; 87 FR 6771, Feb. 7, 2022]

§ 3550.56 Site requirements.

(a) *Rural areas.* Loans may be made only in rural areas designated by RHS. If an area designation is changed to non-rural:

(1) New conditional commitments will be made and existing conditional commitments will be honored only in conjunction with an applicant for a section 502 loan who applied for assistance before the area designation changed.

(2) REO property sales and transfers with assumption may be processed.

(3) Subsequent loans may be made either in conjunction with a transfer with assumption of an RHS loan or to repair properties that have RHS loans.

(b) *Site standards.* Sites must be developed in accordance with 7 CFR part 1924, subpart C and any applicable standards imposed by a State or local government.

(1) The site must not be large enough to subdivide into more than one site under existing local zoning ordinances and

(2) The site must not include farm service buildings, though small outbuildings such as a storage shed may be included.

[61 FR 59779, Nov. 22, 1996, as amended at 87 FR 6772, Feb. 7, 2022]

§ 3550.57 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, or have a market value in excess of the applicable maximum area loan limit, in accordance with § 3550.63, unless RHS authorizes an exception under this paragraph (a). An exception may be granted on a case-by-case basis to accommodate the specific needs of an applicant, such as to serve exceptionally large households or to provide reasonable accommodation for a household member with a disability. Any additional loan amount approved must not exceed the amount required to address the specific need. Existing properties with in-ground swimming pools may be considered modest; however, in-ground swimming pools with new construction or with properties which are purchased new are prohibited.

(1) *Area-wide exception.* Area-wide exceptions may be granted when RHS determines that the section 203(b) limit is too low to enable applicants to purchase adequate housing.

(2) *Individual exceptions.* Individual exceptions may be granted to accommodate the specific needs of an applicant, such as to serve exceptionally large households or to provide reasonable accommodation for a household member with a disability. Any additional loan amount approved must not exceed the amount required to address the specific need.

(b) *New dwellings.* Construction must meet the requirements in 7 CFR part 1924, subpart A.

(c) *Existing dwellings.* Existing dwellings must be structurally sound; functionally adequate; in good repair, or to be placed in good repair with loan funds; have adequate electrical, heating, plumbing, water, and wastewater disposal systems; and be free of termites and other wood damaging pests and organisms.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002; 72 FR 70222, Dec. 11, 2007; 87 FR 6772, Feb. 7, 2022]

§ 3550.58 Ownership requirements.

After the loan is closed, the borrower must have an acceptable interest in the property as evidenced by one of the following.

(a) *Fee-simple ownership.* Acceptable fee-simple ownership is evidenced by a fully marketable title with a deed vesting a fee-simple interest in the property to the borrower.

(b) *Secure leasehold interest.* A written lease is required. To be acceptable, a leasehold interest must have an unexpired term that is at least 150 percent of the term of the mortgage, unless the loan is guaranteed, in which case the unexpired term of the lease must be at least 2 years longer than the loan term. In no case may the unexpired term be

less than 25 years. For new energy efficient manufactured and modular home financing in land-lease communities operating on a nonprofit basis, and on Tribal Trust land, individual (allotted) Trust land, or Tribal restricted fee land, the Agency will accept a lease with an unexpired term that is at least 2 years longer than the loan term.

(c) *Life estate interest.* To be acceptable a life estate interest must provide the borrower with rights of present possession, control, and beneficial use of the property. Generally, persons with any remainder interests must be signatories to the mortgage. All of the remainder interests need not be included in the mortgage to the extent that one or more of the persons holding remainder interests are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or if the remainder interests are divided among such a large number of people that it is not practical to obtain the signatures of all of the remainder interests. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(d) *Undivided interest.* All legally competent co-owners will be required to sign the mortgage. When one or more of the co-owners are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or the ownership interests are divided among so large a number of co- owners that it is not practical for all of their interests to be mortgaged, their interests not exceeding 50 percent may be excluded from the security requirements. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(e) *Possessory rights.* Acceptable forms of ownership include possessory rights on an American Indian reservation or State-owned land and the interest of an American Indian in land held in severalty under trust patents or deeds containing restrictions against alienation, provided that land in trust or restricted status will remain in trust or restricted status.

[61 FR 59779, Nov. 22, 1996, as amended at 90 FR 203, Jan. 3, 2025]

§ 3550.59 Security requirements.

Before approving any loan, RHS will impose requirements to secure its interests.

(a) *Adequate security.* A loan will be considered adequately secured only when all of the following requirements are met:

(1) RHS obtains at closing a mortgage on all ownership interests in the security property or the requirements of § 3550.58 are satisfied.

(2) No liens prior to the RHS mortgage exist at the time of closing and no junior liens are likely to be taken immediately after or at the time of closing, unless the other liens are taken as part of a leveraging strategy or the RHS loan is essential for repairs. Any lien senior to the RHS lien must secure an affordable non-RHS loan. Liens junior to the RHS lien may be allowed at loan closing if the junior lien will not interfere with the purpose or repayment of the RHS loan. When the junior lien involves a grant or a forgivable affordable housing product, the total debt may exceed the market value provided:

(i) The RHS loan is fully secured (with allowable exceptions for the tax service fee, appraisal fee, homebuyer education and initial escrow for taxes and insurance);

(ii) The junior lien is for an authorized loan purpose identified in § 3550.52; and

(iii) The grant or forgivable affordable housing product comes from a recognized grant source such as a Community Development Block Grant or a HOME Investment Partnerships Program (HOME).

(3) The provisions of 7 CFR part 1927, subpart B regarding title clearance and the use of legal services have been followed.

(4) Existing and proposed property improvements are totally on the site and do not encroach on adjoining property.

(b) *Guaranteed payment.* Mortgage insurance guaranteeing payment from a

Government agency or Indian tribe is adequate security.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002; 87 FR 6772, Feb. 7, 2022]

§ 3550.60 Escrow account.

RHS may require that customers deposit into an escrow account amounts necessary to ensure that the account will contain sufficient funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs when they are due in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) (12 U.S.C. 2601, *et seq.*) and section 501(e) of the Housing Act of 1949, as amended.

§ 3550.61 Insurance.

(a) Borrower responsibility. Any borrower with a secured indebtedness in excess of $15,000 at the time of loan approval must furnish and continually maintain hazard insurance on the security property, with companies, in amounts, and on terms and conditions acceptable to RHS including a ''loss payable clause'' payable to RHS to protect the Government's interest.

(b) Amount. The borrower is required to insure the dwelling and any other essential buildings in an amount equal to the insurable value of the dwelling and other essential buildings. However, in cases where the borrower's outstanding secured indebtedness is less than the insurable value of the dwelling and other essential buildings, the borrower may elect a lower coverage provided it is not less than the outstanding secured indebtedness. If the borrower fails, or is unable, to insure the secured property, RHS will force place insurance and charge the cost to the borrower's account. Force place insurance only provides insurance coverage to the Agency and does not provide any direct coverage or benefit to the borrower. The amount of the lender-placed coverage will generally be the property's last known insured value.

(c) *Flood insurance.* Flood insurance must be obtained and maintained for the life of the loan for all property located in a Special Flood Hazard Area (SFHA) as determined by the Federal Emergency Management Agency (FEMA). RHS actions will be consistent with 7 CFR part 1806, subpart B which addressed flood insurance requirements. If flood insurance through FEMA's National Flood Insurance Program is not available in an SFHA, the property is not eligible for federal financial assistance.

(d) *Losses.* (1) Loss deductible clauses for required insurance coverage may not exceed the generally accepted minimums based on current industry standards and local market conditions.

(2) Customers must immediately notify RHS of any loss or damage to insured property and collect the amount of the loss from the insurance company.

(3) Depending on the amount of the loss, RHS may require that loss payments be supervised. All repairs and replacements done by or under the direction of the borrower, or by contract, will be planned, performed, inspected, and paid for in accordance with 7 CFR part 1924, subpart A.

(4) When insurance funds remain after all repairs, replacements, and other authorized disbursements have been made, the funds will be applied in the following order:

(i) Prior liens, including delinquent property taxes.

(ii) Past-due amounts.

(iii) Protective advances due.

(iv) Released to the customer if the RHS debt is adequately secured.

(5) If a loss occurs when insurance is not in force, the borrower is responsible for making the needed repairs or replacements and ensuring that the insurance is reinstated on the property.

(6) If the borrower is not financially able to make the repairs, RHS may take one of the following actions:

(i) Make a subsequent loan for repairs.

(ii) Subordinate the RHS lien to permit the borrower to obtain funds for needed repairs from another source.

(iii) Permit the borrower to obtain funds secured by a junior lien from another source.

(iv) Make a protective advance to protect the Government's interest.

(v) Accelerate the account.

[61 FR 59779, Nov. 22, 1996, as amended at 70 FR 6552, Feb. 8, 2005; 73 FR 49592, Aug. 22, 2008]

§ 3550.62 Appraisals.

(a) *Requirement.* An appraisal is required when the debt to be secured exceeds $15,000 or whenever RHS determines that it is necessary to establish the adequacy of the security. Appraisals must be made in accordance with the Uniform Standards of Professional Appraisal Practices. When other real estate is taken as additional security, it will be appraised if it represents a substantial portion of the security for the loan.

(b) *Fees.* RHS will charge a fee for each loan application that requires an appraisal, except the appraisal fee is not required on appraisals done for subsequent loans needed to make minimal, essential repairs or in cases where another party provides an appraisal which is acceptable to RHS. Fees collected in connection with a dwelling constructed under an approved conditional commitment will be paid to the contractor at closing to offset the cost of the real estate appraisal that is included in the conditional commitment fee.

§ 3550.63 Maximum loan amount.

Total secured indebtedness must not exceed the area loan limit or market value limitations specified in paragraphs (a) or (b) of this section, whichever is lower. Any loan amount for the RHS appraisal, tax monitoring fee, and the charge to establish an escrow account for taxes and insurance will not be subject to the limitations specified below. This section does not apply to loans on NP terms.

(a) *Area loan limit.* (1) The area loan limit is the maximum value of the property RHS will finance in a given locality. This limit is based on a percentage(s) of the applicable local HUD section 203(b) limit. The percentage(s) will be determined by the Agency and published in the program handbook. The area loan limits will be reviewed at least annually and posted to the Agency website.

(2) The maximum loan limit calculated under paragraph (a)(1) will be reduced in the following situations:

(i) When the applicant owns the site or is purchasing the site at a sales price below market value, the market value of the lot will be deducted from the maximum loan limit, and

(ii) When an applicant is receiving a housing grant or other form of affordable housing assistance for purposes other than closing costs, the amount(s) of such grants and affordable housing assistance will be deducted from the maximum loan limit.

(3) The maximum loan limit for self-help housing will be calculated by adding the total of the market value of the lot (including reasonable and typical costs of site development), the cost of construction, and the value of sweat equity. The total of these three factors cannot exceed the limit established in paragraph (a)(1) of this section.

(b) *Market value limitation.* (1) The market value limitation is 100 percent of market value for existing housing and for new dwellings for which RHS will receive adequate documentation of construction quality and the source of such documentation is acceptable to RHS.

(2) The market value limitation is 90 percent of market value for new dwellings for which adequate documentation of construction quality is not available.

(3) The market value limitation can be increased by:

(i) Up to one percent, if RHS makes a subsequent loan for closing costs only, in conjunction with the sale of an REO property or an assumption.

(ii) The amount necessary to make a subsequent loan for repairs necessary to protect the Government's interest, and reasonable closing costs.

(iii) The amount necessary to refinance an existing borrower's RHS loans, plus closing costs associated with the new loan.

[61 FR 59779, Nov. 22, 1996; 61 FR 65266, Dec. 11, 1996, as amended at 67 FR 78330, Dec. 24, 2002; 84 FR 29038, June 21, 2019]

§ 3550.64 Down payment.

Elderly families must use any net family assets in excess of $20,000 towards a down payment on the property. Non-elderly families must use net family assets in excess of $15,000 towards a down payment on the property. Applicants may contribute assets in addition to the required down payment to

further reduce the amount to be financed.

[73 FR 49593, Aug. 22, 2008]

§ 3550.65 [Reserved]

§ 3550.66 Interest rate.

Loans will be written using the applicable RHS interest rate in effect at loan approval or loan closing, whichever is lower. Information about current interest rates is available in any Rural Development office.

[67 FR 78330, Dec. 24, 2002]

§ 3550.67 Repayment period.

Loans will be scheduled for repayment over a period that does not exceed the expected useful life of the property as a dwelling. The loan repayment period will not exceed:

(a) Thirty-three years in all cases except as noted in paragraphs (b), (c), and (d) of this section.

(b) Thirty-eight years:

(1) For initial loans, or subsequent loans made in conjunction with an assumption, if the applicant's adjusted income does not exceed 60 percent of the area adjusted median income and the longer term is necessary to show repayment ability.

(2) For subsequent loans not made in conjunction with an assumption if the applicant's initial loan was for a period of 38 years, the applicant's adjusted income at the time the subsequent loan is approved does not exceed 60 percent of area adjusted median income, and the longer terms is necessary to show repayment ability.

(c) Ten years for loans not exceeding an amount determined by the Agency based on factors such as the performance of unsecured loans in the Agency's portfolio and the Agency's budgetary needs, but not to exceed eight percent of the national average area loan limit.

(d) Thirty years for manufactured homes.

[61 FR 59779, Nov. 22, 1996, as amended at 87 FR 6772, Feb. 7, 2022]

§ 3550.68 Payment subsidies.

RHS administers three types of payment subsidies: interest credit, payment assistance method 1, and payment assistance method 2. Payment subsidies are subject to recapture when the borrower transfers title or ceases to occupy the property.

(a) *Eligibility for payment subsidy.* (1) Applicants or borrowers who receive loans on program terms are eligible to receive payment subsidy if they personally occupy the property and have adjusted income at or below the applicable moderate-income limit.

(2) Payment subsidy may be granted for initial loans or subsequent loans made in conjunction with an assumption only if the term of the loan is 25 years or more.

(3) Payment subsidy may be granted for subsequent loans not made in conjunction with an assumption if the initial loan was for a term of 25 years or more.

(b) *Determining type of payment subsidy.* (1) A borrower currently receiving interest credit will continue to receive it for the initial loan and for any subsequent loan for as long as the borrower is eligible for and remains on interest credit.

(2) If a borrower receiving payment assistance using payment assistance method 1 receives a subsequent loan, payment assistance method 2 will be used to calculate the subsidy for the initial loan and subsequent loan.

(3) A borrower who has never received payment subsidy, or who has stopped receiving interest credit or payment assistance method 1, and at a later date again qualifies for a payment subsidy, will receive payment assistance method 2.

(4) A borrower may not opt to change payment assistance methods.

(c) *Calculation of payment assistance.* Regardless of the method used, payment assistance may not exceed the amount necessary if the loan were amortized at an interest rate of one percent.

(1) *Payment Assistance Method 2.* The amount of payment assistance granted is the lesser of the difference between:

(i) The annualized promissory note installments for the combined RHS loan and eligible leveraged loans plus the cost of taxes and insurance less twenty-four percent of the borrower's adjusted income, or

(ii) The annualized promissory note installment for the RHS loan less amount the borrower would pay if the loan were amortized at an interest rate of one percent.

(2) *Payment Assistance Method 1.* The amount of payment assistance granted is the difference between the installment due on the promissory note and the greater of the payment amortized at the equivalent interest rate or the payment calculated based on the required floor payment. In leveraging situations, the equivalent interest rate will be used.

(i) The floor payment, which is defined as a minimum percentage of adjusted income that the borrower must pay for PITI: 22 percent for very low-income borrowers, 24 percent for low-income borrowers with adjusted income below 65 percent of area adjusted median, and 26 percent for low-income borrowers with adjusted incomes between 65 and 80 percent of area adjusted median; or

(ii) The annualized note rate installment and the payment at the equivalent interest rate, which is determined by a comparison of the borrower's adjusted income to the adjusted median income for the area in which the security property is located. The following chart is used to determine the equivalent interest rate.

When the applicant's adjusted income is:

PERCENTAGE OF MEDIAN INCOME AND THE EQUIVALENT INTEREST RATE

Equal to or more than:	BUT less than:	THEN the equivalent interest rate is*
00%	50.01 of adjusted median income.	1%
50.01%	55 of adjusted median income.	2%
55%	60 of adjusted median income.	3%
60%	65 of adjusted median income.	4%
65%	70 of adjusted median income.	5%
70%	75 of adjusted median income.	6%
75%	80.01 of adjusted median income.	6.5%
80.01%	90 of adjusted median income.	7.5%
90%	100 of adjusted median income.	8.5%
100%	110% of adjusted median income.	9%
110%	Or more than adjusted median income.	9.5%

*Or note rate, whichever is less; in no case will the equivalent interest rate be less than one percent.

(d) *Calculation of interest credit.* The amount of interest credit granted is the difference between the note rate installment as prescribed on the promissory note and the greater of:

(1) Twenty percent of the borrower's adjusted income less the cost of real estate taxes and insurance, or

(2) The amount the borrower would pay if the loan were amortized at an interest rate of 1 percent.

(e) *Annual review.* The borrower's income will be reviewed annually to determine whether the borrower is eligible for continued payment subsidy. The borrower must notify RHS whenever an adult member of the household changes or obtains employment, there is a change in household composition, or if income increases by at least 10 percent so that RHS can determine whether a review of the borrower's circumstances is required.

[72 FR 73255, Dec. 27, 2007, as amended at 79 FR 28810, May 20, 2014; 84 FR 29038, June 21, 2019]

§ 3550.69 Deferred mortgage payments.

For qualified borrowers, RHS may defer up to 25 percent of the monthly principal and interest payment at 1 percent for up to 15 years. This assistance may be granted only at initial loan closing and is reviewed annually. Deferred mortgage payments are subject to recapture when the borrower transfers title or ceases to occupy the property.

(a) *Eligibility.* In order to qualify for deferred mortgage payments, all of the following must be true:

(1) The applicants adjusted income at the time of initial loan approval does not exceed the applicable very low-income limits.

(2) The loan term is 38 years, or 30 years for a manufactured home.

(3) The applicant's payments for principal and interest, calculated at a one

percent interest rate for the maximum allowable term, plus estimated costs for taxes and insurance exceeds:

(i) For applicants receiving payment assistance, 29 percent of the applicants repayment income by more than $10 per month; or

(ii) For applicants receiving interest credit, 20 percent of adjusted income by more than $10 per month.

(b) *Amount and terms.* (1) The amount of the mortgage payment to be deferred will be the difference between the applicants payment for principal and interest, calculated at one percent interest for the maximum allowable term, plus estimated costs for taxes and insurance and:

(i) For applicants receiving payment assistance, 29 percent of the applicants repayment income.

(ii) For applicants receiving interest credit, 20 percent of adjusted income.

(2) Deferred mortgage payment agreements will be effective for a 12-month period.

(3) Deferred mortgage assistance may be continued for up to 15 years after loan closing. Once a borrower becomes ineligible for deferred mortgage assistance, the borrower can never again receive deferred mortgage assistance.

(c) *Annual review.* The borrower's income, taxes, and insurance will be reviewed annually to determine eligibility for continued deferred mortgage assistance. The borrower must notify RHS whenever an adult member of the household changes or obtains employment or if income increases by at least 10 percent so that RHS can determine whether a review of the borrower's circumstances is required.

§ 3550.70 Conditional commitments.

A conditional commitment is a determination by RHS that a dwelling offered for sale will be acceptable for purchase by a qualified RHS loan applicant if it is built or rehabilitated in accordance with RHS-approved plans, specifications, and regulations and priced within the lesser of the property's appraised value or the applicable maximum load limit. The conditional commitment does not reserve funds, does not guarantee funding, and does not ensure that an eligible loan applicant will be available to buy the dwelling.

(a) *Eligibility.* To be eligible to request a conditional commitment, the builder, dealer-contractor, or seller must:

(1) Have an adequate ownership interest in the property, as defined in § 3550.58, prior to the beginning of any planned construction;

(2) Have the experience and ability to complete any proposed work in a competent and professional manner;

(3) Have the legal capacity to enter into the required agreements;

(4) Be financially responsible and have the ability to finance or obtain financing for any proposed construction or rehabilitation; and

(5) Comply with the requirements of 7 CFR part 1901, subpart E and all applicable laws, regulations, and Executive Orders relating to equal opportunity. Anyone who receives 5 or more conditional commitments during a 12-month period must obtain RHS approval of an affirmative marketing plan.

(b) *Limitations.* Conditional commitments for new or substantially rehabilitated dwellings will not be issued after construction has started. RHS may limit the total number of conditional commitments issued in any locality based on market demand.

(c) *Commitment period.* A conditional commitment will be valid for 12 months from the date of issuance. The commitment may be extended for up to an additional 6 months if there are unexpected delays in construction caused by such factors as bad weather, materials shortages, or marketing difficulties. Conditional commitments may be canceled if construction does not begin within 60 days after the commitment is issued.

(d) *Conditional commitments involving packaging of applications.* A conditional commitment may be made to a seller, builder, or dealer-contractor who packages an RHS loan application for a prospective purchaser. In cases where the dwelling is to be constructed for sale to a specific eligible applicant, all of the following conditions must be met:

(1) The conditional commitment will not be approved until the applicant's loan has been approved;

(2) Construction will not begin until loan funds are obligated for the loan. Exceptions may be made when it appears likely that funding will be forthcoming and as long as the RHS lien priority is not jeopardized. The sales agreement must indicate that the loan has been approved but not funded and must provide that if the loan is not closed within 90 days of the date of approval, the contractor may terminate the sales agreement and sell the property to another party. If the sales agreement is terminated, the conditional commitment will be honored for another eligible loan applicant for the remaining period of the commitment; and

(3) The RHS loan will be closed only after the dwelling is constructed or the required rehabilitation completed and final inspection has been made.

(e) *Fees.* An application for a conditional commitment must include payment of the conditional commitment fee. The fee will be refunded if for any reason preliminary inspection of the property or investigation of the conditional commitment applicant indicates that a conditional commitment will not be issued. Application fees will not be refunded for any property on which the required appraisal has been made.

(f) *Failure of conditional commitment applicant or dwelling to qualify.* The conditional commitment applicant will be informed if the conditional commitment is denied. Conditional commitments will be canceled if the property does not meet program requirements.

(g) *Changes in plans, specifications, or commitment price.* The holder of the conditional commitment must request approval for changes in plans, specifications, and commitment price. RHS may approve the changes if the following requirements are met:

(1) The property price does not exceed the maximum loan limit and increases in costs are due to factors beyond the control of the commitment holder; and

(2) The requested changes are justifiable and appropriate.

(h) *Builder's warranty.* The builder or seller, as appropriate, must execute either an RHS-approved ''Builder's Warranty,'' or provide a 10-year insured warranty when construction is completed or the loan is closed.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002]

§ 3550.71 Special requirements for condominiums.

RHS loans may be made for condominium units under the following conditions:

(a) The unit is in a project approved or accepted by U.S. Department of Housing and Urban Development (HUD), the Federal National Mortgage Association (Fannie Mae), or the Federal Home Loan Mortgage Corporation (Freddie Mac).

(b) The condominium project complies with the requirements of the condominium enabling statute and all other applicable laws. Any right of first refusal in the condominium documents will not impair the rights of RHS to:

(1) Foreclose or take title to a condominium unit pursuant to the remedies in the mortgage;

(2) Accept a deed in lieu of foreclosure in the event of default by a mortgagor; and

(3) Sell or lease a unit acquired by RHS.

(c) If RHS obtains title to a condominium unit pursuant to the remedies in its mortgage or through foreclosure, RHS will not be liable for more than 6 months of the unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the unit by RHS. The homeowners association's lien priority may include costs of collecting unpaid dues.

(d) In case of condemnation or substantial loss to the units or common elements of the condominium project, unless at least two-thirds of the first mortgagees or unit owners of the individual condominium units have given their consent, the homeowners association may not:

(1) By act or omission seek to abandon or terminate the condominium project;

(2) Change the pro rata interest or obligations of any condominium unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata

share of ownership of each condominium unit in the common elements;

(3) Partition or subdivide any condominium unit;

(4) Seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements by act or omission (the granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium project is not a transfer within the meaning of this clause); or

(5) Use hazard insurance proceeds for losses to any condominium property (whether units or common elements) for other than the repair, replacement, or reconstruction of the condominium property.

(e) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law relate only to the individual condominium units and not to the condominium project as a whole.

(f) No provision of the condominium documents gives a condominium unit owner or any other party priority over any rights of RHS as first or second mortgagee of the condominium unit pursuant to its mortgage in the case of a payment to the unit owner of insurance proceeds or condemnation awards for losses to or taking of condominium units or common elements.

(g) If the condominium project is on a leasehold the underlying lease provides adequate security of tenure as described in § 3550.58(b).

(h) At least 70 percent of the units have been sold. Multiple purchases of condominium units by one owner are counted as one sale when determining if the sales requirement has been met.

(i) No more than 15 percent of the unit owners are more than 1 month delinquent in payment of homeowners association dues or assessments at the time the RHS loan is closed.

§ 3550.72 Community land trusts.

Eligible dwellings located on land owned by a community land trust may be financed if:

(a) The loan meets all the requirements of this subpart; and

(b) Any restrictions, imposed by the community land trust on the property or applicant are:

(1) Reviewed and accepted by RHS before loan closing; and

(2) Automatically and permanently terminated upon foreclosure or acceptance by RHS of a deed in lieu of foreclosure.

§ 3550.73 Manufactured homes.

With the exception of the restrictions and additional requirements contained in this section, section 502 loans on manufactured homes are subject to the same conditions as all other section 502 loans.

(a) *Eligible costs.* In addition to the eligible costs described in § 3550.52(d), RHS may finance the following activities related to manufactured homes when a real estate mortgage covers both the unit and the site:

(1) Purchase of an eligible unit, transportation, and set-up costs, and purchase of an eligible site if not already owned by the applicant;

(2) Site development work in accordance with 7 CFR part 1924, subpart A:

(3) Subsequent loans in conjunction with an assumption or sale of an REO property; or

(4) Subsequent loans for repairs of units financed under section 502.

(b) *Loan restrictions.* In addition to the loan restrictions described in § 3550.52(e), RHS may not use loan funds to finance:

(1) An existing unit and site unless it is already financed with a section 502 loan; or is an RHS REO property; or the unit was constructed in conformance with FMHCSS standards as evidenced by both an affixed HUD Certification label and a HUD Data Plate on or after date determined by the Agency, is installed on a permanent foundation which meets HUD regulations and 7 CFR part 1924, subpart A, exhibit J, and has not been previously installed on a different homesite or had any alterations since construction in the factory, except as specified in the program handbook.

(2) The purchase of a site without also financing the unit.

(3) Alteration or remodeling of the unit when the initial loan is made.

(4) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios,

stereo sets, and other similar items of personal property. Furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment, or other similar items.

(c) *Loan term.* The maximum term of a loan on a manufactured home is 30 years.

(d) *Construction and development.* Unit construction, site development and setup must conform to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and 7 CFR part 1924, subpart A. Development under the Mutual Self-Help and borrower construction methods is not permitted for manufactured homes.

(e) *Contract requirements.* The dealer-contractor must sign a construction contract, as specified in 7 CFR 1924.6 which will cover both the unit and site development work. The use of multi-contracts is prohibited. A dealer-contractor may use subcontractors if the dealer-contractor is solely responsible for all work under the contract. Payment for all work will be in accordance with 7 CFR part 1924, subpart A, except no payment will be made for materials or property stored on site (e.g., payment for a unit will be made only after it is permanently attached to the foundation).

(f) *Lien release requirements.* All persons furnishing materials or labor in connection with the contract except the manufacturer of the unit must sign a Release by Claimants document, as specified in 7 CFR part 1924, subpart A. The manufacturer of the unit must furnish an executed manufacturer's certificate of origin to verify that the unit is free and clear of all legal encumbrances.

(g) *Warranty requirements.* The dealer-contractor must provide a warranty in accordance with the provisions of 7 CFR 1924.12. The warranty must identify the unit by serial number. The dealer-contractor must certify that the unit substantially complies with the plans and specifications and the manufactured home has sustained no hidden damage during transportation and, if manufactured in separate sections, that the sections were properly joined and sealed according to the manufacturer's specifications. The dealer-contractor will also furnish the applicant with a copy of all manufacturer's warranties.

[61 FR 59779, Nov. 22, 1996, as amended at 90 FR 203, Jan. 3, 2025]

§ 3550.74 Nonprogram loans.

NP terms may be extended to applicants who do not qualify for program credit, or for properties that do not qualify as program properties, when it is in the best interest of the Government. NP loans are originated and serviced according to the requirements for program loans except as indicated in this section.

(a) *Purpose.* NP terms may be offered to expedite:

(1) Sale of an REO property.

(2) Assumption of an existing program loan on new rates and terms. If additional funds are required to purchase the property, the applicant must obtain them from another source.

(3) Conversion of a program loan that has received unauthorized assistance.

(4) Continuation of a loan on a portion of a security property when the remainder is being transferred and the RHS debt is not paid in full.

(b) *Terms.* (1) Rate and term:

(i) For an applicant who intends to occupy the property, the term will not exceed 30 years.

(ii) For other applicants, the term will not exceed 10 years. If more favorable terms are necessary to facilitate the sale, the loan may be amortized over a period of up to 20 years with payment in full due not later than 10 years from the date of closing.

(iii) An applicant with an NP loan under paragraph (b)(1)(i) of this section who wishes to retain the property and purchase a new property with RHS credit must purchase the second property according to the terms of paragraph (b)(1)(ii) of this section, even if the new property will serve as the applicant's principal residence.

(2) NP loans are written at the NP interest rate in effect at the time of loan approval.

(3) NP borrowers are not eligible for payment assistance or a moratorium.

(c) *Additional requirements.* (1) NP applicants other than public bodies and nonprofit organizations must pay a nonrefundable application fee.

(2) NP applicants must make a down payment based upon the purchase price and whether the applicant intends to personally occupy the property or use it for other purposes.

(3) NP applicants cannot finance loan closing costs or escrow, tax service, or appraisal fees.

(d) *Reduced restrictions.* (1) NP applicants need not be unable to obtain other credit in order to receive an NP loan and are not required to refinance with private credit when they are able to do so.

(2) NP applicants are not required to occupy the property.

(3) NP applicants are not subject to leasing restrictions.

(e) *Waiver of costs.* When the purpose of the loan is the conversion of a program loan that has received unauthorized assistance or continuation of a loan on a portion of a security property when the remainder is being transferred, the application fee, appraisal fee, and down payment may be waived.

§ 3550.75 Certified loan application packaging process.

Persons interested in applying for a section 502 loan may, but are not required to, submit an application through the certified loan application packaging process.

(a) *General.* The certified loan application packaging process involves individuals who have been designated as an Agency-certified loan application packager, their qualified employers, and, if required by the State Director, Agency-approved intermediaries.

(b) *Process requirements.* To package section 502 loan applications under this process, each of the following conditions must be met:

(1) *Agency-certified loan application packager.* An individual who wishes to acquire RHS certification as a loan application packager must meet all of the following conditions:

(i) Have at least one year of affordable housing loan origination and/or affordable housing counseling experience;

(ii) Be employed (either as an employee or as an independent contractor) by a qualified employer as outlined in paragraph (b)(2) of this section;

(iii) Complete an Agency-approved loan application packaging course and successfully pass the corresponding test as specified in paragraph (c) of this section; and

(iv) Submit applications to the Agency via an intermediary if determined necessary by a State Director.

(2) *Qualified employer.* Individuals who have been designated as an Agency-certified loan application packager must be employed (either as an employee or as an independent contractor) by a qualified employer. To be considered a qualified employer, the packager's employer must meet each of the conditions specified in paragraphs (b)(2)(i) through (v) of this section. Tribal housing authorities and the States' Housing Finance Agencies are eligible and are exempt from the conditions specified in paragraphs (b)(2)(i) through (ii) of this section.

(i) Be a nonprofit organization or public agency in good standing in the State(s) of its operation.

(ii) Be tax exempt under the Internal Revenue Code and be engaged in affordable housing per their regulations, articles of incorporation, or bylaws.

(iii) Notify the Agency and the applicant if they or their Agency-certified packager(s) are the developer, builder, seller of, or have any other such financial interest in the property for which the application package is submitted. The Agency may disallow a particular qualified employer and/or Agency-certified packager from receiving part or all of a packaging fee if the Agency determines that the financial interest is improper or the qualified employer or Agency-certified packager has a history of improperly using its position when there has been a financial interest in the property.

(iv) Prepare an affirmative fair housing marketing plan for Agency approval as outlined in RD Instruction 1901–E (or in any superseding guidance provided in the impending RD Instruction 1940–D).

(v) Submit applications to the Agency via an intermediary if determined necessary by a State Director.

(3) *Agency-approved intermediaries.* To become an Agency-approved intermediary, an interested party must apply and demonstrate to the Agency's

satisfaction that they meet each of the conditions specified below. The States' Housing Finance Agencies, however, are exempt from the conditions specified in paragraphs (b)(3)(i) through (v). After the initial application process, the Agency may require intermediaries to periodically demonstrate that they still meet the following criteria.

(i) Be a section 501(c)(3) nonprofit organization or public agency in good standing in the State(s) of its operation with the capacity to serve multiple qualified employers and their Agency-certified loan application packagers throughout an entire State or preferably throughout entire States and with the capacity to perform quality assurance reviews on a large volume of packaged loan applications within an acceptable period of time as determined by the Agency;

(ii) Be engaged in affordable housing in accordance with their regulations, articles of incorporation, or bylaws;

(iii) Be financially viable and demonstrate positive operating performance as evidenced by an independent audit paid for by the applicant seeking to be an intermediary;

(iv) Have at least five years of verifiable experience with the Agency's direct single family housing loan programs;

(v) Demonstrate that their quality assurance staff has experience with packaging, originating, or underwriting affordable housing loans.

(vi) Develop and implement quality control procedures designed to prevent submission of incomplete or ineligible application packages to the Agency;

(vii) Ensure that their quality assurance staff complete an Agency-approved loan application packaging course and successfully pass the corresponding test;

(viii) Not be the developer, builder, seller of, or have any other such financial interest in the property for which the application package is submitted; and

(ix) Provide supplemental training, technical assistance, and support to certified loan application packagers and qualified employers to promote quality standards and accountability; and to address areas for improvement and any changes in program guidance.

(c) *Loan application packaging courses.* Prospective loan application packagers must successfully complete an Agency-approved course that covers the material identified in paragraph (c)(1) of this section. Prospective intermediaries must also successfully complete an Agency-approved course as specified in paragraph (c)(2) of this section.

(1) *Loan application packagers.* At a minimum, the certification course for individuals who wish to become Agency-certified loan application packagers will provide:

(i) An in-depth review of the section 502 direct single family housing loan program and the regulations and laws that govern the program (including civil rights lending laws such as the Equal Credit Opportunity Act, Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973);

(ii) A detailed discussion on the program's application process and borrower/property eligibility requirements;

(iii) An examination of the Agency's loan underwriting process which includes the use of payment subsidies; and

(iv) The roles and responsibilities of a loan application packager and the Agency staff.

(2) *Intermediaries.* The required course for an intermediary's quality assurance staff will cover the components described in paragraph (c)(1) of this section and other information relevant to undertaking quality assurance, technical assistance, and training functions in support of the qualified employers and their Agency-certified loan application packagers.

(3) *Non-Agency trainers.* Prior to offering the required course to packagers and intermediaries, non-Agency trainers must obtain approval from designated Agency staff. Non-Agency trainers, who will generally be limited to housing nonprofit organizations but may in rare cases include public bodies such as public universities, must provide proof of relevant experience and resources for delivery; present evidence that their individual trainers are competent and knowledgeable on all subject areas; submit course materials for

Agency review; agree to maintain attendance records, test results, and updated course materials; and bear the cost of providing the training though a reasonable tuition fee may be charged the course participants. The course content, schedule, and tuition must be approved by RHS and a designated Agency staff member will typically participate in each training session to ensure accuracy of the program information and to serve as a program resource. A list of eligible non-Agency trainers, which is subject to change based on non-Agency trainers' performance, will be published by the Agency.

(d) *Confidentiality*. The Agency-certified loan application packager, qualified employer, Agency-approved intermediary and their agents must safeguard each applicant's personal and financial information.

(e) *Retaining designation*. The Agency will meet with the Agency-certified loan application packager, their qualified employer, and Agency-approved intermediary (if applicable) at least annually to maintain open lines of communication; discuss their packaging activities; identify and resolve deficiencies in the packaging process; and stipulate any training requirements for retaining designation (including but not limited to civil rights refresher training).

(f) *Revocation*. The designation as an Agency-certified loan application packager or Agency-approved intermediary is subject to revocation by the Agency under any of the following conditions:

(1) The rate of submitted packaged loan applications that receive RHS approval is below the acceptable limit as determined by the Agency;

(2) The rate of submitted packaged loan applications from very low-income applicants is below the acceptable level as determined by the Agency;

(3) Violation of applicable regulations, statutes and other guidance; or

(4) No viable packaged loan applications are submitted to the Agency in any consecutive 12-month period.

[80 FR 23678, Apr. 29, 2015]

§§ 3550.75–3550.99 [Reserved]

§ 3550.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002]

Subpart C—Section 504 Origination and Section 306C Water and Waste Disposal Grants

§ 3550.101 Program objectives.

This subpart sets forth policies for administering loans and grants under section 504(a) of title V of the Housing Act of 1949, as amended. Section 504 loans and grants are intended to help very low-income owner-occupants in rural areas repair their properties. This subpart also covers Water and Waste Disposal (WWD) Grants to individuals authorized by Section 306C(b) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926c).

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

§ 3550.102 Grant and loan purposes.

(a) *Grant funds.* Grant funds may be used only to pay costs for repairs and improvements that will remove identified health and safety hazards or to repair or remodel dwellings to make them accessible and useable for household members with disabilities. Unused grant funds must be returned to the Rural Housing Service (RHS).

(b) *Loan funds.* Loan funds may be used to make general repairs and improvements to properties or to remove health and safety hazards, as long as

the dwelling remains modest in size and design.

(c) *Eligibility of mobile and manufactured homes.* Repairs necessary to remove health and safety hazards may be made to mobile or manufactured homes provided:

(1) The applicant owns the home and site and has occupied the home prior to filing an application with RHS; and

(2) The mobile or manufactured home is on a permanent foundation or will be put on a permanent foundation with section 504 funds.

(d) *Eligible costs.* In addition to construction costs to make necessary repairs and improvements, loan and grant funds may be used for:

(1) Reasonable expenses related to obtaining the loan or grant, including legal, architectural and engineering, title clearance, and loan closing fees; and appraisal, surveying, environmental, tax monitoring, and other technical services.

(2) The cost of providing special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(3) Reasonable connection fees, assessments, or the pro rata installation costs for utilities such as water, sewer, electricity, and gas for which the borrower is liable and which are not paid from other funds.

(4) Real estate taxes that are due and payable on the property at the time of closing and for the establishment of escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(5) Fees to public and private nonprofit organizations that are tax exempt under the Internal Revenue Code for the development and packaging of applications.

(e) *Restrictions on uses of loan or grant funds.* Section 504 funds may not be used to:

(1) Assist in the construction of a new dwelling.

(2) Make repairs to a dwelling in such poor condition that when the repairs are completed, the dwelling will continue to have major hazards.

(3) Move a mobile home or manufactured home from one site to another.

(4) Pay for off-site improvements except for the necessary installation and assessment costs for utilities.

(5) Refinance any debt or obligation of the applicant incurred before the date of application except for the installation and assessment costs of utilities; or subject to the availability of funds and program priorities as determined by RHS, refinance of an existing RHS loan in accordance with § 3550.201 as a special servicing option, including but not limited to refinancing at the end of a moratorium.

(6) Pay fees, commission, or charges to for-profit entities related to loan packaging or referral of prospective applicants to RHS.

[61 FR 59779, Nov. 22, 1996, as amended at 87 FR 6772, Feb. 7, 2022]

§ 3550.103 Eligibility requirements.

To be eligible, applicants must meet the following requirements:

(a) *Owner-occupant.* Applicants must own, as described in § 3550.107, and occupy the dwelling.

(b) *Age (grant only).* To be eligible for grant assistance, an applicant must be 62 years of age or older at the time of application.

(c) *Income eligibility.* At the time of loan or grant approval, the household's adjusted income must not exceed the applicable very low-income limit. Section 3550.54 provides a detailed discussion of the calculation of adjusted income.

(d) *Citizenship status.* The applicant must be a U.S. citizen or a non-citizen who qualifies as a legal alien, as defined in § 3550.10.

(e) *Need and use of personal resources.* Applicants must be unable to obtain financial assistance at reasonable terms and conditions from non-RHS credit or grant sources and lack the personal resources to meet their needs. Elderly families must use any net family assets in excess of $20,000 to reduce their section 504 request. Non-elderly families must use any net family assets in excess of $15,000 to reduce their section 504 request. Applicants may contribute assets in excess of the aforementioned amounts to further reduce their request for assistance. The definition of assets for the purpose of this paragraph (e) is net family assets as described in

§ 3550.54, less the value of the dwelling and a minimum adequate site.

(f) *Legal capacity*. The applicant must have the legal capacity to incur the loan obligation or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(g) *Suspension or debarment*. Applications from applicants who have been suspended or debarred from participation in federal programs will be handled in accordance with RD Instruction 1940–M (available in any Rural Development office).

(h) *Repayment ability (loans only)*. Applicants must demonstrate adequate repayment ability as supported by a budget.

(1) If an applicant does not meet the repayment ability requirements, the applicant can have another party join the application as a cosigner.

(2) If an applicant does not meet the repayment ability requirements, the applicant can have other household members join the application.

(i) *Credit qualifications*. Applicants must be unable to secure the necessary credit from other sources under terms and conditions that the applicant could reasonably be expected to fulfill. Loan applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. An applicant with an outstanding judgment obtained by the United States in a federal court, other than the United States Tax Court, is not eligible for a loan or grant from RHS.

(1) Indicators of unacceptable credit include:

(i) Payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months.

(ii) Payments on any account which was delinquent for more than 30 days on two or more occasions within a 12-month period.

(iii) Loss of security due to a foreclosure if the foreclosure has been completed within the last 36 months.

(iv) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens with no satisfactory arrangement for payment.

(v) A court-created or court-affirmed obligation or judgment caused by non-payment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded by paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(vi) Outstanding collection accounts with a record of irregular payment with no satisfactory arrangements for repayment, or collection accounts that were paid in full within the last 6 months.

(vii) Non-agency debts written off within the last 36 months or paid in full at least 12 months ago.

(viii) Agency debts that were debt settled within the last 36 months or are being considered for debt settlement.

(ix) Delinquency on a federal debt.

(2) The following will not be considered indicators of unacceptable credit:

(i) A bankruptcy in which debts were discharged more than 36 months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meet obligations when due for the 12 months prior to the date of application.

(ii) A non-foreclosure judgment satisfied more than 12 months before the date of application.

(3) When an application is rejected because of unacceptable credit, the applicant will be informed of the reason and source of information.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002; 73 FR 49593, Aug. 22, 2008; 80 FR 9911, Feb. 24, 2015; 87 FR 6772, Feb. 7, 2022]

§ 3550.104 Applications.

(a) *Application submissions*. All persons applying for section 504 loans or grants must file a complete written application in a format specified by RHS. Applications will be accepted even when funds are not available.

(b) *Application processing*. (1) Incomplete applications will be returned to the applicant specifying in writing the additional information that is needed to make the application complete.

(2) An applicant may voluntarily withdraw an application at any time.

(3) RHS may periodically request in writing that applicants reconfirm their interest in obtaining a loan or grant. RHS may withdraw the application of

any applicant who does not respond within the specified timeframe.

(4) Applicants who are eligible will be notified in writing. If additional information becomes available that indicates that the original eligibility determination may have been in error or that circumstances have changed, RHS may reconsider the application and the applicant may be required to submit additional information.

(5) Applicants who are ineligible will be notified in writing and provided with the specific reasons for the rejection.

(c) *Processing priorities.* When funding is not sufficient to serve all eligible applicants, applications for assistance to remove health and safety hazards will receive priority for funding. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a veterans' preference. After selection for processing, requests for assistance are funded on a first-come, first-served basis.

[61 FR 59779, Nov. 22, 1996, as amended at 87 FR 6772, Feb. 7, 2022]

§ 3550.105 Site requirements.

(a) *Rural areas.* Loans may be made only in rural areas designated by RHS. If an area designation is changed to nonrural an existing RHS borrower may receive 504 assistance.

(b) *Not subdividable.* The site must not be large enough to subdivide into more than one site under existing local zoning ordinances.

§ 3550.106 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, or have a market value in excess of the applicable maximum area loan limit, in accordance with § 3550.63.

(b) *Post-repair condition.* Dwellings repaired with section 504 funds need not be brought to the agency development standards of 7 CFR part 1924, subpart A, nor must all existing hazards be removed. However, the dwelling may not continue to have major health or safety hazards.

(c) *Construction standards.* All work must be completed in accordance with local construction codes and standards. When potentially hazardous equipment or materials are being installed, all materials and installations must be in accordance with the applicable standards in 7 CFR part 1924, subpart A.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002; 72 FR 70222, Dec. 11, 2007; 87 FR 6772, Feb. 7, 2022]

§ 3550.107 Ownership requirements.

The applicant must have an acceptable ownership interest in the property as evidenced by one of the following:

(a) *Full fee ownership.* Acceptable full fee ownership is evidenced by a fully marketable title with a deed vesting a fee interest in the property to the applicant.

(b) *Secure leasehold interest.* A written lease is required. For loans, the unexpired portion of the lease must not be less than 2 years beyond the term of the promissory note. For grants, the remaining lease period must be at least 5 years. A leasehold for mutual help housing financed by U.S. Department of Housing and Urban Development (HUD) on Indian lands requires no minimum lease period and constitutes acceptable ownership.

(c) *Life estate interest.* To be acceptable, a life estate interest must provide the applicant with rights of present possession, control, and beneficial use of the property. For secured loans, generally persons with any remainder interests must be signatories to the mortgage. All of the remainder interests need not be included in the mortgage to the extent that one or more of the persons holding remainder interests are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or if the remainder interests are divided among such a large number of people that it is not practical to obtain the signatures of all of the remainder interests. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(d) *Undivided interest.* An undivided interest is acceptable if there is no reason to believe that the applicant's position as an owner-occupant will be jeopardized as a result of the improvements to be made, and:

(1) In the case of unsecured loans or grants, if any co-owners living or planning to live in the dwelling sign the repayment agreement.

(2) In the case of a secured loan, when one or more of the co-owners are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or the ownership interests are divided among so large a number of co-owners that it is not practical for all of their interests to be mortgaged, their interests not exceeding 50 percent may be excluded from the security requirements. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(e) *Possessory rights.* Acceptable forms of ownership include possessory right on an American Indian reservation or State-owned land and the interest of an American Indian in land held severalty under trust patents or deeds containing restrictions against alienation, provided that land in trust or restricted status will remain in trust or restricted status.

(f) *Land purchase contract.* A land purchase contract is acceptable if the applicant is current on all payments, and there is a reasonable likelihood that the applicant will be able to continue meeting the financial obligations of the contract.

(g) *Alternative evidence of ownership.* If evidence, as described in paragraphs (a) through (e) of this section, is not available, RHS may accept any of the following as evidence of ownership:

(1) Records of the local taxing authority that show the applicant as owner and that demonstrate that real estate taxes for the property are paid by the applicant.

(2) Affidavits by others in the community stating that the applicant has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

(3) Any instrument, whether or not recorded, which is commonly accepted as evidence of ownership.

§ 3550.108 Security requirements (loans only).

When the total section 504 indebtedness is $7,500 or more, the property will be secured by a mortgage on the property, leasehold interest, or land purchase contract.

(a) RHS does not require a first lien position, but the total of all debts on the secured property may not exceed the value of the security, except by the amount of any required contributions to an escrow account for taxes and insurance and any required appraisal fee.

(b) Title clearance and the use of legal services generally must be conducted in accordance with 7 CFR part 1927, subpart B. These requirements need not be followed for:

(1) Loans where the total section 504 indebtedness does not exceed an amount determined by the Agency based on factors such as average costs for title insurance and closing agents compared to average housing repair costs, but no greater than twenty percent of the national average area loan limit.

(2) Subsequent loans made for minimal essential repairs necessary to protect the Government's interest.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002; 87 FR 6772, Feb. 7, 2022]

§ 3550.109 Escrow account (loans only).

RHS may require that borrowers deposit into an escrow account amounts necessary to ensure that the account will contain sufficient funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs when they are due in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) and section 501(e) of the Housing Act of 1949, as amended.

§ 3550.110 Insurance (loans only).

(a) Borrower responsibility. Any borrower with a secured indebtedness in excess of $15,000 at the time of loan approval must furnish and continually maintain hazard insurance on the security property, with companies, in amounts, and on terms and conditions acceptable to RHS including a ''loss

payable clause'' payable to RHS to protect the Government's interest.

(b) Amount. The borrower is required to insure the dwelling and any other essential buildings in an amount equal to the insurable value of the dwelling and other essential buildings. However, in cases where the borrower's outstanding secured indebtedness is less than the insurable value of the dwelling and other essential buildings, the borrower may elect a lower coverage provided it is not less than the outstanding secured indebtedness. If the borrower fails, or is unable to insure the secured property, RHS will force place insurance and charge the cost to the borrower's account. Force place insurance only provides insurance coverage to the Agency and does not provide any direct coverage or benefit to the borrower. The amount of the lender-placed coverage generally will be the property's last known insured value.

(c) *Flood insurance.* Flood insurance must be obtained and maintained for the life of the loan for all property located in Special Flood Hazard Areas (SFHA) as determined by the Federal Emergency Management Agency (FEMA). RHS actions will be consistent with 7 CFR part 1806, subpart B which addresses flood insurance requirements. If flood insurance through FEMA's National Flood Insurance Program is not available in a SFHA, the property is not eligible for federal financial assistance.

(d) *Losses.* (1) Loss deductible clauses for required insurance coverage may not exceed the generally accepted minimums based on current and local market conditions.

(2) Borrowers must immediately notify RHS of any loss or damage to insured property and collect the amount of the loss from the insurance company.

(3) RHS may require that loss payments be supervised. All repairs and replacements done by or under the direction of the borrower, or by contract, will be planned, performed, inspected, and paid for in accordance with 7 CFR part 1924, subpart A.

(4) When insurance funds remain after all repairs, replacements, and other authorized disbursements have been made, the funds will be applied in the following order:

(i) Prior liens, including delinquent property taxes.

(ii) Delinquency on the account.

(iii) Advances due for recoverable cost items.

(iv) Released to the borrower if the RHS debt is adequately secured.

(5) If a loss occurs when insurance is not in force, the borrower is responsible for making the needed repairs or replacements and ensuring that the insurance is reinstated on the property.

(6) If the borrower is not financially able to make the repairs, RHS may take one of the following actions:

(i) Make a subsequent loan for repairs.

(ii) Subordinate the RHS lien to permit the borrower to obtain funds for needed repairs from another source.

(iii) Permit the borrower to obtain funds secured by a junior lien from another source.

(iv) Make a protective advance to protect the Government's interest.

(v) Accelerate the account and demand payment in full.

[61 FR 59779, Nov. 22, 1996, as amended at 70 FR 6552, Feb. 8, 2005; 73 FR 49593, Aug. 22, 2008]

§ 3550.111 Appraisals (loans only).

An appraisal is required when the section 504 debt to be secured exceeds $15,000 or whenever RHS determines that it is necessary to establish the adequacy of the security. RHS may charge an appraisal fee. Appraisals must be made in accordance with the Uniform Standards of Professional Appraisal Practices. When other real estate is taken as additional security it will be appraised if it represents a substantial portion of the security for the loan.

§ 3550.112 Maximum loan and grant.

(a) *Maximum loan permitted.* The sum of all outstanding section 504 loans to one household for one dwelling may not exceed an amount determined by the Agency based on factors such as average loan amounts and repair costs, but no greater than twenty percent of the national average area loan limit.

(1) Transferees who have assumed a section 504 loan and wish to obtain a

subsequent section 504 loan are limited to the difference between the unpaid principal balance of the debt assumed and the maximum loan permitted.

(2) For a secured loan, the total of all debts on the secured property may not exceed the value of the security, except by the amount of any required appraisal and tax monitoring fees, and the contributions to an escrow account for taxes and insurance.

(b) *Maximum loan based upon ability to pay*. The maximum loan is limited to the principal balance that can be supported given the amount the applicant has available, as determined by RHS, to repay a loan at 1 percent interest with a 20-year term.

(c) *Maximum grant*. The lifetime total of the grant assistance to any one household or one dwelling may not exceed ten percent of the national average area loan limit.

[61 FR 59779, Nov. 22, 1996, as amended at 87 FR 6772, Feb. 7, 2022]

§ 3550.113 Rates and terms (loans only).

(a) *Interest rate*. The interest rate for all section 504 loans will be 1 percent.

(b) *Loan term*. The repayment period for all section 504 loans will be 20 years.

[61 FR 59779, Nov. 22, 1996, as amended at 87 FR 6773, Feb. 7, 2022]

§ 3550.114 Repayment agreement (grants only).

Grant recipients are required to sign a repayment agreement which specifies that the full amount of the grant must be repaid if the property is sold in less than 3 years from the date the grant agreement was signed.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

§ 3550.115 WWD grant program objectives.

The objective of the WWD individual grant program is to facilitate the use of community water and waste disposal systems by the residents of colonias along the border between the U.S. and Mexico. WWD grants are processed the same as Section 504 grants, except as specified in this subpart.

[67 FR 78331, Dec. 24, 2002]

§ 3550.116 Definitions applicable to WWD grants only.

(a) *Colonia*. Any identifiable community designated in writing by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of a potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads, and drainage; and existed and was generally recognized as a colonia before October 1, 1989.

(b) *Individual*. Resident of a colonia located in a rural area.

(c) *Rural areas*. Includes unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

(d) *System*. A community or central water supply or waste disposal system.

(e) *WWD*. Water and Waste Disposal grants to individuals.

[67 FR 78331, Dec. 24, 2002, as amended at 80 FR 9911, Feb. 24, 2015]

§ 3550.117 WWD grant purposes.

Grant funds may be used to pay the reasonable costs for individuals to:

(a) Extend service lines from the system to their residence.

(b) Connect service lines to residence's plumbing.

(c) Pay reasonable charges or fees for connecting to a system.

(d) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is limited to one bathtub, sink, commode, kitchen sink, water heater, and outside spigot.

(e) Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

(f) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant for a purpose provided in paragraph (a) or (b)

of this section and is required by local or State law.

(g) Make improvements to individual's residence when needed to allow the use of the water and/or waste disposal system.

[67 FR 78331, Dec. 24, 2002]

§ 3550.118 Grant restrictions.

(a) *Maximum grant.* Lifetime assistance to any individual for initial or subsequent Section 306C WWD grants may not exceed a cumulative total of $5,000.

(b) *Limitation on use of grant funds.* WWD grant funds may not be used to:

(1) Pay any debt or obligation of the grantees other than obligations incurred for purposes listed in § 3550.117.

(2) Pay individuals for their own labor.

[67 FR 78331, Dec. 24, 2002]

§ 3550.119 WWD eligibility requirements.

In addition to the eligibility requirements of § 3550.103, WWD applicants must meet the following requirements:

(a) An applicant need not be 62 years of age or older.

(b) Own and occupy a dwelling located in a colonia. Evidence of ownership will be presented as outlined in § 3550.107.

(c) Have a total taxable income from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services.

(d) Must not be delinquent on any Federal debt.

(e) The household income must be verified at the time they apply for assistance through verification of employment and benefits. Federal tax returns are used as further verification of household income.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

§§ 3550.120–3550.149 [Reserved]

§ 3550.150 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002; 80 FR 81738, Dec. 31, 2015]

Subpart D—Regular Servicing

§ 3550.151 Servicing goals.

This subpart sets forth the Rural Housing Service (RHS) policies for managing the repayment of loans made under sections 502 and 504 of the Housing Act of 1949, as amended.

§ 3550.152 Loan payments.

(a) *Payment terms.* Unless the loan documents specify other loan repayment terms, borrowers are required to make monthly payments. Borrowers with existing loans specifying annual payments may request conversion to monthly payments, and must convert to a monthly payment schedule before any subsequent loan or new payment assistance is approved. Suitable forms of payment are: check, money order, or bank draft. Borrowers who make cash payments will be assessed a fee to cover the cost of conversion to a money order.

(b) *Application of payments.* If a borrower makes less than the scheduled payment, the payment is held in suspense and is not applied to the borrower's account. When subsequent payments are received in an amount sufficient to equal a scheduled payment, the amount will be applied in the following order:

(1) Protective advances charged to the account.

(2) Accrued interest due.

(3) Principal due.

(4) Escrow for taxes and insurance.

(c) *Multiple loans.* When a borrower with multiple loans for the same property makes less than the scheduled payment on all loans, the payment will be applied to the oldest loan and then in declining order of age. Future remittances will be applied beginning with the oldest unpaid installment.

(d) *Application of excess payments.* Borrowers can elect to make payments in excess of the scheduled amount to be applied to principal, provided there are no outstanding fees.

§ 3550.153 Fees.

RHS may assess reasonable fees including a tax service fee, fees for late payments, and fees for checks returned for insufficient funds.

§ 3550.154 Inspections.

RHS or its agent may make reasonable entries upon and inspections of any property used as security for an RHS loan as necessary to protect the interest of the Government. RHS will give the borrower notice at the time of or prior to an inspection.

§ 3550.155 Escrow account.

Escrow accounts will be administered in accordance with RESPA and section 501(e) of the Housing Act of 1949, as amended.

(a) Upon creation of the escrow account, RHS may require borrowers to deposit funds sufficient to pay taxes and insurance premiums applicable to the mortgage for the period since the last payments were made and to fund a cushion as permitted by RESPA.

(b) Borrowers may elect to escrow at any time during the terms of the loan if the outstanding RHS loan balance is over $2,500.

(c) RHS may require borrowers to escrow in conjunction with any special servicing action.

§ 3550.156 Borrower obligations.

(a) After receiving a loan from RHS, borrowers are expected to meet a variety of obligations outlined in the loan documents. In addition to making timely payments, these obligations include:

(1) Maintaining the security property; and

(2) Maintaining an adequately funded escrow account, or paying real estate taxes, hazard and flood insurance, and other related costs when due.

(b) If a borrower fails to fulfill these obligations, RHS may obtain the needed service and charge the cost to the borrowers account.

§ 3550.157 Payment subsidy.

(a) *Borrowers currently receiving payment subsidy.* (1) RHS will review annually each borrower's eligibility for continued payment subsidy and determine the appropriate level of assistance. To be eligible for payment subsidy renewal, the borrower must also occupy the property.

(2) If the renewal is not completed before the expiration date of the existing agreement, the effective date of the renewal will be either the expiration date of the previous agreement if RHS error caused the delay, or the next due date after the renewal is approved in all other cases.

(3) The borrower must notify RHS whenever an adult member of the household becomes employed or changes employment, there is a change in household composition, or if income increases by at least 10 percent. The household may also report decreases in income. If the change in the household's income will cause the payment for principal and interest to change by at least 10 percent, the household's payment subsidy may be adjusted for a new 12-month period. The new agreement will be effective the due date following the date the borrower's information is verified by RHS.

(b) *Borrowers not currently receiving payment subsidy.* Payment assistance may be granted to borrowers not currently receiving payment subsidy whose loans were approved on or after August 1, 1968, whose income does not exceed the applicable low-income limit for the area, are personally occupying the RHS financed property, and who meet the requirements of § 3550.53(b), (e), and (f). In general, to receive payment assistance the term of the loan at closing must have been at least 25 years. If an account has been reamortized and the initial term of the loan was at least 25 years, payment assistance may be granted even though the

term of the reamortized loan is less than 25 years. Payment assistance may be granted on a subsequent loan for repairs with a term of less than 25 years.

(c) *Cancellation of payment subsidy.* RHS will cancel a payment subsidy if the borrower does not occupy the property, has sold or transferred title to the property, or is no longer eligible for payment subsidy.

§ 3550.158 Active military duty.

The Soldiers and Sailors Relief Act requires that the interest rate charged a borrower who enters full-time active military duty after a loan is closed not exceed six percent. Active military duty does not include participation in a military reserve or the National Guard unless the borrower is called to active duty.

(a) *Amount of assistance.* If a borrower qualifies for payment subsidy after reduction of the interest rate to six percent, the amount of payment subsidy received during the period of active military duty will be the difference between the amount due at the subsidized rate for principal and interest and the amount due at a six percent interest rate. The six percent interest rate will be effective with the first payment due after RHS confirms the active military status of the borrower.

(b) *Change of active military status.* The borrower must notify RHS when he or she is no longer on active military duty. RHS will cancel the six percent interest rate and resume use of the promissory note interest rate. A new payment subsidy agreement may be processed if the borrower is eligible.

§ 3550.159 Borrower actions requiring RHS approval.

(a) *Mineral leases.* Borrowers who wish to lease mineral rights to a security property must request authorization from RHS. RHS may consent to the lease of mineral rights and subordinate its liens to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence and the Government's security interest will not be adversely affected. Subordination of RHS loans to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property.

(1) If the proposed activity is likely to decrease the value of the security property, RHS may consent to the lease only if the borrower assigns 100 percent of the income from the lease to RHS to be applied to reduce principal and the rent to be paid is at least equal to the estimated decrease in the market value of the security.

(2) If the proposed activity is not likely to decrease the value of the security property, RHS may consent to the lease if the borrower agrees to use any damage compensation received from the lessee to repair damage to the site or dwelling, or to assign it to RHS to be applied to reduce principal.

(b) *Subordination.* RHS may subordinate its interests to permit a borrower to defer recapture amounts and refinance the loan, or to obtain a subsequent loan with private credit.

(1) When it is in the best interest of the Government, subordination will be permitted if:

(i) The other lender will verify that the funds will be used for purposes for which an RHS loan could be made;

(ii) The prior lien debt will be on terms and conditions that the borrower can reasonably be expected to meet without jeopardizing repayment of the RHS indebtedness;

(iii) Any proposed development will be planned and performed in accordance with 7 CFR part 1924, subpart A or directed by the other lender in a manner which is consistent with that subpart; and

(iv) An agreement is obtained in writing from the prior lienholder providing that at least 30 days prior written notice will be given to RHS before action to foreclose on the prior lien is initiated.

(2) The total amount of debt permitted when RHS subordinates its interests depends on whether the borrower pays off the RHS loan.

(i) For situations in which the borrower is obtaining a subsequent loan from another source and will not pay off the RHS debt, the prior lien debt plus the unpaid balance of all RHS loans, exclusive of recapture, will not exceed the market value of the security.

(ii) For situations in which RHS is subordinating only a deferred recapture amount, the prior lien debt plus the deferred recapture amount will not exceed the market value of the security.

(c) *Partial release of security.* RHS may consent to transactions affecting the security, such as sale or exchange of security property or granting of a right-of-way across the security property, and grant a partial release provided:

(1) The compensation is:

(i) For sale of the security property, cash in an amount equal to the value of the security being disposed of or rights granted.

(ii) For exchange of security property, another parcel of property acquired in exchange with value equal to or greater than that being disposed of.

(iii) For granting an easement or right-of-way, benefits derived that are equal to or greater than the value of the security property being disposed of.

(2) An appraisal must be conducted if the latest appraisal is more than 1 year old or if it does not reflect market value and the amount of consideration exceeds $5,000. The appraisal fee will be charged to the borrower.

(3) The security property, after the transaction is completed, will be an adequate but modest, decent, safe, and sanitary dwelling and related facilities.

(4) Repayment of the RHS debt will not be jeopardized.

(5) Environmental requirements are met and environmental documentation is submitted in accordance with 7 CFR part 1970.

(6) When exchange of all or part of the security is involved, title clearance is obtained before release of the existing security.

(7) Proceeds from the sale of a portion of the security property, granting an easement or right-of-way, damage compensation, and all similar transactions requiring RHS consent, will be used in the following order:

(i) To pay customary and reasonable costs related to the transaction that must be paid by the borrower.

(ii) To be applied on a prior lien debt, if any.

(iii) To be applied to RHS indebtedness or used for improvements to the security property in keeping with purposes and limitations applicable for use of RHS loan funds. Proposed development will be planned and performed in accordance with 7 CFR part 1924, subpart A and supervised to ensure that the proceeds are used as planned.

(d) *Lease of security property.* A borrower must notify RHS if they lease the property. If the lease is for a term of more than 3 years or contains an option to purchase, RHS may liquidate the loan. During the period of any lease, the borrower is not eligible for a payment subsidy or special servicing benefits.

[61 FR 59779, Nov. 22, 1996, as amended at 81 FR 11048, Mar. 2, 2016]

§ 3550.160 Refinancing with private credit.

(a) *Objective.* RHS direct loan programs are not intended to supplant or compete with private credit sources. Therefore, borrowers are required to refinance RHS loans with private credit sources when RHS determines that the borrower meets RHS criteria.

(b) *Criteria for refinancing with private credit.* Borrowers must refinance with private credit when RHS determines that the borrower has the ability to obtain other credit at reasonable rates and terms based on their income, assets, and credit history. Reasonable rates and terms are those commercial rates and terms that borrowers are expected to meet when borrowing for similar purposes. Differences in interest rates and terms between RHS and other lenders will not be an acceptable reason for a borrower to fail to refinance with private credit if the available rates and terms are within the borrower's ability to pay.

(c) *Notice of requirement to refinance with private credit.* The financial status of all borrowers may be reviewed periodically to determine their ability to refinance with private credit. A borrower's financial status may be reviewed at any time if information becomes available to RHS that indicates that the borrower's circumstances have changed.

(1) A borrower undergoing review is required to supply, within 30 days of a request from RHS, sufficient financial

information to enable RHS to determine the borrowers ability to refinance with private credit. Foreclosure action may be initiated against any borrower who fails to respond.

(2) When RHS determines that a borrower has the ability to refinance with private credit, the borrower will be required to refinance within 90 days.

(3) Within 30 days after being notified of the requirement to refinance with private credit, a borrower may contest the RHS decision and provide additional financial information to document an inability to refinance with private credit.

(d) *Failure to refinance with private credit.* (1) If the borrower is unable to secure private credit, the borrower must submit written statements and documentation to RHS showing:

(i) The lenders contacted.

(ii) The amount of the loan requested by the borrower and the amount, if any, offered by the lenders.

(iii) The rates and terms offered by the lenders or the specific reasons why other credit is not available.

(iv) The information provided by the borrower to the lenders regarding the purpose of the loan.

(2) If RHS determines that the borrower's submission does not demonstrate the borrower's inability to refinance with private credit, or if the borrower fails to submit the required information, foreclosure may be initiated.

(e) *Subordination of recapture amount.* RHS may subordinate its interest in any deferred recapture amount to permit a borrower to refinance with private credit. The amount to which the RHS debt will be subordinated may include:

(1) The amount required to repay the RHS debt, exclusive of recapture;

(2) Reasonable closing costs;

(3) Up to one percent of the loan amount for loan servicing costs, if required by the lender; and

(4) The cost of any necessary repairs or improvements to the security property.

(f) *Application for additional credit.* A borrower who has been asked to refinance with private credit will not be considered for additional credit until the refinancing issue is resolved unless such additional credit is necessary to protect the Government's interest.

§ 3550.161 Final payment.

(a) *Payment in full.* Full payment of a borrower's account includes repayment of principal and outstanding interest, unauthorized assistance, recapture amounts, and charges made to the borrower's account. Any supervised funds or funds remaining in a borrower's escrow account will be applied to the borrower's account or returned to the borrower.

(b) *Release of security instruments.* RHS may release security instruments when full payment of all amounts owed has been received and verified. If RHS and the borrower agree to settle the account for less than the full amount owed, the security instruments may be released when all agreed-upon amounts are received and verified. Security instruments will not be released until any deferred recapture amount has been paid in full.

(c) *Payoff statements.* At the borrower's request, RHS will provide a written statement indicating the amount required to pay the account in full. RHS may charge a fee for statements for the same account if more than 2 statements are requested in any 30 day period.

(d) *Suitable forms of payment.* Suitable forms of payment are: check, money order, or bank draft. Borrowers who make cash payments will be assessed a fee to cover conversion to a money order.

(e) *Recording costs.* Recording costs for the release of the mortgage will be the responsibility of the borrower, except where State law requires the mortgagee to record or file the satisfaction.

§ 3550.162 Recapture.

(a) *Recapture policy.* Borrowers with loans approved or assumed on or after October 1, 1979, will be required to repay subsidy amounts received through payment subsidy (including the former interest credit program) or deferred mortgage assistance in accordance with paragraph (b) of this section. Amounts to be recaptured are due

and payable when the borrower transfers title or ceases to occupy the property, including but not limited to, in the event of foreclosure or deed in lieu of foreclosure. Such recapture will include the amount of principal reduction attributed to subsidy (for loans subject to recapture that were approved, and received interest credit, between October 1, 1979, and December 31, 1989), except in cases of foreclosure and deed in lieu of foreclosure.

(b) *Amount to be recaptured*—(1) *General.* The amount to be recaptured is determined by a calculation specified in the borrower's subsidy repayment agreement and is based on the borrower's equity in the property at the time of loan pay off. If there is no equity based on the recapture calculation, the amount of principal reduction attributed to subsidy is not collected. The recapture calculation includes the amount of principal reduction attributed to subsidy plus the lesser of:

(i) The amount of subsidy received; or

(ii) A portion of the value appreciation of the property subject to recapture. In order for the value appreciation to be calculated, the borrower will provide a current appraisal, including an appraisal for any capital improvements, or arm's length sales contract as evidence of market value upon Agency request. Appraisals must meet Agency standards under § 3550.62.

(2) *Foreclosure or deed in lieu of foreclosure.* Notwithstanding paragraph (b)(1) of this section, the amount to be recaptured in a foreclosure or deed in lieu of foreclosure is the amount of subsidy received, not including any principal reduction attributed to subsidy. Foreclosure actions will seek to recover such amounts only from the proceeds of the property. Liquidation proceeds (in the case of foreclosure) or the net recovery value (in the case of deed in lieu of foreclosure) will be applied or credited to the borrower's debt in accordance with the security agreement in the following order:

(i) Recoverable costs (e.g. protective advances, foreclosure costs, late charges).

(ii) Accrued interest.

(iii) Principal.

(iv) Subsidy.

(3) *Value appreciation.* The value appreciation of property with a cross-collateralized loan is based on the market value of the dwelling and lot. If located on a farm, the lot size would be a typical lot for a single family housing property.

(4) *Interest* reduced from the promissory note rate to six percent under the Servicemembers Civil Relief Act (SCRA) is not subject to recapture.

(c) *Deferral of recapture.* If the borrower refinances or otherwise pays in full without transfer of title and continues to occupy the property, the amount of recapture will be calculated in accordance with paragraph (a) of this section but payment of recapture may be deferred, interest free, until the property is sold or vacated. If the recapture amount is deferred, the Agency mortgage can be subordinated when in the Government's best interest but will not be released nor the promissory note satisfied until the Agency is paid in full. In situations where deferral of recapture is an option, recapture will be discounted if paid in full at the time of settlement or timely paid after Agency notification to the borrower that recapture is due.

(d) *Assumed loans.* (1) When a loan subject to recapture is assumed under new rates and terms, the recapture amount may be paid in full by the seller or included in the principal amount assumed by the buyer.

(2) When a loan is assumed under the same rates and terms as the original promissory note, recapture amounts will not be due. When the new borrower transfers title or ceases to occupy the property, all subsidy subject to recapture before and after the assumption is due.

(3) When a borrower has deferred payment of recapture amounts, the deferred recapture amount may be included in the principal amount of the new loan.

[77 FR 3378, Jan. 24, 2012, as amended at 87 FR 6773, Feb. 7, 2022]

§ 3550.163 Transfer of security and assumption of indebtedness.

(a) *General policy.* RHS mortgages contain due-on-sale clauses that generally require RHS consent before title

to a security property can be transferred with an assumption of the indebtedness. If it is in the best interest of the Government, RHS will approve the transfer of title and assumption of indebtedness on program or nonprogram (NP) terms, depending on the transferee's eligibility and the property's characteristics.

(b) *RHS approval of assumptions.* (1) A borrower with a loan on program terms who wishes to transfer a security property restricted by a due-on-sale clause to a purchaser who wishes to assume the debt must receive prior authorization from RHS. If RHS authorizes the transfer and assumption, the account will be serviced in the purchaser's name and the purchaser will be liable for the loan under the terms of the security instrument.

(2) If a borrower transfers title to the security property with a due-on-sale clause without obtaining RHS authorization, RHS will not approve assumption of the indebtedness, and the loan will be liquidated unless RHS determines that it is in the Government's best interest to continue the loan. If RHS decides to continue the loan, the account will be serviced in the original borrower's name and the original borrower will remain liable for the loan under the terms of the security instrument.

(c) *Exceptions to due-on-sale clauses.* (1) Due-on-sale clauses are not triggered by the following types of transfers:

(i) A transfer from the borrower to a spouse or children not resulting from the death of the borrower.

(ii) A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower.

(iii) A transfer to a spouse or exspouse resulting from a divorce decree, legal separation agreement, or property settlement agreement.

(iv) A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment.

(v) A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property.

(2) A transferee who obtains property through one of the types of transfer listed in paragraph (c)(1) of this section:

(i) Is not required to assume the loan, and RHS is not permitted to liquidate the loan, if the transferee continues to make scheduled payments and meet all other obligations of the loan. A transferee who does not assume the loan is not eligible for payment assistance or a moratorium.

(ii) May assume the loan on the rates and terms contained in the promissory note, with no down payment. If the account is past due at the time an assumption is executed, the account may be brought current by using any of the servicing methods discussed in subpart E of this part.

(iii) May assume the loan under new rates and terms if the transferee applies and is program-eligible.

(3) Any subsequent transfer of title, except upon death of the inheritor or between inheritors to consolidate title, will be treated as a sale.

(d) *Requirements for an assumption.* (1) Loans secured by program-eligible properties to be assumed by program-eligible purchasers may be assumed on program terms. Loans secured by nonprogram properties and loans to be assumed by purchasers who are not eligible for program terms may be assumed on NP terms.

(2) The amount the transferee will assume will be either the current market value less any prior liens and any required down payment, or the indebtedness, whichever is less.

(3) For loans assumed on program terms, the interest rate charged by RHS will be the rate in effect at loan approval or loan closing, whichever is lower. For loans assumed on nonprogram terms, the interest rate will be the rate in effect at the time of loan approval.

(4) If additional financing is required to purchase the property or to make repairs, RHS may approve a subsequent loan under subparts B or C of this part.

(5) If an appraisal is required for an assumption on new terms, the purchaser is responsible for the appraisal fee.

(6) If all or a portion of the borrower's account balance is assumed, the borrower and cosigner, if any, will be released from liability on the amount of the indebtedness assumed. If an account balance remains after the assumption, RHS may pursue debt settlement in accordance with subpart F of this part.

(7) Unless it is in the Government's best interest, RHS will not approve an assumption of a secured loan if the seller fails to repay any unsecured RHS loan.

(8) If a loan is secured by a property with a dwelling situated on more than a minimum adequate site and the excess property cannot be sold separately as a minimum adequate site for another dwelling, RHS may approve a transfer of the entire property. If the excess property can be sold separately as a minimum adequate site, RHS will approve assumption of only the dwelling and the minimum adequate site. If the value of the dwelling on the minimum adequate site is less than the amount of the outstanding RHS debt, the remaining debt will be secured by the excess property. The outstanding debt will be converted to an NP loan and reamortized over a period not to exceed 10 years or the final due date of the original promissory note, whichever is sooner.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

§ 3550.164 Unauthorized assistance.

(a) *Definition.* Unauthorized assistance includes any loan, payment subsidy, deferred mortgage payment, or grant for which the recipient was not eligible.

(b) *Unauthorized assistance due to false information.* (1) False information includes information that the recipient knew was incorrect or should have known was incorrect that was provided or omitted for the purposes of obtaining assistance for which the recipient was not eligible.

(2) If the recipient receives an unauthorized loan due to false information, RHS will adjust the account using the NP interest rate that was in effect when the loan was approved. The recipient must pay the account in full within 30 days.

(3) If the recipient receives unauthorized subsidy due to false information, RHS will require the recipient to repay it within 30 days. The account cannot be reamortized to include the unauthorized subsidy. If the recipient repays the unauthorized subsidy, the loan may be continued.

(c) *Unauthorized assistance due to inaccurate information.* (1) Inaccurate information includes incorrect information inadvertently provided, used, or omitted without the intent to obtain benefits for which the recipient was not eligible.

(2) RHS will permit a recipient who receives an unauthorized loan due to inaccurate information to retain the loan under the following conditions.

(i) If the inaccurate information was related to the purpose of the loan or the recipient's eligibility, with the exception of income, or the income used was incorrect, but the recipient still qualified as income-eligible, RHS will allow the recipient to continue the loan on existing terms.

(ii) If a section 502 recipient's income was above the moderate-income level, RHS will convert the loan to an NP loan, using the nonprogram interest rate in effect on the date the loan was approved.

(iii) If a section 504 recipient's income was above the very low-income level, RHS will apply the applicable 502 or nonprogram interest rate in effect on the date the loan was approved.

(iv) If an incorrect interest rate was used, RHS will adjust the account using the correct interest rate.

(3) If the recipient receives unauthorized subsidy due to inaccurate information, RHS will require the recipient to repay it within 30 days. If the recipient cannot repay it within 30 days, the account may be reamortized. If the recipient repays the unauthorized subsidy or reamortizes the loan, the loan may be continued.

(d) *Unauthorized grants.* Recipients may either repay the unauthorized assistance in a lump sum or execute a promissory note, regardless of whether the unauthorized assistance was due to

false or inaccurate information. RHS may seek a judgment if the recipient refuses to repay the unauthorized assistance.

(e) *Account servicing.* RHS will adjust all accounts retroactively to establish the amount of unauthorized assistance. If the recipient does not repay the unauthorized assistance within 30 days, RHS may accelerate the loan. If the unauthorized assistance is due to inaccurate information and the recipient is unable to repay within 30 days, RHS may reamortize the loan.

(f) *Accounts with no security.* If an unauthorized loan or grant is unsecured, RHS may seek the best mortgage obtainable.

§§ 3550.165–3550.199 [Reserved]

§ 3550.200 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

Subpart E—Special Servicing

§ 3550.201 Purpose of special servicing actions.

The Rural Housing Service (RHS) may approve special servicing actions to reduce the number of borrower failures that result in liquidation. Borrowers who have difficulty keeping their accounts current may be eligible for one or more available servicing options including: Payment assistance; delinquency workout agreements that temporarily modify payment terms; protective advances of funds for taxes, insurance, and other approved costs; and payment moratoriums. Subject to the availability of funds and Agency priorities, refinancing may be available as a special servicing option in accordance with § 3550.52(c).

[87 FR 6773, Feb. 7, 2022]

§ 3550.202 Past due accounts.

An account is past due if the scheduled payment is not received by the due date, or as authorized by State law.

(a) *Late fee.* A late fee will be assessed if the full scheduled payment is not received by the 15th day after the due date.

(b) *Liquidation*—(1) *For borrowers with monthly payments.* The account may be accelerated without further servicing when at least 3 scheduled payments are past due or an amount equal to at least 2 scheduled payments is past due for at least 3 consecutive months. In such cases RHS may pursue voluntary liquidation and foreclosure.

(2) *For borrowers with annual payments.* The account may be accelerated without further servicing when at least 3/12 of 1 scheduled payment has not been received by its due date. In such cases, RHS may pursue voluntary liquidation and foreclosure.

(3) *Subsidy recapture.* Acceleration under this section will take into account any subsidy recapture due under § 3550.162.

[61 FR 59779, Nov. 22, 1996, as amended at 77 FR 3379, Jan. 24, 2012]

§ 3550.203 General servicing actions.

Whenever any of the servicing actions described in this subpart result in reamortization of the account RHS may:

(a) Require a borrower who currently makes annual payments, but receives a monthly income, to convert to monthly payments.

(b) Require the creation and funding of an escrow account for real estate taxes and insurance, if one does not already exist for any borrower with monthly payments.

(c) Convert the method of calculating interest for any account being charged daily simple interest to an amortized payment schedule.

§ 3550.204 Payment assistance.

Borrowers who are eligible may be offered payment assistance in accordance with subpart B of this part. Borrowers who are not eligible for payment assistance because the loan was approved before August 1, 1968, or the loan was made on above-moderate or nonprogram (NP) terms, may refinance the loan in order to obtain payment assistance if:

(a) The borrower is eligible to receive a loan with payment assistance;

(b) Due to circumstances beyond the borrower's control, the borrower is in danger of losing the property; and

(c) The property is program-eligible.

§ 3550.205 Delinquency workout agreements.

Borrowers with past due accounts may be offered the opportunity to avoid liquidation by entering into a delinquency workout agreement that specifies a plan for bringing the account current. To receive a delinquency workout agreement, the following requirements apply:

(a) A borrower who is able to do so will be required to pay the past-due amount in a single payment.

(b) A borrower who is unable to pay the past-due amount in a single payment must pay monthly all scheduled payments plus an agreed upon additional amount that brings the account current within 2 years or the remaining term of the loan, whichever is shorter.

(c) If a borrower becomes more than 30 days past due under the terms of a delinquency workout agreement, RHS may cancel the agreement.

§ 3550.206 Protective advances.

RHS may pay for fees or services and charge the cost against the borrower's account to protect the Governments interest.

(a) *Advances for taxes and insurance.* RHS may advance funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs, as well as amounts needed to fund the current escrow cycle.

(b) *Advances for costs other than taxes and insurance.* Protective advances for costs other than taxes and insurance, such as emergency repairs, will be made only if the borrower cannot obtain a subsequent loan.

(c) *Repayment arrangements.* (1) Advances for borrowers with multiple loans will be charged against the largest loan.

(2) Amounts advanced will be due with the next scheduled payment. RHS may schedule repayment consistent with the borrowers ability to repay or reamortize the loan.

(3) Advances will bear interest at the promissory note rate of the loan to which the advance was charged.

§ 3550.207 Payment moratorium.

RHS may defer a borrowers scheduled payments for up to 2 years. NP borrowers are not eligible for a payment moratorium.

(a) *Borrower eligibility.* For a borrower to be eligible for a moratorium, all of the following conditions must be met:

(1) Due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making scheduled payments because:

(i) The borrower's repayment income fell by at least 20 percent within the past 12 months;

(ii) The borrower must pay unexpected and unreimbursed expenses resulting from the illness, injury, or death of the borrower or a family member; or

(iii) The borrower must pay unexpected and unreimbursed expenses resulting from damage to the security property in cases where adequate hazard insurance was not available or was prohibitively expensive.

(2) The borrower occupies the dwelling, unless RHS determines that it is uninhabitable.

(3) The borrower's account is not currently accelerated.

(b) *Reviews of borrower eligibility.* (1) Periodically RHS may require the borrower to submit financial information to demonstrate that the moratorium should be continued. The moratorium may be canceled if:

(i) The borrower does not respond to a request for financial information;

(ii) RHS receives information indicating that the moratorium is no longer required; or

(iii) In the case of a moratorium granted to pay unexpected or unreimbursed expenses, the borrower cannot show that an amount at least equal to the deferred payments has been applied toward the expenses.

(2) At least 30 days before the moratorium is scheduled to expire, the borrower must provide financial information needed to process the re-amortization of the loan(s).

(c) *Resumption of scheduled payments.* When the moratorium expires or is cancelled, the loan will be re-amortized to include the amount deferred during the moratorium and the borrower will be required to escrow. If the new monthly payment, after consideration of the maximum amount of payment subsidy available to the borrower, exceeds the borrower's repayment ability, all or part of the interest that has accrued during the moratorium may be forgiven so that the new monthly payment optimizes both affordability to the borrower as well as the best interest of the Government.

[61 FR 59779, Nov. 22, 1996, as amended at 87 FR 6773, Feb. 7, 2022]

§ 3550.208 Reamortization using promissory note interest rate.

Reamortization using the promissory note interest rate may be authorized when RHS determines that reamortization is required to enable the borrower to meet scheduled obligations, and only if the Government's lien priority is not adversely affected.

(a) *Permitted uses.* Reamortization at the promissory note interest rate may be used to accomplish a variety of servicing actions, including to:

(1) Repay unauthorized assistance due to inaccurate information.

(2) Repay principal and interest accrued and advances made during a moratorium.

(3) Bring current an account under a delinquency workout agreement after the borrower has demonstrated the willingness and ability to meet the terms of the loan and delinquency workout agreement and reamortization is in the borrower's and Government's best interests.

(4) Bring a delinquent account current in the case of an assumption where the due on sale clause is not triggered as described in § 3550.163(c).

(5) Cover the remaining debt when a portion of the security property is being transferred but the acquisition price does not cover the outstanding debt. The remaining balance will be reamortized for a period not to exceed 10 years or the final due date of the note being reamortized, whichever is sooner.

(6) Bring an account current where the National Appeals Division (NAD) reverses an adverse action, the borrower has adequate repayment ability, and RHS determines the reamortization is in the best interests of the Government and the borrower.

(b) *Payment term of reamortized loan.* Except as noted in paragraph (a)(5) of this section, the term of the reamortized loan may be extended to the maximum term for which the borrower was eligible at the time the loan was originally made, less the number of years the loan has been outstanding. In all cases, the term must not exceed the remaining security life of the property.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

§ 3550.209 [Reserved]

§ 3550.210 Offsets.

Any money that is or may become payable from the United States to an RHS borrower may be subject to administrative, salary, or Internal Revenue Service (IRS) offsets for the collection of a debt owed to RHS.

(a) *IRS offset.* RHS may take action to effect offset of claims due RHS against tax refunds due to RHS debtors under 31 U.S.C. 3720a and 31 CFR 285.2.

(b) *Salary offset.* Offset of claims due to RHS may be collected pursuant to the salary offset provisions in 7 CFR part 3, subpart C for a federal employee or other persons covered in that subpart.

(c) *Administrative offset.* RHS may take action to effect administrative offset to recover delinquent claims due to it in accordance with the procedures in 7 CFR part 3, subpart B.

(d) *Offset by other federal agencies.* Escrow funds and loan and grant funds

held or payable by RHS are not subject to offset by other federal agencies.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 69672, Nov. 19, 2002]

§ 3550.211 Liquidation.

(a) *Policy*. When RHS determines that a borrower is unable or unwilling to meet loan obligations, RHS may accelerate the loan and, if necessary, acquire the security property. The borrower is responsible for all expenses associated with liquidation and acquisition. If the account is satisfied in full, the borrower will be released from liability. If the account is not satisfied in full, RHS may pursue any deficiency unless the borrower received a moratorium at any time during the life of the loan and faithfully tried to repay the loan.

(b) *Tribal allotted or trust land*. Liquidations involving a security interest in tribal allotted or trust land shall only be pursued after offering to transfer the account to an eligible tribal member, the tribe, or the Indian Housing Authority. Forced liquidation of RHS security interests in Indian trust lands or on tribal allotted land will be recommended only after the State Director has determined it is in the best interest of the Government.

(c) *Acceleration and foreclosure*. If RHS determines that foreclosure is in the best interest of the Government, RHS will send an acceleration notice to each borrower and any cosigner.

(d) *Voluntary liquidation*. Borrowers may voluntarily liquidate through:

(1) *Refinancing or sale*. The borrower may refinance or sell the security property for at least net recovery value and apply the proceeds to the account.

(2) *Deed in lieu of foreclosure*. RHS may accept a deed in lieu of foreclosure to convey title to the security property only after the debt has been accelerated and when it is in the Government's best interest.

(3) *Offer by third party*. If a junior lienholder or cosigner makes an offer in the amount of at least the net recovery value, RHS may assign the note and mortgage.

(e) *Bankruptcy*. (1) When a petition in bankruptcy is filed by a borrower after acceleration, collection actions and foreclosure actions are suspended in accordance with the provisions of the Bankruptcy Code.

(2) RHS may accept conveyance of security property by the trustee in bankruptcy if the Bankruptcy Court has approved the transaction, RHS determines the conveyance is in the best interest of the Government, and RHS will acquire title free of all liens and encumbrances except RHS liens.

(3) Whenever possible in a Chapter 7 Bankruptcy, a reaffirmation agreement will be signed by the borrower and approved by the court prior to discharge, if RHS decides to continue with the borrower.

(f) *Junior lienholder foreclosure*. When a junior lienholder foreclosure does not result in payment in full of the RHS debt but the property is sold subject to the RHS lien, RHS may liquidate the account unless the new owner is eligible to assume the RHS debt and actually assumes the RHS debt.

(g) *Payment subsidy*. If the borrower is receiving payment subsidy, the payment subsidy agreement will not be canceled when the debt is accelerated, but will not be renewed unless the account is reinstated.

(h) *Eligibility for special servicing actions*. A borrower is not eligible for special servicing actions once the account has been accelerated.

(i) *Reporting*. RHS may report to IRS and credit reporting agencies any debt settled through liquidation.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

§§ 3550.212–3550.249 [Reserved]

§ 3550.250 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing insurrections, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to

respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

Subpart F—Post-Servicing Actions

§ 3550.251 Property management and disposition.

(a) *Policy.* Rural Housing Service (RHS) will manage custodial property and Real Estate Owned (REO) property to protect the Government's interest, and may dispose of REO property through direct sales, sealed bid, or auction. RHS will follow affirmative fair housing marketing policies.

(b) *Custodial property.* RHS may take custodial possession of security property that has been abandoned, or for other reasons necessary to protect the Government's security. After taking custodial possession of a security property, RHS may maintain and repair the security property as needed to protect the Government's interest, pay required real estate taxes and assessments, and secure personal property left on the premises. Expenses will be charged to the borrower's account. Custodial property may be leased when it is in the Government's best interest and in such cases the borrower's account will be credited for income from the security property.

(c) *REO property*—(1) *Classification.* When RHS takes title to a security property, it is classified as either program or nonprogram (NP) property. An REO property that is eligible for financing under the section 502 program, or which could reasonably be repaired to be eligible, is classified as program property. An REO property that cannot reasonably be repaired to be eligible as section 502 property, and property that has been improved to a point that it will no longer qualify as modest under section 502, is classified as NP property.

(2) *Disclosing decent, safe, and sanitary defects.* When RHS determines that an REO property to be sold is not decent, safe, and sanitary, or does not meet cost-effective energy conservation standards, it will disclose the reasons why. The deed by which such an REO property is conveyed will contain a covenant restricting it from residential use until it is decent, safe, and sanitary and meets the RHS cost-effective energy conservation standards. RHS will also notify any potential purchaser of any known lead-based paint hazards.

(3) *Property on Indian tribal allotted or trust land.* REO property which is located on Indian tribal allotted or trust land, will be sold or otherwise disposed of only to a member of the particular tribe having jurisdiction over the allotted or tribal land, to the tribe, or to an Indian housing authority serving the tribe on a first-come, first-served basis.

(4) *Sale of program REO properties.* For no less than 30 days after a program REO property is listed for sale, the property will be reserved for sale to eligible direct or guaranteed single family housing very-low, low- or moderate income applicants under this part or part 3555 of this title, and for sale or lease to nonprofit organizations or public bodies providing transitional housing and turnkey housing for tenants of such transitional housing in accordance with 42 U.S.C. 11408a. Offers from eligible direct or guaranteed single family housing applicants are evaluated at the listed price, not the offering price. Priority of offers received the same day from eligible direct or guaranteed single family housing applicants will be given to applicants qualifying for veterans' preference, cash offers from highest to lowest, then credit offers from highest to lowest. Acceptable offers of equal priority received on the same business day are selected by lot. After the expiration of a reservation period, REO properties can be bought by any buyer.

(5) *Sale by sealed bid or auction.* RHS may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government.

(d) *Special purposes.* (1) REO property may be purchased for conversion to multiple family housing.

(2) RHS shall follow the standards and procedures in 42 U.S.C. 11408a for the sale or lease of an REO property to a public agency or nonprofit organization. The terms of the sale and lease, and the entity seeking to purchase or

lease the REO property, must meet the requirements in 42 U.S.C. 11408a.

(3) REO property may be sold under special provisions to nonprofit organizations or public bodies for the purpose of providing affordable housing to very low- and low-income families.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002; 87 FR 6773, Feb. 7, 2022]

§ 3550.252 Debt settlement policies.

(a) *Applicability.* Debt settlement procedures may be initiated to collect any amounts due to RHS including:

(1) Balances remaining on loan accounts after all liquidation proceeds or credits have been applied;

(2) Subsidy recapture or grant amounts due; and

(3) Unauthorized assistance due.

(b) *Judgment.* RHS may seek a judgment whenever a judgment might enable RHS to collect all or a significant portion of an amount owed.

(c) *Multiple loans.* RHS does not settle debts for one loan while other RHS loans on the same security property remain active.

(d) *Cosigners and claims against estates.* RHS may use any and all remedies available under law to collect from any cosigner and from a deceased borrower's estate.

(e) *Reporting.* RHS will report to the Internal Revenue Service and credit reporting agencies any debt settled through cancellation, compromise, or adjustment.

(f) *Settlement during legal or investigative action.* Cases that are under investigation for fiscal irregularity or have been referred to the Office of the Inspector General, the Office of the General Counsel, or the U.S. Attorney will not be considered for debt settlement until final action by the investigating or prosecuting entity has been taken.

(g) *Offsets.* RHS may request offsets as described in § 3550.210 to collect amounts owed.

(h) *Escrow funds.* At liquidation all funds held in escrow or unapplied funds will be applied against the debt.

§ 3550.253 Settlement of a debt by compromise or adjustment.

Compromise or adjustment offers may be initiated by the debtor or by RHS. RHS will approve only those compromises and adjustments that are in the best interest of the Government.

(a) *Compromise.* A compromise is an agreement by RHS to release a debtor from liability upon receipt of a specified lump sum that is less than the total amount due.

(b) *Adjustments.* An adjustment is an agreement by RHS to release a debtor from liability generally upon receipt of an initial lump sum representing the maximum amount the debtor can afford to pay and periodic additional payments over a period of up to 5 years.

(c) *Timing of offers.* (1) For a settlement offer to be considered, secured debts must be fully matured under the terms of the debt instrument or must have been accelerated by RHS.

(2) Unsecured debts owed after the sale of the security property may be proposed for compromise or adjustment at any time. Debts that were never secured may be proposed for compromise or adjustment when they are due and payable.

(d) *Retention of security property.* The debtor may retain the security property if the compromise payment is at least equal to the net recovery value, and it is in the best interest of the Government to allow the debtor to retain the security property.

§§ 3550.254–3550.299 [Reserved]

§ 3550.300 OMB control number.

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[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

SOURCE: 78 FR 73941, December 9, 2013, unless otherwise noted.

Subpart A—General

§ 3555.1 Applicability.

This part sets forth policies for the Single Family Housing Guaranteed Loan Program (SFHGLP) administered by USDA Rural Development. It addresses the requirements of section 502(h) of the Housing Act of 1949, as amended, and includes policies regarding originating, servicing, holding and liquidating SFHGLP loans. Any provision regarding the expenditure of funds under this part is contingent upon the availability of funds.

§ 3555.2 Purpose.

(a) *General.* The purpose of the SFHGLP is to provide low- and moderate-income persons who will live in rural areas with an opportunity to own

decent, safe and sanitary dwellings and related facilities. The SFHGLP offers applicants without sufficient resources to provide the necessary housing on their own account, and unable to secure the credit necessary for such housing from other sources upon terms and conditions, which the applicant can reasonably be expected to fulfill without the guarantee, an opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.

(b) *Demonstration programs.* Rural Development may authorize limited demonstration programs as allowed by law. The objective of these demonstration programs will be to test new approaches to offering housing under the statutory authority granted to the Secretary. Therefore, such demonstration programs may not be consistent with all of the provisions contained in this part. However, any statutory SFHGLP requirements will remain in effect.

§ 3555.3 Civil rights.

Rural Development, lenders, and their agents must administer the program fairly, and in accordance with both the letter and the spirit of all equal opportunity, equal credit opportunity and fair housing legislation, and applicable executive orders. Loan guarantees, services, and benefits provided under this part shall not be denied to any person based on race, color, national origin, sex, religion, marital status, familial status, age (provided the applicant has the capacity to enter into a binding contract), handicap, receipt of income from public assistance, sexual orientation, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). All activities under this part shall be accomplished in accordance with the Fair Housing Act (42 U.S.C. 3601–3620), the Equal Credit Opportunity Act (15 U.S.C. 1691), and Executive Order 11063 as amended by Executive Order 12259, as applicable. Rural Development's civil rights compliance requirements are provided in 7 CFR part 1901, subpart E.

§ 3555.4 Mediation and appeals.

Whenever Rural Development makes a decision that will adversely affect a participant, the participant may proceed with alternative dispute resolution including mediation and a USDA National Appeals Division hearing in accordance with 7 CFR parts 1 and 11. The participant also may request an informal review of the adverse decision made by Rural Development. Except when the adverse decision applies to a loss claim, the applicant or borrower and the lender may participate in the appeal process. Adverse decisions made by the lender cannot be appealed unless concurrence by Rural Development was required by this subpart and obtained by the lender.

§ 3555.5 Environmental requirements.

(a) *Policy.* Rural Development will consider environmental quality, economic, social, and other relevant factors in program development and decision-making processes. Rural Development will take into account potential environmental impacts of proposed projects by working with applicants, other Federal agencies, American Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program's goals in a manner that will protect environmental quality.

(b) *Regulatory references.* Loan processing or servicing actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970, and 7 CFR part 1924, which addresses lead-based paint.

(c) *Agency responsibilities.* Rural Development is responsible for compliance with all applicable environmental regulations and statutes.

(d) *Lender and loan applicant responsibilities.* (1) Lenders must use due diligence in regard to potential environmental hazards to ensure the property is decent, safe and sanitary and of sufficient value to adequately secure the loan. The level of due diligence review to determine potential environmental hazards must be equivalent to the standards established by Fannie Mae, Freddie Mac, FHA, or the VA.

(2) Mortgage loan transactions will be subject to the requirements of the 1994 National Flood Insurance Reform Act to determine if the dwelling is located in a Special Flood Hazard Area (SFHA).

(3) On an as needed basis, lenders and loan applicants will assist Rural Development in obtaining such information as Rural Development needs to complete its environmental review and to cooperate in the resolution of environmental problems.

(4) Lenders will become familiar with Agency environmental requirements, so they can advise applicants and reduce the probability of unacceptable applications being submitted to Rural Development.

(5) The lender must comply with Federally mandated flood insurance purchase requirements. Existing dwellings in a SFHA are not eligible under the SFHGLP unless flood insurance through the FEMA National Flood Insurance Program (NFIP) is available for the community and flood insurance, whether NFIP, ''write your own,'' or private flood insurance, is purchased by the borrower. The lender will require the borrower to obtain, and maintain for the term of the mortgage, flood insurance for any property located in a SFHA, listing the lender as a loss payee. Purchase of existing structures within the federally regulated floodplain will not require consideration of alternatives to avoid adverse effects and incompatible development in floodplains;

(6) The borrower must obtain, and continuously maintain for the life of the mortgage, flood insurance on the security property in an amount sufficient to protect the property securing the guaranteed loan. Flood insurance policies must be issued under the NFIP, or by a licensed property and casualty insurance company authorized to participate in NFIP's ''Write Your Own'' program or private flood insurance policy, as approved by the lender. Lenders are required to accept private flood insurance policies, when purchased by a borrower, that meet the requirements of 42 U.S.C. 4012a (b)(1)(A). Lenders remain responsible to ensure a private flood insurance policy meets the requirements of 42 U.S.C. 4012a (b)(1)(A).

(7) Rural Development will not guarantee loans for new or proposed homes in an SFHA unless the lender obtains a final Letter of Map Amendment (LOMA) or a final Letter of Map Revision (LOMR) that removes the property from the SFHA, or performs an alternatives analysis in compliance with the Agencies National Environmental Policy Act regulation and obtains a FEMA elevation certificate that shows that the lowest floor (including basement) of the dwelling and all related building improvements are built at or above the 100-year flood plain elevation in compliance with the NFIP.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6428, Feb. 8, 2016; 81 FR 11048, Mar. 2, 2016]

§ 3555.6 State and local law.

Lenders will comply with applicable State and local laws and regulations, including the laws of American Indian tribes. Supplemental guidance will be issued in the case of any conflict with or significant differences from provisions of this part.

§ 3555.7 Exception authority.

The Administrator of the Agency, or a designee, may make an exception to any requirement or provision of this part or to address any omissions in this part, when the Administrator, or designee, determines that application of the requirement or failure to take action would adversely affect the Government's interest. Any exception must be consistent with the authorizing statute and other applicable laws.

§ 3555.8 Conflict of interest.

(a) *Applicant or borrower responsibility*. The applicant or borrower must disclose to the lender any prohibited relationship or association with any Rural Development employee, and the lender must disclose that information to Rural Development.

(b) *Lender responsibility*. The lender must disclose to Rural Development any prohibited relationship or association it, or any of its employees, has with any Rural Development employee.

(c) *Prohibited relationships and associations*. Prohibited relationships and associations include the following:

(1) Immediate family members, including parents and children, whether related by blood or marriage;

(2) Close relatives, including grandmother, grandfather, aunt, uncle, sister, brother, niece, nephew, granddaughter, grandson, or first cousin, whether related by blood or marriage;

(3) Any household residents;

(4) Immediate working relationships, including coworkers in the same office, subordinates, and immediate supervisors; and

(5) Close business associations, including business partnerships, joint ventures, or closely held corporations.

(d) *Result of disclosure.* Disclosure of prohibited relationships and associations under this section will not necessarily result in applicant, borrower or lender ineligibility. Disclosures may result in reassignment with regard to the loan guarantee in question so that no prohibited relationships or associations exist between the Rural Development employees responsible for loan guarantee transactions and lenders, borrowers, or applicants.

§ 3555.9 Enforcement.

Rural Development will take such actions as are appropriate and necessary to enforce the provisions of these regulations. Such actions will include, but not be limited to, reduction of the loss claim payment; termination of a lender's or servicer's participation in the SFHGLP; suspension and debarment of participation in this or other Federal programs; and, any other appropriate administrative, civil, or criminal actions as allowed by law. Rural Development may assess civil monetary penalties pursuant to Section 543 of the Housing Act of 1949, 42 U.S.C. 1409s(b).

§ 3555.10 Definitions and abbreviations.

The definitions and abbreviations in this section apply to this part.

Acceleration. Demand for immediate repayment of the entire balance of a debt if the covenants in the promissory note, assumption agreement, or security instruments are breached.

Adjusted annual income. Income from all household members who live or propose to live in the dwelling as their primary residence for all or part of the ensuing 12 months. Adjusted annual income is used to determine whether an applicant is income-eligible for a guaranteed loan, or interest assistance, if applicable. Adjusted annual income provides for deductions to account for varying household circumstances and expenses. See § 3555.152(c) for a complete description of adjusted annual income.

Agency. The Rural Housing Service of the U.S. Department of Agriculture, Rural Development.

Agency employee. Any employee of the Rural Housing Service, or any employee of the Rural Development mission area who carries out SFHGLP functions.

Alien. See ''Qualified alien.''

Amortization. A gradual reduction of the mortgage debt through equal monthly principal and interest payments sufficient to fully repay the unpaid principal balance over the mortgage term.

Amortized payment. Equal monthly payments under a fully amortized mortgage loan that provides for the scheduled payment of interest and principal over the term of the loan.

Annual fee. A periodic amount that is based on the average annual scheduled unpaid principal balance of the loan and is paid by the servicing lender to Rural Development on an annual basis for issuance of a Loan Note Guarantee. The fee may be passed on to the borrower and included in the monthly mortgage payment of a borrower and is used when calculating payment ratios.

Annual income. The income of all household members calculated according to § 3555.152(b). Annual income is used to determine adjusted annual income in § 3555.152(c) for program eligibility purposes.

Applicant. An individual applying to a lender for a guaranteed loan.

Area median income. The median income in a specific locality, typically a county or Metropolitan Statistical Area (MSA), as determined by the Department of Housing and Urban Development.

Assumption. A method of selling real estate wherein the property purchaser accepts the liability for payment of an existing mortgage.

Borrower. An individual obligated to repay the loan guaranteed under the Guaranteed Rural Housing loan program.

Combination construction and permanent loan. A guaranteed loan on which the Rural Development guarantee becomes effective at the time construction of an eligible single family housing project begins.

Community land trust. A private nonprofit community housing development organization that is established to acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases. See section 502(a)(3)(B) of the Housing Act of 1949, 42 U.S.C. 1472(a)(3)(B), as amended.

Conditional commitment. Rural Development's agreement that a proposed loan will be guaranteed if all conditions and requirements established by Rural Development are met.

Condominium project. A real estate project in which each owner has title to a unit in a building, an undivided interest in the common areas of the project and sometimes the exclusive use of certain limited common areas. See §526(d) of the Housing Act of 1949, as amended.

Debarment. An action taken under 2 CFR part 180 or 417 to exclude a person or entity from participating in Federal programs.

Default. A loan is considered in default when a payment has not been paid after 30 days from the date it was due.

Disability. See ''Person with a disability.''

Dwelling. A house, manufactured home, or condominium unit, and related facilities, such as a garage or storage shed, used or to be used as the borrower's principal residence.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled, and is an applicant or borrower;

(2) Two or more persons who are living together, at least one of whom is age 62 or older, or disabled, and who is an applicant or borrower; or

(3) Where the deceased borrower or spouse in a household was at least 62 years old or disabled, the surviving household member shall continue to be classified as an elderly household for the purpose of determining adjusted income, even though the surviving members may not meet the definition of an elderly family on their own, provided:

(i) They occupied the dwelling with the deceased household member at the time of the death;

(ii) If one of the surviving household members is the spouse of the deceased household member, the surviving household shall be classified as an elderly family only until the remarriage or death of the surviving spouse; and

(iii) At the time of the death of the deceased household member the dwelling was financed with a Guaranteed Rural Housing loan.

Escrow account. A trust account that is established by the lender or its servicing agent to hold funds collected from the borrower and allocated for the payment of real estate taxes, special assessments, hazard or flood insurance premiums, and other similar expenses.

Existing dwelling. A dwelling that does not meet the definition of ''new dwelling''.

Extended-term loan modification. A loan modification authorized under §3555.304 of this part, in which the lender reduces the interest rate to a level at or below the maximum allowable interest rate and then extends the repayment term up to a maximum of 40 years from the date of loan modification, but only as long as is necessary to achieve the targeted mortgage payment to income ratio.

Fannie Mae. A private, shareholder-owned company with a charter from Congress to support the housing finance system, formerly officially known as the Federal National Mortgage Association.

FEMA. The United States Department of Homeland Security, Federal Emergency Management Agency.

FHA. The Federal Housing Administration of the United States Department of Housing and Urban Development.

FHLB. Federal Home Loan Bank.

First-time homebuyer. Individuals who meet any one of the following three criteria are considered first-time homebuyers:

(1) An individual who has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing.

(2) An individual who is a displaced homemaker and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Displaced homemakers include any individual who is:

(i) An adult;

(ii) Unemployed or underemployed;

(iii) Experiencing difficulty in obtaining or upgrading employment; and

(iv) In recent years has worked primarily without remuneration to care for the home and family, but has not worked full-time, full-year in the labor force.

(3) An individual who is a single parent and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Single parents include any individual who is:

(i) Unmarried or legally separated; and

(ii) Has custody or joint custody of one or more children, or is pregnant.

Forbearance agreement. An agreement between the lender and the borrower providing for temporary suspension of payments or a repayment plan that calls for periodic payments of less than the normal monthly payment, periodic payments at different intervals, etc. to bring the account current.

Freddie Mac. A private, shareholder owned company with a charter from Congress to support the housing finance system, formerly officially known as the Federal Home Loan Mortgage Corporation.

Funded buydown account. An escrow account funded by the lender, seller, or through a third party gift, from which monthly payments are released directly to the lender to reduce the amount of interest on a loan, thereby improving an applicant's repayment ability.

Ginnie Mae. Government National Mortgage Association, a Government-owned corporation within HUD.

Household. All persons routinely living in the dwelling as principal residence, except for live-in aides, foster children, and foster adults.

Housing Act of 1949. The Act which, in part, provides the authority for single family housing programs, codified at 42 U.S.C. 1471 *et seq.*

HUD. The United States Department of Housing and Urban Development.

Interest assistance. Agency assistance available to eligible borrowers that reduces the effective interest rate on the guaranteed loan. Interest assistance applied to borrowers whose loans were approved as a subsidized guaranteed loan between April 17, 1991, and September 30, 1991, and who entered into interest assistance and shared equity agreements at loan closing.

IRS. The Internal Revenue Service of the United States Department of the Treasury.

Leasehold estate. The right to use and occupy real estate for a stated term and under conditions which have been conveyed by a lease.

Lender. The entity making, holding, or servicing a loan that is guaranteed under the provisions of this part.

Live-in aide. A person who:

(1) Lives with an elderly person or a person with a disability and

(2) Is essential to that person's care and well-being, and

(3) Is not obligated for the person's support, and

(4) Would not be living in the unit except to provide the support services.

Loan modification. A written agreement that permanently changes an original note term, such as the interest rate, monthly payment, and/or the principal balance due to capitalization of interest or advances.

Low-income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

Manufactured home. A structure that is built on a permanent foundation according to Federally Manufactured Home Construction and Safety Standards established by HUD and found at 24 CFR part 3280.

Market value. The value of the property as determined by a current appraisal made in accordance with the Uniform Standards of Professional Appraisal Practices.

Median income. The area median income, adjusted for family size, as established by HUD.

Moderate income. The greater of:

(1) 115 percent of the U.S. median family income,

(2) The average of the state-wide and state non-metro median family income,

(3) 115/80ths of the area low-income limit adjusted for household size for the county or MSA where the property is, or will be, located.

Modest housing. For purposes of this part, ''modest housing'' is the housing that a low- or moderate-income borrower can afford based on their repayment ability.

Mortgage. A form of security instrument or consensual lien on real property including a real estate mortgage and a deed of trust.

Mortgage credit certificate. A certificate issued by an authorized State or local housing finance agency that documents a Federal income tax credit awarded to a first-time homebuyer and/or low- or moderate-income homebuyer. The Federal income tax credit reduces the applicant's Federal income tax liability, which improves his or her repayment ability.

Mortgage payment to income ratio. As used in § 3555.304, this ratio is the monthly mortgage payment (principal, interest, taxes, and insurance) divided by the borrower's gross monthly income.

Mortgage recovery advance. A mortgage recovery advance is funds advanced by the lender on behalf of a borrower to satisfy the borrower's arrearage, pay legal fees and foreclosure costs related to a cancelled foreclosure action, and reduce principal. Upon request, RHS will reimburse the lender for eligible mortgage recovery advances under § 3555.304.

MSA (Metropolitan Statistical Area). A geographic entity defined by the United States Office of Management and Budget.

Net family assets. The value of assets available to a household, as contained in § 3555.152(d).

Net recovery value. The amount available to apply to the outstanding unpaid loan balance after considering the value of the security property and other amounts recovered, and deducting the costs associated with liquidation, acquisition and sale of the property. Net recovery value is calculated differently depending on the type of disposition, as contained in § 3555.353.

New dwelling. A dwelling that is to be built is under construction, or a dwelling that is less than one year old and has never been occupied. A manufactured home is considered a new unit if the manufacturer's date is within 12 months from the date of loan closing and the unit has never been occupied or installed at any other location as otherwise provided by Rural Development.

Participant. For the purpose of appeals, a participant is any individual or entity that has applied for, or whose right to participate in or receive a payment, loan guarantee, or other benefit, is affected by an Agency decision in accordance with 7 CFR 11.1.

Person with a disability. Any person who has a physical or mental impairment that substantially limits one or more major life activities, including functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, has a record of such an impairment, or is regarded as having such an impairment.

Planned Unit Development. For the purpose of this definition, a condominium is not a Planned Unit Development (PUD). A PUD is a development that has all of the following characteristics:

(1) The individual unit owners own a parcel of land improved with a dwelling. This ownership is not in common with other unit owners;

(2) The development is administered by a homeowners association that owns and is obligated to maintain property and improvements within the development (for example, greenbelts, recreation facilities and parking areas) for the common use and benefit of the unit owners; and

(3) The unit owners have an automatic, non-severable interest in the homeowners association and pay mandatory assessments.

Pre-foreclosure sale. A sale of property in which the lender and borrower agree to accept the proceeds of the sale to satisfy a defaulted mortgage, even

though this may be less than the amount owed on the mortgage, in order to avoid foreclosing on the property.

Primary residence. See ''Principal residence.''

Principal residence. The home domicile physically occupied by the owner for the major portion of the year and the address of record for such activities as Federal income tax reporting, voter registration, occupational licensing, etc.

Prior lien. A lien against the security property that is superior in right to the lender's debt instrument.

Qualified alien. See the definition of the term under Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (8 U.S.C. 1641).

Real estate taxes. Taxes and assessments estimated to be due and payable on the property.

REO (Real Estate Owned). Property that formerly served as security for a guaranteed loan and for which the lender holds title.

Repayment income. Used to determine whether an applicant has the ability to make monthly loan payments. Repayment income may include amounts excluded for the purpose of determining adjusted annual income. See § 3555.152(a) for a complete description of repayment income.

Rural area. The definition of ''rural area'' is found in section 520 of the Housing Act of 1949, as amended.

Rural Development. A mission area within USDA that includes the Rural Housing Service, the Rural Utilities Service, and the Rural Business-Cooperative Service.

Scheduled payment. The monthly installment on a promissory note, as modified by an interest assistance agreement or forbearance agreement, plus escrow payments.

Secured loan. A loan that is collateralized by property so that in the event of a default on the loan, the property may be sold to pay down the debt.

Security instrument. The mortgage, or deed of trust, that secures the promissory note or assumption agreement.

Security property. All the real property that serves as collateral for a guaranteed loan.

Settlement date. The settlement date, for the purpose of loss calculation, is:

(1) Actual foreclosure date;

(2) The closing date, if sold to a third party at the foreclosure sale;

(3) The date the borrower sells the property to a third party in order to avoid or cure a default situation, with prior approval of the lender; and

(4) When title is acquired to the security following the expiration of any state-required redemption or confirmation period.

(5) The date title is acquired upon recordation of a deed-in-lieu of foreclosure, with prior approval of the lender.

SFHGLP. Single Family Housing Guaranteed Loan Program. The SFHGLP guarantees loans under section 502 of the Housing Act of 1949. Under the guarantee, the holder of the loan note may be reimbursed by Rural Development for all or part of a loss incurred if a borrower defaults on a loan.

Short sale. A type of voluntary liquidation (also referred to as a preforeclosure sale or short payoff) where a borrower and the lender who holds the mortgage on the property agree to sell the property at fair market value, but for less than the current outstanding debt (including any missing payments, late fees, penalties, and advances for taxes and the like).

Streamlined-assist refinance. A streamlined-assist refinance is an abbreviated method of refinancing which does not require a credit report, or the calculation of loan-to-value or debt-to-income ratios. Lenders must verify that the borrower has been current on their existing loan for the preceding 12 month period.

Supplemental loan. A guaranteed loan made in conjunction with a transfer and assumption to provide funds to complete the transaction.

Suspension. An action taken under 2 CFR parts 180 or 417 to exclude a person or entity from participation in Federal programs for a temporary period, pending completion of an investigation of wrongdoing.

Total debt to income ratio. Total debt to income ratio is defined as the borrower's monthly mortgage payment plus all recurring monthly debt divided

by the borrower's gross monthly income.

Unauthorized assistance. Any guaranteed loan or interest assistance for which there was no regulatory or statutory authorization, or for which the borrower was not eligible.

United States citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

U.S. non-citizen national. A person born in American Samoa or Swains Island on or after the date the U.S. acquired American Samoa or Swains Island, or a person whose parents are U.S. non-citizen nationals.

VA. United States Department of Veterans Affairs.

Veterans' preference. A preference in loan processing extended to a SFHGLP loan applicant who served on active duty and has been discharged or released from the active forces on conditions other than dishonorable from the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. The preference applies to the service person, or the family of a deceased serviceperson who died in service before the termination of such war or such period or era. The applicable timeframes are:

(1) During the period of April 6, 1917, through March 31, 1921;

(2) During the period of December 7, 1941, through December 31, 1946;

(3) During the period of June 27, 1950, through January 31, 1955;

(4) For a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975;

(5) During the period beginning August 2, 1990, and ending January 2, 1992, provided, of course, that the veteran is otherwise eligible; or

(6) During any other period as prescribed by Presidential proclamation or law.

Warehouse lender. A non-depository lender who utilizes short-term revolving lines of credit to finance loan origination and or construction financing.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 26464, May 3, 2016; 84 FR 29038, June 21, 2019; 84 FR 35006, July 22, 2019; 84 FR 70886, Dec. 26, 2019; 90 FR 203, Jan. 3, 2025]

§§ 3555.11–3555.49 [Reserved]

§ 3555.50 OMB control number.

The report and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0179.

Subpart B—Lender Participation

§ 3555.51 Lender eligibility.

A lender must meet the requirements described in this section to be approved for participation in the SFHGLP.

(a) *Ability to underwrite and service loans.* The lender must have a demonstrated ability to underwrite and service single-family home loans. A lender will be considered to have such a demonstrated ability if it qualifies as one of the following:

(1) A State Housing Agency;

(2) A lender approved as a supervised or nonsupervised mortgagee by HUD with direct endorsement authority for submission of applications for Federal Housing Mortgage Insurance;

(3) A supervised or nonsupervised mortgagee with authority to close VA-guaranteed loans on the automatic basis;

(4) A lender approved by Fannie Mae for single-family loans;

(5) A lender approved by Freddie Mac for single-family loans;

(6) A Farm Credit System institution that provides documentation of its ability to underwrite and service single-family loans. Lenders who are a Farm Credit System lender with direct lending authority meet demonstrated ability;

(7) A lender participating in other Rural Development or Farm Service Agency guaranteed loan programs that provide documentation of its ability to underwrite and service single family loans. Documentation criteria for

other Rural Development or Farm Service Agency guarantee loan programs require an active lender agreement; or

(8) A Federally supervised lender that provides documentation of its ability to originate, underwrite, and service single-family loans. Acceptable sources of supervision include:

(i) Being a member of the Federal Reserve System.

(ii) The Federal Deposit Insurance Corporation (FDIC).

(iii) The National Credit Union Administration (NCUA).

(iv) The Office of the Comptroller of the Currency (OCC).

(v) The Federal Housing Finance Board regulating lenders within the Federal Home-Loan Bank (FHLB) system.

(9) If lenders cannot meet the requirements under paragraphs (a)(1) through (8) of this section, they may demonstrate its ability to originate and underwrite loans by submitting appropriate documentation, examples of which include, but are not limited to:

(i) A summary of residential mortgage lending activity.

(ii) Written criteria outlining the lender's policy and procedures for originating, underwriting and closing residential mortgage loans.

(iii) Evidence of an experienced loan underwriter on staff.

(iv) Certification the lender will contract with an Agency-approved lender meeting the criteria to participate in the program as a servicer.

(10) A lender that proposes to service loans that cannot meet paragraphs (a)(1) through (8) of this section must demonstrate its ability by submitting appropriate documentation, examples of which include but are not limited to:

(i) Evidence of a written plan when contracting for escrow services.

(ii) Evidence the lender has serviced single-family residential mortgage loans in the year prior to request lender approval to participate in the SFHGLP.

(11) The financial requirements for non-supervised lenders not covered in paragraph (a)(8), must have:

(i) A minimum adjusted net worth of $250,000, or $50,000 in working capital plus one percent of the total volume in excess of $25 million in guaranteed loans originated, serviced, or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of $2.5 million, and

(ii) One or more lines of credit with a minimum aggregate of one million dollars.

(b) *SFHGLP participation requirements.* Lenders and their agents must comply with the following requirements:

(1) Keep up to date, and comply with, all Agency regulations and handbooks, including all amendments and revisions of program requirements and policies. Lenders must also comply with all other applicable federal, state, and local laws, rules, and requirements, including those under the purview of the Consumer Financial Protection Bureau, such as the Real Estate Settlement Procedures Act and the Truth in Lending Act. Lenders who originate a minimal number loans, as determined by the Agency, in a 24 month time frame may be required to take updated training to ensure a lender's continued knowledge of the program;

(2) Regularly check Rural Development's Web site for new issuances related to the program;

(3) Underwrite loans according to Rural Development regulations and process and approve loans in accordance with program instructions;

(4) Review loan applications for accuracy and completeness,

(5) Ensure that applicant income limits are not exceeded;

(6) Ensure that borrowers have adequate loan repayment ability and acceptable credit histories;

(7) Ensure that loss claims include only supportable costs;

(8) Cooperate fully with Agency reporting and monitoring requirements;

(9) Comply with limitations on loan purposes, loan limitations, interest rates, and loan terms;

(10) Inform Rural Development immediately after the sale, transfer, or change of servicers of any Agency guaranteed loan;

(11) Maintain reasonable and prudent business practices consistent with generally accepted mortgage industry standards, such as maintaining fidelity bonding;

(12) Remain responsible for servicing even if servicing has been contracted to a third party;

(13) Use Rural Development, HUD, Fannie Mae, or Freddie Mac forms, unless otherwise approved by Rural Development;

(14) Maintain eligibility under paragraph (a) of this section;

(15) Notify Rural Development if there are any material changes in organization or practices;

(16) Be neither debarred nor suspended from participation in Federal programs, not debarred, suspended or sanctioned under state licensing and certification laws and regulation;

(17) Notify Rural Development in the event of its bankruptcy or insolvency;

(18) Remain free from default and delinquency on any debt owed to the Federal government;

(19) Allow Rural Development or its representative access to the lender's records, including, but not limited to, records necessary for on-site and desk reviews of the lender's operation and the operations of any of its agents to verify compliance with Agency regulations and guidelines;

(20) Maintain adequate operational quality control and reporting procedures to prevent mortgage fraud;

(21) Maintain complete loan files with all required documentation that is accessible by the Agency upon request for review; and

(22) Execute a lender's agreement provided by Rural Development.

(23) Provide documentation as required by the Agency to be reviewed every two years for lender participation and,

(24) Provide evidence that principal officers have a minimum of two years of experience in originating or servicing guaranteed mortgage loans as recommended in OMB Circular A–129.

[78 FR 73941, Dec. 9, 2013, as amended at 84 FR 70886, Dec. 26, 2019; 87 FR 53371, Aug. 31, 2022]

§ 3555.52 Lender approval.

(a) *Initial approval.* The lender must apply for and receive approval from Rural Development to participate in the SFHGLP. Application forms are available from Rural Development.

(b) *Conditions of approval.* The lender must provide evidence to support their ability to originate, underwrite and/or service SFHGLP loans as outlined in § 3555.51(a), including evidence of the lender's internal loan criteria and quality control. New lenders will be subject to mandatory training prior to lender approval in accordance with Agency procedures.

(c) *Termination of approval.* Lender approval may be terminated in any of the following situations:

(1) *Lapse of any eligibility requirement.* In the event that a lender fails to meet any of the requirements described in § 3555.51, the lender must notify Rural Development immediately. Rural Development may terminate the lender's approval upon written notice and in accordance with the lender's agreement. The Agency may take other appropriate corrective action due to noncompliance with any of the requirements in this part and the lender's agreement. A lender whose approval has been terminated must sell any SFHGLP loans it holds to an approved lender immediately, and in no event later than 6 months, after termination of approval.

(2) *Voluntary withdrawal.* The lender may choose to end participation in the SFHGLP at any time. If the withdrawing lender has originated SFHGLP loans and obtained conditional commitments but has not closed the loans, or is holding or servicing SFHGLP loans, the lender must make arrangements prior to withdrawing for the transfer of such loans to lenders approved to participate in the SFHGLP.

§ 3555.53 Contracting for loan origination.

Lenders may contract with mortgage brokers, non-approved lenders, or other entities for loan origination services, closing services, or both, provided the loan is transferred immediately after closing to an Agency approved lender to which the guarantee will be issued. The approved lender is responsible for ensuring that the loan is properly underwritten, obtaining the conditional commitment, ensuring that the loan is properly closed, and ensuring that all

closing costs, financing, and settlement fees meet Agency program requirements.

§ 3555.54 Sale of loans to approved lenders.

Lenders may sell SFHGLP loans only to other Agency-approved lenders, Fannie Mae, Freddie Mac, or the Federal Home Loan Banks. In such a sale, the purchasing lender acquires all rights of the selling lender under the Loan Note Guarantee, and assumes all of the selling lender's obligations contained in any note, security instrument, or Loan Note Guarantee in connection with the loan purchased. The purchasing lender may be subject to any defenses, claims, or offsets that Rural Development would have had against the selling lender if the selling lender had continued to hold the loan. The lender must notify Rural Development immediately upon the sale or transfer of servicing of a SFHGLP loan.

§§ 3555.55–3555.99 [Reserved]

§ 3555.100 OMB control number.

The report and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0179.

Subpart C—Loan Requirements

§ 3555.101 Loan purposes.

Loan funds must be used to acquire a new or existing dwelling to be used by the applicant as a principal residence.

(a) *Eligible purposes.* Loan funds may be used for:

(1) The construction or purchase of a new dwelling;

(2) The cost of acquisition of an existing dwelling;

(3) The cost of repairs associated with the acquisition of an existing dwelling; or

(4) Acquisition and relocation of an existing dwelling.

(b) *Eligible costs.* Loan funds also may be used to pay for the following items associated with the acquisition of a dwelling:

(1) Purchase and installation of essential household equipment in the dwelling such as wall-to-wall carpeting, ovens, ranges, refrigerators, washing machines, clothes dryers, heating and cooling equipment, and other similar items as long as the equipment is conveyed with the dwelling and such items are typically included in the purchase of similar dwellings in the area.

(2) Purchase and installation of energy-saving measures.

(3) Site preparation including grading, foundation, plantings, seeding or sodding, trees, walks, fences, and driveways to the home.

(4) A supplemental loan to provide funds for seller equity or essential repairs when an existing guaranteed loan is assumed simultaneously.

(5) Special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(6) Loan funds may be used to pay for reasonable and customary expenses related to obtaining the loan. Allowable loan expenses include:

(i) Legal, architectural, and engineering fees;

(ii) Title exam, title clearance and title insurance;

(iii) Transfer taxes and recordation fees;

(iv) Appraisal, property inspection, surveying, environmental, tax monitoring, and technical services;

(v) Homeownership education.

(vi) Reasonable and customary loan discount points to reduce the note interest rate from the rate authorized in § 3555.104(a).

(vii) Reasonable and customary nonrecurring closing costs associated with the mortgage transaction that do not exceed those charged other applicants by the lender for similar transactions such as FHA-insured or VA-guaranteed first mortgage loans. If the lender does not participate in such programs, the loan closing costs may not exceed those charged other applicants by the lender for a similar loan program that requires conventional mortgage insurance or guarantee. Allowable closing costs include the actual cost of credit reports, the loan origination fee, settlement fee, deposit verification fees,

document preparation fees (if performed by a third party not controlled by the lender), and other reasonable and customary costs as determined by Rural Development. Payment of finder's fees or placement fees for the referral of an applicant to the lender is prohibited.

(viii) Reasonable connection fees, assessments, or the pro rata installment costs for utilities such as water, sewer, electricity and gas for which the borrower is responsible.

(ix) The prorated portion of real estate taxes that is due and payable on the property at the time of closing and to establish escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(x) The amount of the loan up-front guarantee fee required by § 3555.107(g).

(xi) The cost of establishing a cushion in the mortgage escrow account for payment of the annual fee required by § 3555.107(h), not to exceed 2 months.

(xii) If the seller or other third party pays any of the costs described in this section, the amount of the costs paid by the seller or other third party may not be included in the loan amount to be guaranteed.

(c) *Combination construction and permanent loan.* Loan funds may be used and Rural Development will guarantee a ''combination construction and permanent loan'' as defined at § 3555.10, during the term of construction and prior to the borrower occupying the property, subject to the conditions in § 3555.105.

(d) *Refinancing.* Refinancing is permitted only in the following situations:

(1) The loan may be used for permanent financing when temporary financing to construct a new dwelling, or to purchase and improve an existing dwelling, is arranged as a part of the loan package.

(2) In the case of loans for a site on which a dwelling is not constructed prior to issuance of the Loan Note Guarantee, refinancing is permitted if:

(i) The site is free and clear of debt;

(ii) The debt to be refinanced was incurred for the sole purpose of purchasing the site;

(iii) The applicant is unable to acquire adequate housing without refinancing; and

(iv) An appropriate dwelling will be constructed on the site.

(3) The loan is a present Section 502 Direct or guaranteed loan, authorized under the Housing Act of 1949 subject to the following additional requirements:

(i) Three options for refinancing may be offered: Streamlined, non-streamlined, and streamlined-assist. Other than provided in this paragraph, no cash out is permitted for any refinance. Documentation costs and underwriting requirements of subparts D, E, and F of this part apply to streamlined and non-streamlined refinances.

(A) Lenders may offer a streamlined refinance for existing Section 502 Guaranteed loans, which does not require a new appraisal. The lender will pay off the balance of the existing Section 502 Guaranteed loan.

(B) Lenders may offer non-streamlined refinancing for existing Section 502 Guaranteed or Direct loans, which requires a new and current market value appraisal. The amount of the new loan must be supported by sufficient equity in the property as determined by an appraisal. The appraised value may be exceeded by the amount of up-front guarantee fee financed, if any, when using the non-streamlined option.

(C) A streamlined-assist refinance loan is a special refinance option available to existing Section 502 direct and guaranteed loan borrowers. Applicants must meet the income eligibility requirements of § 3555.151(a), and must not have had any defaults during the 12 month period prior to the refinance loan application. There are no debt-to-income calculation requirements, no credit report requirements, no property inspection requirements, and no loan-to-value requirements. There is no appraisal requirement except for Section 502 direct loan borrowers who have received a subsidy.

(ii) The interest rate of the new loan must be fixed and must not exceed the interest rate of the original loan being refinanced.

(iii) Existing borrowers seeking to refinance must have demonstrated their ability to meet payment demands by maintaining a current account for the 180 days prior to application.

(iv) The loan security must include the same property as the original loan and be owned and occupied by the borrowers as their principal residence.

(v) The maximum loan amount cannot exceed the balance of the loan being refinanced including accrued interest, the guarantee fee, and reasonable and customary closing costs. When a direct loan is refinanced, any recapture amount owed may be included in the loan amount or deferred as long as the recapture amount takes a subordinate lien position to the new SFHGLP loan. A discount on the recapture amount may be offered if the borrower does not defer recapture or includes the recapture amount in the new loan.

(vi) Two options for refinancing can be offered. Lenders may offer a streamlined refinance for existing Section 502 Guaranteed loans, which does not require a new appraisal. Streamlined financing may not be available for existing Section 502 Direct loans. The lender will pay off the principal balance of the existing Section 502 Guaranteed loan. The new loan amount cannot include any accrued interest, closing costs or lender fees. The refinance up-front guarantee fee as established by the Agency can be included in the loan to be refinanced to the extent financing does not exceed the original loan amount. Lenders may offer non-streamlined refinancing for existing Section 502 Guaranteed or Direct loans, which requires a new and current market value appraisal. The new loan may include the principal and interest of the existing Agency loan, reasonable closing costs and lenders fees to extent there is sufficient equity in the property as determined by an appraisal. The appraised value may be exceeded by the amount of up-front guarantee fee financed, if any, when using the non-streamlined option. Documentation, costs, and underwriting requirements of subparts D, E, and F of this part apply to refinances, unless otherwise provided by the Agency.

(vii) Lenders may require property inspections and/or repairs as a condition to loan approval. Expenses related to property inspections and repairs required of the lender may not be financed into the new loan amount.

(viii) The lender pays a guarantee fee as established by the Agency.

(ix) The refinance loan may be subject to an annual fee as established by the Agency; and

(x) The Agency may limit the number of guaranteed loans made for refinancing purposes based on market conditions and other appropriate factors.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6428, Feb. 8, 2016; 81 FR 26464, May 3, 2016]

§ 3555.102 Loan restrictions.

A guarantee will not be issued if loan funds are to be used for:

(a) *Existing manufactured homes.* Purchase of an existing manufactured home, except as provided in § 3555.208(b)(3);

(b) *Income producing land or buildings.* Purchase or improvement of land or buildings that are typically used principally for income-producing purposes;

(c) *Business or income-producing enterprise.* Purchase or the construction of buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise;

(d) *Loan discount points.* Loan discount points, except as provided in § 3555.101(b)(6)(vi);

(e) *Refinancing.* Refinancing, except as provided in § 3555.101(d);

(f) *Buydown.* Establishing a buydown account;

(g) *Lease.* Payments on a lease; or

(h) *Seller concessions.* Purchasing a home if the seller, or other interested third party, contributes more than 6 percent, unless otherwise provided by the Agency, of the property's sales price toward the purchaser's mortgage financing costs, closing costs, escrow accounts, furniture or other giveaways.

§ 3555.103 Maximum loan amount.

The amount of the loan must not exceed the lesser of:

(a) *Market value.* The market value of the property as determined by an appraisal that meets Agency requirements plus the amount of the up-front loan guarantee fee required by § 3555.107(g), or

(b) *Purchase price and acquisition costs.* The total of the purchase price and all eligible acquisition costs as permitted by § 3555.101.

(c) *Newly constructed dwelling—limited to 90 percent.* A newly constructed dwelling that does not meet the definition of an existing dwelling, as defined at § 3555.10, and cannot meet the inspection and warranty requirements of § 3555.202(a) of this subpart is limited to 90 percent of the present market value. The dwelling must meet or exceed the International Energy Conservation Code (IECC) in effect at the time of construction.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6428, Feb. 8, 2016]

§ 3555.104 Loan terms.

(a) *Interest rate.* The loan must be written at an interest rate that:

(1) Is fixed over the term of the loan;

(2) Shall be negotiated between the lender and the borrower to allow the borrower to obtain the best available rate in compliance with all applicable laws.

(3) If the interest rate increases between the time of the issuance of the conditional commitment and the loan closing, the lender will submit appropriate documentation and underwriting analysis to confirm that the applicant is still eligible.

(4) The warehouse lender may charge an interest rate for interim construction financing that exceeds the underlying promissory note rate. After construction ends, the interest rate must revert to a rate that is no higher than the underlying promissory note rate. The Agency reserves the right to establish a maximum amount for the interim construction financing interest rate in the handbook, as necessary to further program goals and protect the best interests of the government.

(b) *Repayment period.* The term of the loan may not exceed 30 years. Adjustable rate mortgages, balloon term mortgages or mortgages requiring prepayment penalties are ineligible terms.

(c) *Repayment schedule.* Amortized payments will be due and payable monthly.

(d) *Negative amortization.* The loan note must not provide for interest on interest.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6428, Feb. 8, 2016; 84 FR 35006, July 22, 2019]

§ 3555.105 Combination construction and permanent loans.

Guarantees of combination construction and permanent loans are subject to the following conditions:

(a) *Lender requirements.* In addition to other lender requirements of this part, lenders seeking guarantees of combination construction and permanent loans must:

(1) Have two or more years experience making and administering construction loans.

(2) Submit an executed construction contract with each loan application package.

(3) Review and approve construction contractors or builders. The lender will conduct due diligence investigations to determine that the contractor or builder meets the minimum requirements in paragraph (b) of this section. Evidence of the contractor or builder's compliance must be made available by the lender upon request of the Agency.

(4) Close the loan prior to the start of construction with proceeds disbursed to cover the cost of, or balance owed on, the land and the balance into escrow.

(5) Pay out monies from escrow to the builder during construction. The lender must obtain written approval from the borrower before each draw payment is provided to the builder. The borrower and lender are jointly responsible for approving disbursements during the construction phase. The lender must ensure that the appropriate work has been completed prior to releasing each draw. The Agency may require the lender to submit a draw and disbursement ledger for any loan guarantee upon request.

(6) Obtain documentation that confirms the construction of the subject property is complete.

(b) *Contractor or builder requirements.* Contractors or builders of homes financed with guaranteed combination construction and permanent loans must at least have:

(1) Two or more years experience building or constructing all aspects of single family dwellings similar to the type of project being proposed;

(2) State-issued construction or contractor licenses, as required by State or local law;

(3) Insurance for commercial general liability of at least $500,000;

(4) Contractors or builders who are constructing their own residence are ineligible.

(c) *Use of loan funds.* (1) The loan is to finance the purchase of real estate and construction of a single family dwelling or the purchase and required rehabilitation of an existing single family dwelling. Condominiums, including detached condominiums and site condominiums, are ineligible for combination construction and permanent loans.

(2) The loan amount may include:

(i) The price of the lot.

(ii) Reasonable and customary construction costs related to the construction administration, such as architectural and engineering fees, building permits and fees, surveys, title updates, contingency reserves, not exceeding a percentage specified by the Agency of the cost of construction, draw control and inspection fees, builder's risk insurance or course of construction insurance, and landscaping costs;

(iii) Reasonable and customary closing costs as defined at § 3555.101; and

(iv) The costs of an interim construction financing interest rate and PITI reserve under § 3555.104(e) and § 3555.105(d)(7), respectively.

(3) Funds remaining after full disbursement of construction costs will be applied by the lender as a principal payment. Borrowers are not to receive funds after closing except that the borrower may receive funds remaining from certain unused prepaid expenses if the borrower used personal, non-loan funds to pay those expenses.

(d) *Terms.* The following terms apply to guarantees of combination construction and permanent loans:

(1) The interest rate for the construction and permanent loan will be established in accordance with § 3555.104 at the time the rate is locked, which must occur prior to closing.

(2) The fair market value as determined by a licensed or certified appraiser in accordance with regulation 3555.107(d) will be used to establish the maximum loan amount.

(3) Annual fees will begin in the month immediately following loan closing and will not be affected by loan reamortization following the completion of construction. Lenders may fund a lender imposed escrow account for borrower payments of the annual fee in accordance with § 3555.101(b)(6)(xi), as an eligible loan purpose, provided the market value of the property is not exceeded.

(4) Interest on the construction loan is payable monthly either directly from the borrower or indirectly drawn from an established interest reserve. Real estate taxes and property insurance due during the construction period may also be paid using the same draw process. The annual fee will be due and payable from the lender on the 1st of the month following the anniversary date the construction to permanent loan closed.

(5) Initial payment of the regularly scheduled (amortized) principal and interest payment may be postponed up to one year, if necessary, based upon the construction period. Local conditions and the proposed construction contract may dictate the term.

(6) The loan will be modified and reamortized to achieve full repayment within its remaining term once construction is complete. Within a reasonable time, as specified by the Agency, after the final inspection, the borrower will begin making regularly scheduled (amortized) principal and interest payments once the loan is re-amortized.

(7) Lenders may fund a reserve account for up to 12 months of regularly scheduled (amortized) principal and interest payments along with taxes and insurance (PITI). In such cases, a loan modification is not required after construction is complete. Funds remaining in the PITI reserve after construction is complete will be applied by the lender as a principal payment.

(e) *Mortgage file documentation.* Standard industry credit and verification documents may be utilized when processing and closing the loan and must be dated within a reasonable time, specified by the Agency, of the closing in order to be considered valid. In addition to documentation noted at § 3555.202(a), lenders must obtain and retain evidence:

(1) The actual cost to construct or rehabilitate the subject dwelling.

(2) The acquisition, transfer of ownership, and/or ownership of land;

(3) Certification of construction completion and that construction costs have been fully drawn;

(4) Closing costs;

(5) Certification that property is free and clear of all other liens after conversion to permanent loan;

(6) Required inspections and warranties;

(7) Loan modification agreement, once construction is complete, confirming the existence of a permanent loan and the amortizing interest rate on the loan; and

(8) Evidence that all funds remaining in the construction escrow or PITI reserve accounts have been applied as a principal curtailment once construction or rehabilitation is complete.

(f) *Loan Note Guarantee.* The Loan Note Guarantee will be issued after closing of the construction loan without waiting for complete construction of the subject property upon:

(1) Request by the approved lender;

(2) The lender's submission of the closing documentation acceptable to Rural Development demonstrating that the loan was properly closed;

(3) Payment of the guarantee fee; and

(4) The lender's compliance with other requirements under § 3555.107.

(g) *Unplanned changes during construction.* Should an unplanned change occur with the borrower or contractor preventing completion of construction, the lender remains responsible for completion of improvements satisfactory to Rural Development. The loan will be serviced in accordance with subparts F and G of this part. Funds remaining in all PITI reserve and construction escrow accounts after full disbursement of construction costs will be applied by the lender as a principal payment.

(h) *Reservation of funding.* Rural Development reserves the right to limit the number or amount of loans guaranteed under this section based on market conditions and other factors it considers appropriate, such as loan and portfolio performance.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6429, Feb. 8, 2016; 84 FR 35006, July 22, 2019; 87 FR 53372, Aug. 31, 2022]

§ 3555.106 [Reserved]

§ 3555.107 Application for and issuance of the loan guarantee.

(a) *Processing of applications.* Except as provided in this section, Rural Development will process loan guarantee applications in the order that completed applications are received. Application forms and instruction procedures are available at any Rural Development office.

(1) If analysis of the utilization of funds during the fiscal year indicates that, at the rate of current utilization, funds may not be sufficient to sustain that level of activity for the remainder of the fiscal year, the Agency may determine a shortage of funds exists.

(2) When there is a shortage of funds, the Agency will limit SFHGLP loans to first-time homebuyers or veterans. First-time homebuyers and veterans will be served in the order their applications are received.

(b) *Automated underwriting.* Approved lenders are required to process SFHGLP loans using Rural Development's automated systems. The automated underwriting system is a tool to help evaluate credit risk but does not substitute or replace the careful judgment of experienced underwriters and shall not be the exclusive determination on extending credit. The lender must apply for and receive approval from Rural Development to utilize the automated underwriting system. Rural Development reserves the right to terminate the lender's use of the automated underwriting system.

(1) Lenders are responsible for ensuring all data is true and accurately represented in the automated underwriting system.

(2) Full documentation and verification, in accordance with Subparts C, D and E of this part, will be retained in the lender's permanent loan file and must confirm the applicant's eligibility, creditworthiness, repayment ability, eligible loan purpose, sufficient collateral, and all other regulatory requirements.

(3) The use of Rural Development's automated underwriting system subjects the lender to indemnification requirements in accordance with § 3555.108.

(4) If a loan receives an ''Accept'' underwriting recommendation, the lender is generally permitted to submit minimal documentation including the appraisal, flood hazard determination and fully executed request for guarantee, unless the lender is instructed to provide other documentation.

(5) Loan requests that receive a ''Refer'' or ''Refer with Caution'' underwriting recommendation require further review and manual underwriting by the lender to determine whether the applicant meets SFHGLP eligibility requirements.

(6) Lenders will validate findings based on the output report of the automated underwriting system.

(7) The final submission of the last scoring event must be retained in the lender's permanent loan file.

(c) *Manual underwriting.* Loans requiring manual underwriting (manually underwritten loans) are described in paragraphs (c)(1) and (2) of this section. For manually underwritten loans, full documentation, and verification in accordance with subparts C, D, and E of this part will be submitted to Rural Development when requesting a guarantee and maintained in the lender's file. The documentation will confirm the applicant's eligibility, creditworthiness, repayment ability, eligible loan purpose, adequate collateral, and satisfaction of other regulatory requirements. The following types of loans require manual underwriting:

(1) Loans downgraded by Rural Development's automated system. These loans are manually underwritten by the lender and submitted utilizing Rural Development's automated system.

(2) Loans that are not supported by Rural Development's automated systems. These loans are manually underwritten by the lender and submitted by secure email or other electronic means approved by the Agency.

(d) *Appraisals.* The lender must supply a current appraisal report of the property for which the guarantee is requested.

(1) Appraisals must be conducted in accordance with the Uniform Standards of Professional Appraisal Practices.

(2) Approved lenders are responsible for selecting a qualified appraiser and the integrity, accuracy and thoroughness of the appraisals used to support their loan guarantee request.

(3) The appraiser must report all readily observable property deficiencies, potential environmental hazards, as well as any adverse conditions discovered performing the research involved in completing the appraisal.

(4) The Agency will conduct reviews of the appraisals prior to issuance of the conditional commitment, and other reviews may be conducted to ensure overall quality of appraisals. The lender is responsible for correcting any appraisal deficiencies reported by the Agency.

(5) The Agency may determine an appraiser ineligible to conduct appraisals for SFHGLP due to the failure to comply with applicable requirements and regulations. Appraisals from the ineligible appraisers will not be accepted.

(6) Use of an alternative approach to value for appraisals performed in remote rural areas, on tribal lands, or where a lack of market activity exists may be accepted at the Agency's discretion.

(7) The validity period of an appraisal will be 120 days, unless otherwise provided by the Agency.

(e) *Environmental requirements.* The lender and Rural Development will meet all environmental responsibilities in accordance with § 3555.5.

(f) *Issuance of a conditional commitment.* The lender must demonstrate that all the general loan, applicant, and site eligibility requirements of this part are met before Rural Development will issue a conditional commitment. The lender, however, may obtain any required property inspection reports, such as a well test or construction phase inspections, if applicable and not needed for environmental compliance, after the issuance of the conditional commitment, but prior to loan closing.

(1) The conditional commitment will expire in 90 days from issuance, unless new construction is involved.

(2) The expiration of a conditional commitment may coincide with projected completion of new construction.

(3) An extension may be granted if the loan cannot be closed due to circumstances beyond the lender's control.

(4) Lenders may accept or decline the conditional commitment, or submit requests for changes with adequate support and documentation to be reviewed by the Agency.

(g) *Loan guarantee fee.* The lender must pay a nonrefundable up-front guarantee fee, the cost of which may be passed on to the borrower. The up-front guarantee fee will not exceed 3.5 percent of the principal obligation. The current guarantee fee is available at any Rural Development office and may change periodically. Notice of a change in fee will be published as authorized in Exhibit K of subpart A of part 1810 of this chapter (RD Instruction 440.1, available in any Rural Development office) or online at: *http://www.rurdev.usda.gov/rd_instructions.html.* Once the guarantee has been issued, the fee will not be refunded.

(h) *Annual fee.* The Agency may impose an annual fee of the lender not to exceed 0.5 percent of the average annual scheduled unpaid principal balance of the loan for the life of the loan to allow the Agency to reduce the up-front guarantee in § 3555.107(g). The annual fee will be applicable to purchase and refinance loan transactions. The annual fee may be passed on to the borrower by the lender. The Agency may assess a late charge to the lender if the annual fee is not paid by the due date, and the late charge may not be passed on to the borrower. Further administrative guidance is provided in the handbook.

(i) *Proper closing and requesting the loan note guarantee.* The lender must ensure that any loan to be guaranteed is properly closed using documents acceptable to Rural Development.

(1) Within 30 days of loan closing, the lender must request issuance of a loan guarantee.

(2) The lender will certify the loan was closed in accordance with the conditional commitment and that no major changes have taken place since issuance of a commitment, except any changes specifically approved by the Agency.

(3) The lender will maintain evidence of hazard insurance and, if applicable, flood insurance.

(4) For all loan submissions, evidence of documentation supporting the properly closed loan will be submitted using Rural Development's automated systems.

(5) Lenders will submit full documentation supporting a closed loan or evidence of self-certification status, as described in this section. Self-certified lenders must still submit the settlement statement and promissory note. Lenders must obtain written authorization from the Agency prior to submitting evidence of self-certification in lieu of full documentation. Authorization for self-certification may be granted by the Agency if:

(i) The lender has an active lender agreement.

(ii) The lender is actively engaged in originating SFHGLP loans and has closed a minimum of 10 loans in the past 12 months.

(iii) The lender has successfully submitted 10 consecutive loan closing to the Agency that were in compliance with loan closing requirements and procedures.

(iv) The lender agrees to retain evidence of confirmed closing conditions in accordance with the issued conditional commitment in the lender's permanent loan file.

(j) *Issuance of the guarantee.* The loan guarantee does not take effect until:

(1) The lender transmits the required up-front guarantee fee, the lender certification form provided by Rural Development, and loan closing documents to Rural Development;

(2) The lender meets all other conditions set out in the conditional commitment;

(3) The loan is current at the time the lender requests the loan guarantee;

(4) Any construction or rehabilitation, is complete except for development described in §§ 3555.101(c) and 3555.202(c); and

(5) Rural Development issues the loan guarantee document.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6429, Feb. 8, 2016; 87 FR 6776, Feb. 7, 2022]

§ 3555.108 Full faith and credit.

(a) *General.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or which the lender participates in or condones. Misrepresentation includes negligent misrepresentation.

(b) *Interest.* A note that provides for the payment of interest on interest, however, shall not be guaranteed. If the note to which the Loan Note Guarantee is attached or relates provides for the payment of interest on interest, then the Loan Note Guarantee is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with re-amortization under subpart G of this part.

(c) *Violations.* The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, civil rights laws, negligent servicing, failure to obtain the required security or use of loan funds for unauthorized purposes, regardless of the time at which Rural Development acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

(d) *Indemnification.* The loan note guarantee will remain in effect for any holder of the loan who acquired it from an originating lender. If the Agency determines that a lender did not originate a loan in accordance with the requirements in this part, and the Agency pays a claim under the loan guarantee, the Agency may revoke the originating lender's eligibility status in accordance with subpart B of this part and may also require the originating lender:

(1) To indemnify the Agency for the loss, if the default leading to the payment of loss claim occurred within five (5) years of loan closing, when one or more of the following conditions is satisfied:

(i) The originating lender utilized unsupported data or omitted material information when submitting the request for a conditional commitment to the Agency;

(ii) The originating lender failed to properly verify and analyze the applicant's income and employment history in accordance with Agency guidelines;

(iii) The originating lender failed to address property deficiencies identified in the appraisal or inspection report that affect the health and safety of the occupants or the structural integrity of the property;

(iv) The originating lender used an appraiser that was not properly licensed or certified, as appropriate, to make residential real estate appraisal in accordance with § 3555.103(a); or,

(2) To indemnify the Agency for the loss regardless of how long ago the loan closed or the default occurred, if the Agency determines that fraud or misrepresentation was involved with the origination of the loan.

(3) In addition, the Agency may use any other legal remedies it has against the originating lender.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6429, Feb. 8, 2016; 81 FR 26464, May 3, 2016]

§ 3555.109 Qualified mortgage.

A qualified mortgage is a guaranteed loan meeting the requirements of this part and applicable Agency guidance, as well as the requirements in 12 CFR 1026.43(e)(2)(i) through (iii) and 12 CFR 1026.43(e)(3). An extension of credit made pursuant to a program administered by a State Housing Finance Agency is exempt from this requirement as defined in 12 CFR 1026.43(a)(3)(iv). Lenders will be allowed to cure unintentional errors and retain the qualified mortgage status if the conditions set in 12 CFR 1026.31(h) are met.

[81 FR 26464, May 3, 2016]

§§ 3555.110–3555.149 [Reserved]

§ 3555.150 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart D—Underwriting the Applicant

§ 3555.151 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable moderate income limit. The lender is responsible for documenting the household's income to determine eligibility for the SFHGLP.

(b) *Citizenship status.* Applicants must provide evidence acceptable to the Agency of their status as United States citizens, U.S. non-citizen nationals, or qualified aliens, as defined in § 3555.10.

(c) *Principal residence.* Applicants must agree and have the ability to occupy the dwelling as their principal residence. The Agency may require evidence of this ability. Rural Development will not guarantee loans for investment properties, or temporary, short-term housing.

(d) *Adequate dwelling.* The dwelling must be modest, decent, safe, and sanitary.

(e) *Eligibility of current homeowners.* Current homeowners may be eligible for guaranteed home loans under this part if all the following conditions are met:

(1) The applicants are not financially responsible for another Agency guaranteed or direct home loan by the time the guaranteed home loan is closed;

(2) The current home no longer adequately meets the applicants' needs;

(3) The applicants will occupy the home financed with the SFHGLP loan as their primary residence;

(4) The applicants are without sufficient resources or credit to obtain the dwelling on their own without the guarantee;

(5) No more than one single family housing dwelling other than the one associated with the current loan request may be retained; and

(6) The applicants must be financially qualified to own more than one home. In order for net rental income from the retained dwelling to be considered for the applicant's repayment ability, the consistency of the rental income must be demonstrated for at least the previous 24 months, and the current lease must be for a term of at least 12 months after the loan is closed.

(f) *Legal capacity.* Applicants must have the legal capacity to incur the loan obligation, or have a court-appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(g) *Suspension or debarment.* Applicants who are suspended or debarred from participation in Federal programs under 2 CFR parts 180 and 417 are not eligible for loan guarantees.

(h) *Repayment ability.* Applicants must demonstrate adequate repayment ability. Lenders must maintain documentation supporting the repayment ability analysis in the loan file. Refer to § 3555.152(a) for further information.

(1) A repayment ratio will be used to determine an applicant's ability to repay a loan. The Agency will utilize two ratios, principal, interest, taxes and insurance (PITI) ratio and total debt (TD) ratio, to determine adequate repayment for the requested loan. The Agency reserves the right to consider calculation of a single ratio in determining repayment for the requested loan.

(i) An applicant is considered to have adequate repayment ability when the monthly amount required for payment of PITI, homeowners' association dues, the monthly calculation of an annual fee, as applicable, and other real estate assessments does not exceed 29 percent of the applicant's repayment income and the monthly amount of PITI plus recurring monthly debts (total debt) does not exceed 41 percent of the applicant's repayment income.

(ii) For home purchases under the Rural Energy Plus provision of § 3555.209, the Agency reserves the right to allow flexibility in the PITI and TD ratio. The handbook will define what flexibilities can be extended.

(iii) Contributions to personal income taxes, retirement accounts (including the repayment of personal

loans from those retirement accounts), savings (including repayment of loans secured by such funds), the cost to commute, membership fees in unions or like organizations, childcare or other voluntary obligations will not be considered in the TD ratio.

(iv) Except for obligations specifically excluded by State law, the debts of non-purchasing spouse must be included in the applicant's repayment ratios if the applicant resides in a community property state.

(2) The repayment ratio may exceed the percentage in paragraph (h)(1) of this section when certain compensating factors exist. The handbook, HB–1–3555, Appendix I, located at *https://www.rd.usda.gov/sites/default/files/hb-1-3555.pdf*, will provide examples of when a debt ratio waiver may be granted. The automated underwriting system will consider any compensating factors in determining when the variance is appropriate. Loans downgraded in the automated underwriting system which must be manually underwritten will require the lender to document compensating factors. The presence of compensating factors does not strengthen a ratio exception when multiple layers of risk are present in the application. Acceptable compensating factors, supporting documentation, and maximum ratio thresholds, will be further defined and clarified in the handbook. Compensating factors include but are not limited to:

(i) A credit score at an acceptable level of 680 or higher for any applicants, unless otherwise provided by the Agency. The Agency reserves the right to change the acceptable level of credit score.

(ii) A minimal increase in housing expense, i.e. the current rent payment is comparable to the proposed mortgage loan payment PITI and if applicable, homeowner association dues.

(iii) The demonstrated ability to accumulate savings and cash reserves post loan closing.

(iv) Continuous employment with a current primary employer.

(3) Loan ratio exceptions require written approval by Rural Development, or acceptance by an Agency approved automated underwriting system. Flexibilities surrounding loan ratio exceptions will be further clarified in the handbook. Lenders with loans accepted by an Agency approved automated underwriting system need not submit documentation for the need for a ratio waiver.

(4) If an applicant does not meet the repayment ability requirements, the applicant can increase repayment ability by having other eligible household members join the application.

(5) Mortgage Credit Certificates may be considered in determining an applicant's repayment ability.

(6) Section 8 Homeownership Vouchers may be used in determining an applicant's repayment ability. The monthly subsidy may be treated as repayment income in accordance with § 3555.152(a) or offset in the PITI.

(7) A funded buydown account may be used to reduce the borrower's monthly mortgage payment during the early years of repayment when all of the following requirements are met:

(i) The loan will be underwritten at the note rate.

(ii) The interest rate may be bought down to no more than 2 percentage points below the note rate.

(iii) The interest rate paid by the borrower may increase no more frequently than annually.

(iv) The interest rate paid by the borrower may increase no more than 1 percentage point annually.

(v) Funds must be placed in an escrow account with monthly releases scheduled directly to the lender.

(vi) Funds must be placed with a Federal- or state-regulated lender.

(vii) The escrow account must be fully funded for the buydown period.

(viii) The borrower is not permitted to use personal funds or funds borrowed from another source to establish the escrow account for the buydown.

(ix) The borrower must not be required to borrow or repay the funds.

(i) *Credit qualifications.* Applicants generally must have a verifiable credit history that indicates a reasonable ability and willingness to meet their debt obligations as evidenced by an acceptable credit score, a credit report from a recognized credit repository meeting the requirements of Fannie Mae, Freddie Mac, FHA or VA, and

other credit qualifications satisfactory to Rural Development.

(1) Except as provided in paragraph (i)(6) of this section, the applicant's credit history must demonstrate a past willingness and ability to meet credit obligations to enable the lender to evaluate each applicant and draw a logical conclusion about the applicant's commitment and ability to handling financial obligations successfully and ability to make payments on the new mortgage obligation.

(2) A loan's acceptance by an Agency approved automated underwriting system eliminates the need for the lender to submit documentation of the credit qualification decision as loan approval requirements will be incorporated in the automated system.

(3) For manually underwritten loans, lenders must submit documentation of the credit qualification decision. Lenders will use credit scores to manually underwrite loan mortgage requests. Lenders are required to validate the credit scores utilized in the underwriting determination. Indicators of significant derogatory credit will require further review and documentation of that review. Indicators of significant derogatory credit include, but are not limited to:

(i) A foreclosure that has been completed in the 36 months prior to application by the applicant.

(ii) A bankruptcy in which debts were discharged within 36 months prior to the date of application by the applicant. A lender may give favorable consideration to applicants who have entered into a bankruptcy debt restructuring plan who have completed 12 months of consecutive payments. The payment performance must have been satisfactory with all required payments made on time, and the Trustee or the Bankruptcy Judge must approve of the new credit.

(iii) One rent or mortgage payment paid 30 or more days late within the last 12 months prior to application by the applicant.

(iv) A previous Agency loan that resulted in a loss to the Government.

(4) When evidence of significant derogatory credit is present, lenders may consider extenuating circumstances, including but not limited to, whether the problems were caused by factors temporary in nature, if the circumstances leading to the derogatory credit were beyond the control of the applicant, and if the loan would significantly reduce the applicant's housing expenses.

(5) In all cases, the applicant cannot have an outstanding Federal judgment, other than a judgment obtained in the United States Tax Court, or a delinquent non-tax Federal debt that has not been paid in full or otherwise satisfied.

(6) For applicants without an established credit history, alternative methods may be used to evidence an applicant's willingness to pay, such as a non-traditional mortgage credit report or multiple independent verifications of trade references.

(7) A credit report for a non-purchasing spouse must be obtained in order to determine the debt-to-income ratio referenced at §3555.151(h) if the applicant resides in a community property state.

(8) Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area. When home ownership counseling is provided or sponsored by Rural Development or another Federal agency in the local area, the Lender must require the borrower to successfully complete the course.

(9) Applicants with delinquent child support payments subject to collection by administrative offset are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

(j) *Obtaining credit.* The applicant must be unable to obtain traditional conventional mortgage credit, as defined by the Agency, for the subject loan.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6429, Feb. 8, 2016; 87 FR 6776, Feb. 7, 2022; 87 FR 53372, Aug. 31, 2022]

§3555.152 Calculation of income and assets.

The lender must obtain and maintain documentation in the loan file supporting the lender's determination of

all income and assets described in this section.

(a) *Repayment income.* Repayment income is the amount of adequate and stable income from all sources that parties to the promissory note are expected to receive. Repayment income is used to determine the applicant's ability to repay a loan.

(1) The lender must examine the applicant's past income record for at least the past 2 years and any applicable training and/or education. The Agency may require additional information and documentation from self-employed applicants and applicants employed by businesses owned by family members.

(2) The lender must establish an applicant's anticipated amount of repayment income and the likelihood of its continuance for at least the next 3 years to determine an applicant's capacity to repay a requested mortgage loan in accordance with § 3555.151(h)(1).

(3) Income may not be used in calculating an applicant's ratios if it is from any source that cannot be verified, is not stable, or is likely not to continue.

(4) The following types of income are examples of income not included in repayment income:

(i) Any student financial aid received by household members for tuition, fees, books, equipment, materials, and transportation;

(ii) Amounts received that are specifically for, or in reimbursement of the cost of medical expenses for any family member;

(iii) Temporary, nonrecurring, or sporadic income (including gifts);

(iv) Lump sum additions to family assets such as inheritances, capital gains, insurance payments and personal or property settlements;

(v) Payments for the care of foster children or adults; and

(vi) Supplemental Nutrition Assistance Program payments.

(b) *Annual income.* Annual income is the income of all household members, regardless of whether they will be parties to the promissory note.

(1) Applicants must provide the income, expense and household information necessary to enable the lender to make income determinations.

(2) Lenders must verify employment and income information provided by the applicant for all household members. Lenders will verify the income for each adult household member for the previous 2 years. Written or oral verifications provided by third-party sources or documents prepared by third-party sources are acceptable. Lenders must project the expected annual income for the next 12 months from the verified sources.

(3) The lender remains responsible for the quality and accuracy of all information used to establish a household's eligibility.

(4) Household income from all sources including, but not limited to, income from temporarily absent household members, allowances for tax-exempt income and net family assets as defined in paragraph (d) of this section are to be considered in the calculation of annual income.

(5) The following sources of income will not be considered in the calculation of annual income:

(i) Earned income of persons under the age of 18 unless they are an applicant or a spouse of a member of the household;

(ii) Payments received for the care of foster children or foster adults and incomes received by foster children or foster adults who live in the household;

(iii) Amounts granted for, or in reimbursement of, the cost of medical expenses;

(iv) Earnings of each full-time student 18 years of age or older, except the head of household or spouse, that are in excess of any amount determined pursuant to HUD definition of annual income at 24 CFR 5.609(c);

(v) Temporary, nonrecurring, or sporadic income (including gifts);

(vi) Lump sum additions to family assets such as inheritances; capital gains; insurance payments under health, accident, or worker's compensation policies; settlements for personal or property losses; and deferred periodic payments of supplemental social security income and Social Security benefits received in a lump sum;

(vii) Any earned income tax credit;

(viii) Adoption assistance in excess of any amount determined pursuant to

HUD's definition of annual income at 24 CFR 5.609(c);

(ix) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling;

(x) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(xi) The full amount of any student financial aid;

(xii) Any other revenue exempted by a Federal statute, a list of which is available from any Rural Development office;

(xiii) Income received by live-in aides, regardless of whether the live-in aide is paid by the family or a social service program;

(ix) Employer-provided fringe benefit packages unless reported as taxable income; and

(x) Amounts received through the Supplemental Nutrition Assistance Program.

(c) *Adjusted annual income.* Adjusted annual income is used to determine program eligibility and is annual income as defined in paragraph (b) of this section, less any of the following verified deductions for which the household is eligible.

(1) A reduction for each family member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount of which will be determined pursuant to HUD definition of adjusted income at 24 CFR 5.611.

(2) A deduction of reasonable expenses for the care of a child 12 years of age or under that:

(i) Enables a family member to work, to actively seek work, or to further a member's education;

(ii) Are not reimbursed or paid by another source; and

(iii) In the case of expenses to enable a family member to work, do not exceed the amount of income, including the value of any health benefits, earned by the family member enabled to work. If the child care provider is a household member, the cost of the children's care cannot be deducted.

(3) A deduction of reasonable expenses related to the care of household members with disabilities that:

(i) Enable a family member or the individual with disabilities to work, to actively seek work, or to further a member's education;

(ii) Are not reimbursed from insurance or another source; and

(iii) Are in excess of 3 percent of the household's annual income and do not exceed the amount of earned income included in annual income by the person who is able to work as a result of the expenses.

(4) For any elderly family, a deduction in the amount determined pursuant to HUD definition of adjusted income at 24 CFR 5.611.

(5) For elderly and disabled families only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which, in combination with any expenses related to the care of household members with disabilities described in paragraph (c)(3) of this section, are in excess of 3 percent of the household's annual income.

(d) *Net family assets.* For the purpose of computing annual income, the net family assets of all household members must be included in the calculation of annual income. Lenders must document and verify assets of all household members.

(1) Net family assets include, but are not limited to, the actual or imputed income from:

(i) Equity in real property or other capital investments, other than the dwelling or site;

(ii) Cash on hand and funds in savings or checking accounts;

(iii) Amounts in trust accounts that are available to the household;

(iv) Stocks, bonds, and other forms of capital investments that is accessible to the applicant without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, and inheritances;

(vi) Personal property held as an investment; and

(vii) Any value, in excess of the consideration received, for any business or

household assets disposed of for less than fair market value during the 2 years preceding the income determination. The value of assets disposed of for less than fair market value shall not be considered if they were disposed of as a result of foreclosure, bankruptcy, or a divorce or separation settlement.

(2) Net family assets for the purpose of calculating annual income do not include:

(i) Interest in American Indian restricted land;

(ii) Cash on hand which will be used to reduce the amount of the loan;

(iii) The value of necessary items of personal property;

(iv) Assets that are part of the business, trade, or farming operation of any member of the household who is actively engaged in such operation;

(v) Amounts in voluntary retirement plans such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts (except at the time interest assistance is initially granted);

(vi) The value of an irrevocable trust fund or any other trust over which no member of the household has control;

(vii) Cash value of life insurance policies; and

(viii) Other amounts deemed by the Agency not to constitute net family assets.

§§ 3555.153–3555.199 [Reserved]

§ 3555.200 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart E—Underwriting the Property

§ 3555.201 Site requirements.

(a) *Rural areas.* Rural Development will only guarantee loans made in rural areas designated as rural by Rural Development. However, if a rural area designation is changed to nonrural:

(1) Existing conditional commitments in the former rural area will be honored;

(2) A supplemental loan may be made in accordance with § 3555.101 in conjunction with a transfer and assumption of a guaranteed loan;

(3) Loan requests where the application and purchase contract was complete prior to the area designation change may be approved; and

(4) REO property sales and transfers with assumption may be processed.

(b) *Site standards.* Sites must be modest and developed in accordance with any standards imposed by a State or local government and must meet all of the following requirements.

(1) The site size must be typical for the area.

(2) The site must not include income-producing land or buildings to be used principally for income-producing purposes. Vacant land without eligible residential improvements, or property used primarily for agriculture, farming or commercial enterprise is ineligible for a loan guarantee.

(3) The site must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surfaced or all weather surfaced and legally enforceable arrangements must be in place to ensure that needed maintenance will be provided.

(4) The site must be supported by adequate utilities and water and wastewater disposal systems. Certain water and wastewater systems that are privately-owned may be acceptable if the lender determines that the systems are adequate, safe, compliant with applicable codes and requirements, and the cost or feasibility to connect to a public or community system is not reasonable. Certain community-owned water and wastewater systems may be acceptable if the lender determines that the systems are adequate, safe, and compliance with applicable codes and requirements. The Agency may require inspections on individual, central, or privately-owned and operated water or waste systems.

§ 3555.202 Dwelling requirements.

(a) *New dwellings.* New dwellings must be constructed in accordance with certified plans and specifications, and must meet or exceed the International Energy Conservation Code (IECC) in effect at the time of construction. The lender must obtain and

retain evidence of construction costs, inspection reports, certifications, and builder warranties acceptable to Rural Development.

(b) *Existing dwellings.* Existing dwellings are considered to meet the following criteria when inspected and certified as meeting HUD requirements for one-to-four unit dwellings in accordance with Agency guidelines:

(1) Be structurally sound;

(2) Be functionally adequate;

(3) Be in good repair, or to be placed in good repair with loan funds; and

(4) Have adequate and safe electrical, heating, plumbing, water, and wastewater disposal systems.

(c) *Escrow account for exterior or interior development.* This paragraph does not apply if the development is related to a ''combination construction and permanent loan'' under §3555.101(c). If a dwelling is complete with the exception of interior or exterior development work, Rural Development may issue the Loan Note Guarantee on the loan if the following conditions are met:

(1) The incomplete work does not affect the habitability of the dwelling, nor the health or safety of the housing occupants.

(2) The cost of any remaining interior or exterior work is not greater than 10 percent of the final loan amount.

(3) An escrow account is funded in an amount sufficient to assure the completion of the remaining work. This figure must be at least 100 percent of the cost of completion but may be higher if the lender determines a higher amount is needed.

(4) The builder or a licensed contractor has executed a contract providing for completion of the planned development within 180 days of loan closing. If the borrower will be completing the planned development on an existing dwelling without the services of a contractor, the requirement for an executed contract is waived when all of the following conditions are met:

(i) The estimated cost to complete the work is less than 10 percent of the total loan amount;

(ii) The escrow amount is less than or equal to $10,000; and

(iii) The lender has determined the borrower has the knowledge and skills necessary to complete the work.

(5) The lender may release escrowed funds only after obtaining a final inspection report acknowledged by the borrower and indicating all planned development has been satisfactorily completed.

(6) The lender remains responsible to ensure a final inspection is performed and required repairs are completed.

(7) The settlement statement reflects the amounts escrowed.

§3555.203 Ownership requirements.

After the loan is closed, the borrower must have an acceptable ownership interest in the property as evidenced by one of the following:

(a) *Fee-simple ownership.* Acceptable fee-simple ownership is evidenced by a fully marketable title with a deed vesting a fee-simple interest in the property to the borrower.

(b) *Secured leasehold interest.* Loans may be guaranteed on leasehold properties. If the conditions in this subsection are met:

(1) The applicant is unable to obtain fee simple title to the property;

(2) Such leaseholds are fully marketable in the area, except in the case of properties located on American Indian restricted land;

(3) The lease has an unexpired term of at least 45 years from the date of loan closing, except in the case of properties located on Tribal Trust land, individual (allotted) Trust land, or Tribal restricted fee land, where the lease must have an unexpired term at least equal to the term of the loan. Leases on Tribal Trust land, individual Trust (allotted) land, or Tribal restricted fee land, for period of 25 years which are renewable for a second 25 year period are permissible, as are leases of a longer duration. For new energy efficient manufactured and modular home financing in land-lease communities operating on a nonprofit basis and on Tribal Trust land, the Agency will accept a lease with an unexpired term that is at least two years longer than the loan term;

(4) The mortgage must cover both the property improvements and the leasehold interest in the land;

(5) The leasehold estate must constitute real property, be subject to the mortgage lien, be insured by a title policy, be assignable or transferable and cannot be terminated except for nonpayment of lease rents; and

(6) The lease must be recorded in the appropriate local real estate records.

[78 FR 73941, December 9, 2013, as amended at 90 FR 203, Jan. 3, 2025]

§ 3555.204 Security requirements.

Rural Development will only guarantee loans that are adequately secured. A loan will be considered adequately secured only when all of the following requirements are met:

(a) *Recorded security document.* The lender obtains at closing, a mortgage on all required ownership and leasehold interests in the security property and ensures that the loan is properly closed.

(b) *Prior liens.* No liens prior to the guaranteed mortgage exist except in conjunction with a supplemental loan for transfer and assumption. The guaranteed loan must have first lien position at closing. Junior liens by other parties are permitted as long as the junior liens do not adversely affect repayment ability or the security for the guaranteed loan.

(c) *Adequate security.* Existing and proposed property improvements are completely on the site and do not encroach on adjoining property.

(d) *Collateral.* All collateral secures the entire loan.

§ 3555.205 Special requirements for condominiums.

Loans may be guaranteed for condominium units in condominium projects that meet all the requirements of this part, as well as the standards for condominium standards established by HUD, Fannie Mae, VA, or Freddie Mac, including those related to self-certification, warranty, underwriting, and ineligible condominium projects.

§ 3555.206 Special requirements for community land trusts.

A community land trust must meet the definition in accordance with § 3555.10 and other requirements described in this subpart. Loans may be guaranteed for dwellings on land owned by a community land trust only if:

(a) *Rural Development review.* Rural Development reviews and accepts any restrictions imposed by the community land trust on the property or applicant before loan closing. The Agency may place conditions on the approval of restrictions on resale price and rights of first refusal.

(b) *Foreclosure termination.* The community land trust automatically and permanently terminates upon foreclosure or acceptance by the lender of a deed in lieu of foreclosure.

(c) *Organization.* The organization must meet the definition of a community land trust as defined in the Housing Act of 1949 and the following requirements:

(1) Be organized under State or local laws.

(2) Members, founders, contributors or individuals cannot benefit from any part of net earnings of the organization.

(3) The organization must be dedicated to decent affordable housing for low-and moderate-income people.

(4) Comply with financial accountability.

(d) *Lender documentation.* The lender's file must contains documentation that the community land trust has community support, local market acceptance and 2 years of prior experience in providing affordable housing.

(e) *Appraisals.* A property located on a site owned by a community land trust must be appraised as leasehold interest and meet the provisions of § 3555.203.

§ 3555.207 Special requirements for Planned Unit Developments (PUDs).

Loans may be guaranteed for PUDs that meet all of the requirements of this part, as well as the criteria for PUDs established by HUD, VA, Fannie Mae, or Freddie Mac.

§ 3555.208 Special requirements for manufactured homes.

Loans may be guaranteed for manufactured homes if all the requirements in this section are met.

(a) *Eligible costs.* In addition to the loan purposes described in § 3555.101, Rural Development may guarantee a

loan used for the following purposes related to manufactured homes when a real estate mortgage covers both the unit and the site:

(1) Purchase of a new manufactured home, transportation, permanent foundation, and installation costs of the manufactured home, and purchase of an eligible site if not already owned by the applicant; and

(2) Site development work properly completed to HUD, state and local government standards, as well as the manufacturer's requirements for installation on a permanent foundation.

(3) An existing unit and site, provided:

(i) The unit was constructed in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by both an affixed HUD Certification label and HUD Data Plate; and

(ii) The unit was installed on a permanent foundation in accordance with the manufacturer's requirements and HUD installation standards. Certification of a proper foundation is required; and

(iii) The unit has not been previously installed on a different homesite, or had any alterations since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials; and

(iv) The unit was constructed on or after a date determined by the Agency.

(b) *Loan restrictions.* The following loan restrictions are in addition to the loan restrictions contained in § 3555.102:

(1) A loan will not be guaranteed if it is used to purchase a site without also financing a new unit.

(2) A loan will not be guaranteed if it is used to purchase furniture, including but not limited to: movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, and stereo sets. Furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment, or other similar items.

(3) A loan will not be guaranteed to purchase an existing manufactured home and site unless:

(i) The unit and site are already financed with an Agency direct single family or guaranteed loan;

(ii) The unit and site are being sold by Rural Development as REO property;

(iii) The unit and site are being sold from the lender's inventory, and the loan for which the unit and site served as security was a loan guaranteed by Rural Development; or

(iv) The existing manufactured home meets all of the following requirements:

(A) The unit was constructed in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by an affixed HUD Certification label and HUD Data Plate;

(B) The unit was installed on a permanent foundation complying with manufacturer and HUD installation standards. The foundation design meets HUD standards for manufactured housing;

(C) The unit has not had any alterations or modifications since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials; and

(D) The unit was constructed on or after a date determined by the Agency.

(4) A loan will not be guaranteed for repairs to an existing unit, unless the unit meets the requirements of § 3555.208(b)(3).

(5) A loan will not be guaranteed for the purchase of an existing manufactured home that has been moved from another site.

(c) *Construction and development.* (1) To be an eligible unit, the new unit must have a floor space of not less than 400 square feet.

(2) The unit must be properly installed on a permanent foundation according to HUD standards, and the manufacturer's requirements for installation on a permanent foundation. A certification of proper foundation is required.

(3) All wheels, axles, towing hitches and running gear must be removed from the manufactured home.

(4) Unit construction must conform to the Federal Manufactured Home

Construction and Safety Standards (FMHCSS) and be constructed in compliance with the HUD heating and cooling requirements for the State in which the unit will be located. Any alterations, such as garage construction, as a new unit must comply with FMHCSS.

(5) The site development, installation and set-up must conform to the HUD requirements and the manufacturer's requirements for a permanent installation.

(6) The unit must meet or exceed the IECC in effect at the time of construction.

(7) The lender must maintain documentation of construction plans and required certifications.

(d) *Warranty requirements.* (1) The applicant must receive a warranty in accordance with HUD requirements for new manufactured homes on permanent foundations.

(2) The warranty must identify the unit by serial number.

(3) The lender and applicant must obtain certification that the manufactured home has sustained no hidden damage during transportation and, if manufactured in separate sections that the sections were properly joined and sealed according to the manufacturer's specifications.

(4) The manufactured home must be affixed with a data plate, placed inside the unit, and a certification label, affixed to each transportable section at the tail-light end of each unit which indicates that the home was designed and built in accordance with HUD's construction and safety standards in effect on the date the home was manufactured.

(5) The lender must retain a copy of all manufacturers' warranties in the lender file.

(e) *HUD requirements.* The FMHCSS and HUD requirements may be found in 24 CFR part 3280.

(f) *Title and lien requirements.* To be eligible for the SFHGLP, the following conditions must be met and documented in the lender's file:

(1) A manufactured home loan must be secured by a perfected lien on real property consisting of the manufactured home and the land;

(2) The manufactured home must be taxed as real estate as applicable under State law, including relevant statutes, regulations, and judicial decisions;

(3) The security instrument must be recorded in the land records and must identify the encumbered property as including both the home and the land;

(4) If applicable State law so permits, any certificate of title to the manufactured home must be surrendered to the appropriate State government authority. If the certificate of title cannot be surrendered, the lender must indicate its lien on the certificate;

(5) The mortgage must be covered by a standard real property title insurance policy and any other endorsement required in the applicable jurisdiction for manufactured home ensuring the manufactured home is part of the real property that secures the loan; and

(6) The borrower must acknowledge the unit is a fixture and part of the real estate securing the mortgage.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6429, Feb. 8, 2016; 90 FR 203, Jan. 3, 2025]

§ 3555.209 Rural Energy Plus loans.

Loans guaranteed under Rural Energy Plus provisions are for the purchase of energy-efficient homes. Homes that meet the most current IECC standards including existing homes that are retrofitted to those standards are eligible. Energy-efficient homes result in lower utility bills, conserve energy, and thus, make more income available for monthly debt obligations. For loans guaranteed under this subpart, the lender will certify that the home meets the most current IECC standards. The Handbook will define what further flexibilities can be extended.

§§ 3555.210–3555.249 [Reserved]

§ 3555.250 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart F—Servicing Performing Loans

§ 3555.251 Servicing responsibility.

(a) *Servicing action.* Lenders must perform those servicing actions that a reasonable and prudent lender would perform in servicing its own portfolio of non-guaranteed loans.

(b) *Third party servicer.* A lender may contract with a third party to service its loans, but the servicing lender of record remains responsible for the quality and completeness of the servicing.

(c) *Transfer of servicing.* Rural Development may require a lender to transfer its loan servicing activities to an approved lender if Rural Development determines that the lender has failed to provide acceptable servicing.

(d) *Non-compliance.* Lenders who fail to comply with Agency requirements or program guidelines may be subject to withdrawal of lender approval, denial and/or reduction in loss claims, withdrawal of the loan guarantee and/or indemnification in accordance with § 3555.108(d).

§ 3555.252 Required servicing actions.

Lender servicing responsibility includes, but is not limited to, the following actions.

(a) *Collecting regularly scheduled payments.* Lender must collect regularly scheduled loan payments and apply them to the borrower's account.

(b) *Payment of taxes and insurance.* Lenders must ensure that real estate taxes, assessments, and flood and hazard insurance premiums for all property that secures a guaranteed loan are paid on schedule.

(1) *Establish escrow account.* Lenders with the capacity to escrow funds must establish escrow accounts for all guaranteed loans for the payment of taxes and insurance. Escrow accounts must be administered in accordance with the Real Estate Settlement and Procedures Act (RESPA) of 1974, and insured by the FDIC or the NCUA.

(2) *Plan and responsibility of lender to ensure payment.* Lenders that do not have the capacity to escrow funds must implement procedures, subject to Agency approval, to ensure the borrower pays such obligations on a timely basis. In addition, such lenders must accept the responsibility for payment of taxes and insurance that comes due prior to liquidation. Rural Development will not include any taxes or insurance amounts that accrued prior to acceleration in any potential loss claim. Rural Development may revoke the acceptance of the lender's plan if loan performance indicates that delinquency and loss rates are being affected by the lender's inability to escrow for taxes, assessment, and insurance. This alternative is not available to lenders who contract for servicing.

(c) *Insurance.* (1) Until the loan is paid in full, lenders must ensure that borrowers maintain hazard and flood insurance as required, on property securing guaranteed loans. The insurance must be issued by companies in amounts, and on terms and conditions, acceptable to Rural Development. Flood insurance through the National Flood Insurance Program must be maintained for all property located in special flood or mudslide areas identified by FEMA and must be consistent with mortgage industry standards, as determined by the Agency.

(2) Lenders must ensure that borrowers immediately notify them of any loss or damage to insured property securing guaranteed loans and collect the amount of the loss from the insurance company. Unless the borrower pays off the guaranteed loan using the insurance proceeds, the following requirements must be met:

(i) All repairs and replacements using the insurance proceeds must be planned, performed, and inspected in accordance with Agency construction requirements and procedures.

(ii) When insurance funds remain after payments for all repairs, replacements, and other authorized disbursements have been made, the funds must be applied in the following order: prior liens (including past-due property taxes); past-due amounts; protective advances; and released to the borrower if the lender's debt is adequately secured.

(3) If the insurance claim is de minimis as determined by the Agency, the lender may release the funds directly to the borrower to advance funds to contractors, provided that the account

is current and the borrower has a history of timely payments; the borrower occupies the property; and the borrower executes an affidavit agreeing to apply the funds for repairs or reconstruction of the dwelling.

(d) *Credit reporting.* The lender must notify a credit repository of each new guaranteed loan, must identify the loan as guaranteed by Rural Development, and must report to that repository whenever any account becomes more than 30 calendar days past due.

(e) *Bankruptcy actions.* The lender is responsible for monitoring and taking all appropriate and prudent actions during bankruptcy proceedings to protect the borrower and Government's interest, in accordance with § 3555.306(d).

§ 3555.253 Late payment charges.

Late payment charges will not be covered by the guarantee and cannot be added to the principal and interest due under any guaranteed note.

(a) *Maximum amount.* Any late payment charge must be reasonable and customary for the area.

(b) *Loans with interest assistance.* The lender must not charge a late fee if the only unpaid portion of the borrower's scheduled payment is interest assistance owed by Rural Development.

§ 3555.254 Final payments.

Lenders may release security instruments only after payment for the satisfaction of the full debt, including any recapture, has been received and verified.

[81 FR 6429, Feb. 8, 2016]

§ 3555.255 Borrower actions requiring lender approval.

(a) *Mineral leases.* A lender may consent to the lease of mineral rights and subordinate its lien to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence, the lender's security interest will not be adversely affected, and Rural Development's environmental requirements are met. Concurrence by Rural Development prior to consenting to the lease of mineral rights is required, unless otherwise provided by the Agency. Subordination of guaranteed loans to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property.

(1) If the proposed activity is likely to decrease the value of the security property, the lender may consent to the lease only if the borrower assigns 100 percent of the income from the lease to the lender to be applied to reduce the principal balance, and the total rent to be paid is at least equal to the estimated decrease in the market value of the security property.

(2) If the proposed activity is not likely to decrease the value of the security property, the lender may consent to the lease if the borrower agrees to use any damage compensation received from the lessee to repair damage to the site or dwelling, or to assign it to the lender to be applied to reduce the principal balance.

(b) *Partial release of security property.* A lender may consent to transactions affecting a security property, such as selling or exchanging security property or granting of a right-of-way across the security property, and grant a partial release, provided that the following conditions are met.

(1) The borrower will receive adequate compensation, and either make a reduction to the principal balance or make improvements to the security property, in order to maintain the current loan-to-value ratio for the guaranteed loan.

(i) For sale of security property, the borrower must receive cash in an amount equal to or greater than the value of the security property being sold or interests being conveyed.

(ii) For exchange of security property, the borrower must receive another parcel of property with value equal to or greater than that being disposed of.

(iii) For granting an easement or right-of-way, the borrower must receive benefits that are equal to or greater than the value of the security property being disposed of or interests being conveyed.

(2) An appraisal of the security property will be conducted by the lender if the most current appraisal is more than 1 year old or if it does not reflect current market value.

(3) The security property, after the transaction is completed, will continue

to be an adequate, safe, and sanitary dwelling.

(4) Repayment of the guaranteed debt will not be jeopardized.

(5) When exchange of all or part of the security property is involved, title clearance will be obtained before release of the existing security.

(6) Proceeds from the sale of a portion of the security property, granting an easement or right-of-way, damage compensation, and all similar transactions requiring the lender's consent, will be used in the following order:

(i) To pay customary and reasonable costs related to the transaction that must be paid by the borrower.

(ii) To be applied on a prior lien debt, if any.

(iii) To be applied to the guaranteed indebtedness or used for improvements to the security property consistent with the purposes and limitations applicable for use of guaranteed loan funds. The lender must ensure that the proceeds are used as planned.

(7) The lender will seek Agency concurrence, unless otherwise provided by the Agency, by submitting documentation supporting the borrower's reason for request, the proposed use of the land with supporting plans, specifications, cost estimates, surveys, disclosures of restrictions, legal description modification, title clearance related to the transaction request, as applicable, and any other documents necessary for the Agency to make a determination.

§ 3555.256 Transfer and assumptions.

(a) *Transfer without assumption.* (1) The lender must notify Rural Development if the borrower transfers the security property and the transferee does not assume the debt.

(2) Except as described in paragraph (d) of this section, if a security property is transferred with the lender's knowledge without assumption of the debt, Rural Development will void the guarantee.

(b) *Transfer with assumption.* (1) The lender must obtain Agency approval before consenting to a transfer with an assumption of the outstanding debt.

(2) Rural Development may approve a transfer with an assumption of the outstanding debt if the following conditions are met:

(i) The transferee must assume the entire outstanding debt and acquire all property securing the guaranteed loan balance; however, the transferor must remain personally liable. The transferor must pay any recapture as a result of interest subsidy granted, if applicable, owed at the time of the transfer and assumption.

(ii) The transferee must meet the eligibility requirements described in subpart D of this part.

(iii) The property must meet the site and dwelling requirements described in subpart E of this part, or be brought to those standards prior to the transfer. Guaranteed loans secured by properties located in areas that have ceased to be rural may be assumed notwithstanding the fact that the property is located in a non-rural area.

(iv) The priority of the existing lien securing the guaranteed loan must be maintained or improved.

(v) Any new rates and terms must not exceed the rates and terms allowed for new loans under this part, and the interest rate must not exceed the interest rate on the initial loan.

(vi) A new guarantee fee, calculated based on the remaining principal balance, must be paid to Rural Development in accordance with § 3555.107(g).

(vii) If additional financing is required to complete the transfer and assumption or to make needed repairs, Rural Development may approve a supplemental guaranteed loan provided adequate security exists.

(viii) The lender must verify and document their permanent file in accordance with subpart C of this part.

(ix) A written request supported by the lender demonstrating the applicant's credit worthiness, income eligibility and underwriting analysis must be submitted to the Agency for approval of a transfer and assumption.

(x) The lender may close the loan in accordance with § 3555.107.

(c) *Transfer without approval.* If a lender becomes aware that a borrower has transferred a property without approval, the lender must take one of the following actions:

(1) Notify Rural Development and continue the loan without the guarantee; or

(2) Obtain Agency approval for the transfer with assumption; or

(3) Liquidate the guaranteed loan and submit a claim for any loss.

(d) *Transfer without triggering the due-on-sale clause.* (1) The following types of transfers do not trigger due-on-sale clauses in security instruments:

(i) A transfer from the borrower to a spouse or children not resulting from the death of the borrower;

(ii) A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower;

(iii) A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement;

(iv) A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment; or

(v) A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property.

(2) When a transferee obtains a property with a guaranteed loan through a transfer that does not trigger the due-on-sale clause:

(i) The lender will notify Rural Development of the transfer;

(ii) Rural Development will continue with the guarantee, whether or not the transferee assumes the guaranteed loan;

(iii) The transferee may assume the guaranteed loan on the rates and terms contained in the promissory note. If the account is past due at the time an assumption agreement is executed, the loan may be re-amortized to bring the account current;

(iv) The transferee may assume the guaranteed loan under new rates and terms if the transferee applies and is eligible.

(3) Any subsequent transfer of title, except upon the death of the inheritor or between inheritors to consolidate title, will trigger the due-on-sale clause.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6429, Feb. 8, 2016]

§ 3555.257 Unauthorized assistance.

(a) *Unauthorized assistance due to false information.* (1) If the borrower receives a guaranteed loan based on false information provided by the borrower, Rural Development may require the lender to accelerate the guaranteed loan. After the lender accelerates the loan upon request, the lender may submit a claim for any loss. If the lender fails to accelerate the loan upon request, Rural Development may reduce or void the guarantee.

(2) If the borrower receives a guaranteed loan based on false information provided by the lender, Rural Development may void the guarantee subject to the provisions of § 3555.108.

(3) If the borrower or lender provides false information, Rural Development may pursue criminal and civil false claim actions, suspension and/or debarment, and take all other appropriate action.

(b) *Unauthorized assistance due to inaccurate information.* Rural Development will honor a guarantee for a loan made to an applicant who receives a guaranteed loan based on inaccurate information if the applicant was eligible to receive the guaranteed loan at the time it was made, and if the loan funds were used only for eligible loan purposes.

§§ 3555.258–3555.299 [Reserved]

§ 3555.300 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart G—Servicing Non-Performing Loans

§ 3555.301 General servicing techniques.

In accordance with industry standards and as provided by the Agency:

(a) *Prompt action.* Lenders shall take prompt action to collect overdue

amounts from borrowers to bring a delinquent loan current in as short a time as possible to avoid foreclosure to the extent possible and minimize losses.

(b) *Evaluation of borrower.* Lenders must evaluate loans and take appropriate loss mitigation actions in an effort to resolve any repayment problems and provide borrowers with the maximum opportunity to become successful homeowners.

(c) *Prompt contact.* In the event of default, the lender shall promptly contact the borrower within a timeframe specified by the Agency.

(d) *Determine ability to cure.* The lender must make a reasonable effort to obtain from the borrower information regarding the reason for default, the borrower's current financial situation and any other necessary information to evaluate the borrower's ability to cure the default and determine a feasible plan for collection, and/or alternatives to foreclosure.

(e) *Communication.* Before an account becomes 60 days past due and if there is no payment arrangement in place, the lender must send a certified letter to the borrower requesting an interview for the purpose of resolving the past due account.

(f) *Prior to liquidation.* Before an account becomes 60 days past due or before initiating liquidation, the lender must assess the physical condition of the property, determine whether it is occupied, and take necessary steps to protect the property.

(g) *Maintain documentation.* The lender must maintain documentation demonstrating that requirements in this subpart have been met and what steps have been taken to save a mortgage prior to making a decision to foreclose.

(h) *Formal servicing plan.* The lender must report a formal servicing plan to the Agency utilizing a web-based automated system when a borrower's account is delinquent for 90 days or more and a method other than foreclosure is recommended to solve the delinquency.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6429, Feb. 8, 2016; 84 FR 70886, Dec. 26, 2019]

§ 3555.302 Protective advances.

Lenders may pay the following preliquidation expenses necessary to protect the security property and charge the cost against the borrower's account.

(a) *Advances for taxes and insurance.* Without prior Agency concurrence, lenders may advance funds to pay past due real estate taxes, hazard and flood insurance premiums, and other related costs.

(b) *Advances for costs other than taxes and insurance.* Protective advances for costs other than taxes and insurance, such as emergency repairs, can be made only if the borrower cannot, or will not, obtain an additional loan or reimbursement from an insurer or the borrower has abandoned the property. The lender must determine that any repairs funded by protective advances are cost effective. Repairs funded by protective advances must be planned, performed and inspected in accordance with § 3555.202 and as further described by the Agency. The lender must obtain prior Agency concurrence before issuing protective advances under this paragraph of a significant amount as specified by the Agency.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6430, Feb. 8, 2016; 84 FR 70886, Dec. 26, 2019]

§ 3555.303 Traditional servicing options.

(a) *Eligibility.* To be eligible for traditional servicing, all the following conditions must be met:

(1) The borrower presently occupies the property;

(2) The borrower is in default or facing imminent default for an involuntary reason. A borrower is ''facing imminent default'' if that borrower is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month in which it is due. The borrower must be able to document the cause of the imminent default, which may include, but is not limited to, one or more of the following types of hardship:

(i) A reduction in or loss of income that was supporting the mortgage loan;

(ii) A change in household financial circumstances;

(3) The borrower demonstrates a reasonable ability to support repayment of the debt in the future;

(4) There are no adverse property conditions that inhibit the inhabitability or use of the property; and

(5) The borrower has not received assistance due to the submission of false information by the borrower.

(b) *Servicing options.* The lender must consider traditional servicing options in the following order to resolve the borrower's default or imminent default:

(1) *Repayment agreement.* A repayment agreement is an informal plan lasting 3 months or less to cure short-term delinquencies.

(2) *Special forbearance agreement.* A special forbearance agreement is a longer-term formal plan to cure a delinquency not to exceed the equivalent of 12 months of PITI. The agreement may gradually increase monthly payments in an amount sufficient to repay the arrearage over a reasonable amount of time and/or temporarily reduce or suspend payments for a short period. If the borrower is at least 3 months delinquent, the special forbearance agreement may resume normal payments for several months followed by a loan modification.

(3) *Loan modification plan.* A loan modification is a permanent change in one or more of the terms of a loan that results in a payment the borrower can afford and allows the loan to be brought current. A loan modification must be a written agreement. (i) The lender's lien priority cannot be adversely affected by providing a loan modification.

(ii) Loan modifications must be a fixed interest rate and cannot exceed the market interest rate at the time of modification.

(iii) Loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including foreclosure fees and costs associated with the delinquency, tax and insurance advances, and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.

(iv) If necessary to demonstrate repayment ability, the loan term after reamortization may be extended for up to 40 years from the date of the loan modification.

(v) Lenders may require that borrowers complete a trial payment plan prior to making scheduled payments amended by the traditional loan servicing loan modification.

(vi) Traditional servicing options shall be used in the order established in this section to reduce the borrower's mortgage payment to income ratio as close as possible to 31 percent of gross monthly income.

(vii) If the targeted mortgage payment to income cannot be achieved using a loan modification alone, the lender may consider a mortgage recovery advance under this section in addition to the loan modification.

(4) *Mortgage recovery advance.* A mortgage recovery advance is funds advanced by the lender on behalf of a borrower to satisfy the borrower's arrearage and reduce principal.

(i) Borrowers may be eligible for multiple Mortgage Recovery Advances up to a cumulative amount that is less than or equal to 30 percent of the unpaid principal balance as of the date of the initial default.

(ii) If the borrower's total monthly mortgage payment is within a reasonable percent of the borrower's ability to repay prior to an extended term loan modification, the mortgage recovery advance can be used to cure the borrower's delinquency without changing the terms of the promissory note.

(iii) The principal deferment amount for a specific case shall be limited to the amount that will bring the borrower's total monthly mortgage payment to 31 percent of gross monthly income.

(iv) If the borrower is eligible for a mortgage recovery advance, the servicer will advance the funds to the borrower's account and create a non-interest-bearing recoverable servicing advance. The balance is to be provided on the mortgage statements along with the principal balance of the loan, but no payment arrangement will be required.

(v) Prior to making a mortgage recovery advance, the lender must perform an escrow analysis to ensure that the payment made on behalf of the borrower accurately reflects the escrow amount required for taxes and insurance.

(vi) The lender may request reimbursement from the Agency for a mortgage recovery advance. The lender shall repay any such reimbursement as provided in this section.

(vii) The following terms apply to the repayment of a mortgage recovery advance:

(A) Borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(B) The borrower is responsible for payment of the mortgage recovery advance to the lender in full at the earlier of the following:

(*1*) When the first lien mortgage and guaranteed note are paid off; or

(*2*) When the borrower transfers title to the property by voluntary or involuntary means.

(C) The lender shall remit to the agency the amount mortgage recovery advance reimbursed by the Agency for a mortgage recovery advance, as described in this part, at the earliest of the following:

(*1*) When the lender receives payment is received from the borrower; or

(*2*) When the mortgage lien is released; or

(*3*) When the borrower transfers title to the property by voluntary or involuntary means.

(*i*) The Agency will collect this Federal Debt from the lender. The Agency may use the debt collection and administrative offset process to collect money owed.

(*ii*) In the event of a loss claim, the mortgage recovery advance will be considered in calculating the claim paid by the Agency. The total amount paid cannot exceed the maximum loss payment described in § 3555.351(b).

(*iii*) Borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance note; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(c) *Terms of loan note guarantee.* Use of traditional servicing options does not change the terms of the loan note guarantee except when the traditional servicing option meets the requirements of paragraph (b)(3)(iv) of this section. The loan guarantee will apply to loan terms extending beyond the 30-year loan term from the date of origination when a loan modification meets the criteria set forth in paragraph (b)(3)(iv).

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6430, Feb. 8, 2016; 84 FR 70886, Dec. 26, 2019; 89 FR 66193, Aug. 15, 2024; 90 FR 9375, Feb. 12, 2025]

§ 3555.304 Streamline servicing options.

(a) *General.* (1) Lenders must exhaust traditional servicing options outlined in this part without received a completed package to be used in evaluating the borrower for traditional servicing options and have sent a demand letter in accordance with § 3555.306 to the borrower prior to consideration of streamline servicing options.

(2) Use of streamline loan servicing does not change the terms of the loan note guarantee.

(3) Streamline options may be provided to the borrower with at least a 10 percent reduction to their principal and interest payment with no consideration of the borrower's financials.

(b) *Conditions for streamline servicing options.* In addition to the requirements in § 3555.303(a), the following conditions apply to all special loan servicing:

(1) The borrower must be at least 90 days past due and prior to initiation of any acceleration or foreclosure action.

(2) The borrower must successfully complete a trial payment plan of sufficient duration, as determined by the Agency, to demonstrate that the borrower will be able to make regularly scheduled payments as modified by the special loan servicing.

(3) Expenses related to streamline loan servicing including, but not limited to, title search and recording fees, shall not be charged to the borrower.

(4) Capitalization of late charges and lender fees is not permitted in the special loan servicing option.

(c) *Extended streamline loan modification*. The Lender may modify the loan by reducing the interest rate to a level at or below the maximum allowable interest rate and extending the repayment term to 40 years from the date of loan modification. The servicer may limit the extension to 30 years if limited by any investor or pooling restrictions. The loan guarantee will apply to loan terms extending beyond the 30-year loan term from the date of origination when a loan modification meets the criteria set forth in this section.

(1) Streamline loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including, tax and insurance advances and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.

(2) Streamline loan modifications must be a fixed interest rate and cannot exceed the current market interest rate at the time of modification. When reducing the interest rate, the maximum rate is subject to paragraph (c)(3) of this section.

(3) The term shall be extended to a maximum of 40 years as noted above to provide the borrower with at least a 10 percent reduction in their principal and interest payment.

(4) If the targeted mortgage payment reduction cannot be achieved using a modification as described in this section, the loan is not eligible for streamline loan servicing and foreclosure may be initiated.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6430, Feb. 8, 2016; 84 FR 70886, Dec. 26, 2019; 89 FR 66194, Aug. 15, 2024; 90 FR 9375, Feb. 12, 2025]

§ 3555.305 Voluntary liquidation.

The lender must have exhausted the servicing options outlined in §§ 3555.302 through 3555.304 to cure the delinquency before considering voluntary liquidation. The methods of voluntary liquidation of the security property outlined in this section may be used to protect the interests of the Government.

(a) *Eligibility*. To be eligible for voluntary liquidation, the following conditions must be met:

(1) The loan is at least 30 days delinquent or meets the imminent default definition as outlined in § 3555.303(a)(2);

(2) The default was caused by an involuntary reason; and

(3) The borrower must presently occupy the property except in situations where the borrower does not occupy the property due to the same involuntary reason that led to the default.

(b) *Pre-foreclosure or short sale*. The borrower may sell the security property for a price that represents its fair market value. The sale price, less any reasonable and customary sale or closing costs incurred by the borrower, must be applied to the borrower's account.

(c) *Deed in lieu of foreclosure*. The lender may accept a deed in lieu of foreclosure if it will result in a lesser loss claim than if foreclosure occurs.

(d) *Offer by junior lienholder*. If a junior lienholder makes an offer in the amount of at least the anticipated net recovery value, as calculated in accordance with § 3555.353, the lender may assign the note and mortgage to the junior lienholder.

(e) *Other methods of voluntary liquidation*. The lender may propose other methods of voluntary liquidation that are consistent with this section if the lender fully documents how the proposal will result in a savings to the Government.

[78 FR 73941, Dec. 9, 2013, as amended at 84 FR 70886, Dec. 26, 2019]

§ 3555.306 Liquidation.

(a) *General*. (1) When a lender determines that a borrower is unable or unwilling to meet loan obligations with servicing options under this subpart, the lender must accelerate the guaranteed loan and, if necessary, foreclose.

(2) Prior to acceleration the lender must have advised the borrower, in writing, of available foreclosure avoidance options and the borrower must have failed to request such options.

(3) The lender must accelerate the guaranteed loan, with a demand letter, when the account is three scheduled payments past due unless there is a reasonable prospect of resolving the delinquency through another method.

(4) The borrower is responsible for all expenses associated with liquidation and acquisition.

(b) *Foreclosure.* (1) The lender must initiate foreclosure within 90 calendar days of the decision to liquidate unless Federal, State, or local law requires that foreclosure action be delayed. When there is a legal delay (such as bankruptcy), foreclosure must be initiated within 90 calendar days after it becomes possible to do so. Foreclosure initiation begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale.

(2) Lenders must exercise due diligence in completing the liquidation process to ensure the foreclosure is cost effective, expeditious, and completed in an efficient manner, as otherwise provided by the Agency. The lender must choose the foreclosure method representing the best interest of the Federal Government.

(3) The lender's decision to bid at foreclosure and any bid amount will be based upon the property value, whether the property value is sufficient to cover the existing debt and incurred costs, and any potential to recover a deficiency. The lender will encourage third party bidding at a foreclosure sale when the total debt, including the cost of acquiring, managing and disposing of the property, if acquired, is greater than the gross proceeds expected from a foreclosure sale at market value.

(c) Unless State law imposes other requirements, the lender may reinstate an accelerated account if the borrower pays, or makes acceptable arrangements to pay, all past-due amounts, any protective advances, and any foreclosure-related costs incurred by the lender.

(d) *Bankruptcy.* (1) When a borrower files a petition in bankruptcy, the lender must suspend collection and foreclosure actions in accordance with Title 11 of the United States Code.

(2) The lender may accept conveyance of security property by the trustee in the bankruptcy, or the borrower, if the bankruptcy court has approved the transaction, and the lender will acquire title free of all liens and encumbrances except the lender's liens.

(3) Whenever possible after the borrower has filed for protection under Chapter 7 of Title 11 of the United States Code, a reaffirmation agreement will be signed by the borrower and approved by the bankruptcy court prior to discharge, if the lender and the borrower decide to continue with the loan.

(4) The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings.

(5) The lender can include principal and interest lost as a result of bankruptcy proceedings in any claim filed in accordance with § 3555.354.

(e) *Maintain condition of security property.* The lender must make reasonable and prudent efforts to ensure that the condition of the security property is maintained during any liquidation, acquisition, and sale of the property. These efforts include, but are not limited to, periodic inspections, performing necessary repairs, winterization, securing the property, removing debris, yard maintenance and ensuring the continuance of property insurance. The lender must identify, determine the cause, and document any environmental hazard affecting the value of the security property. The lender must retain a record of all efforts to maintain the condition of the security property.

(f) *Lender acquisition of title.* If at liquidation, the title to the property is conveyed to the lender, the lender will submit a loss claim package, including a market value appraisal, within 60 days of the foreclosure sale date or the date the lender acquires title. If eviction action is required in order to obtain a market value appraisal, the lender must submit the loss claim package, including the market value appraisal, within 60 days of the date the occupants clear the premises. The lender must submit the loss claim request, including the market value appraisal, in accordance with subpart H.

(g) *Debt settlement reporting.* The lender must report to the IRS and all national credit reporting repositories any debt settled through liquidation.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6430, Feb. 8, 2016; 81 FR 31164, May 18, 2016; 84 FR 70886, Dec. 26, 2019]

§ 3555.307 Assistance in natural disasters.

(a) *Policy.* Servicers must utilize general procedures available under this subpart for servicing borrowers affected by natural disasters, as supplemented by Rural Development, to minimize delinquencies and avoid foreclosure.

(b) *Evaluating the damage.* Servicers are expected to inspect a security property whenever they have reason to believe the property has been damaged.

(c) *Special relief measures.* The servicer must evaluate on an individual case-by-case basis a mortgage that is (or becomes) seriously delinquent as the result of the borrower's incurring extraordinary damages or expenses related to the natural disaster. The servicer should document its individual mortgage file regarding all servicing actions taken during this time period. The lender must consider all special relief alternatives for disaster assistance available to the borrower prior to suspending collection and foreclosure activities. The suspension of servicing actions will expire 90 days from the declaration date of the natural disaster, unless otherwise extended by the Agency.

(d) *Insurance claim settlements.* Prior to release of hazard insurance proceeds because of damage caused by a natural disaster, servicers must complete a cost and benefit analysis on a case-by-case basis to determine if the property can be repaired or rebuilt. The servicer's actions must be based on the status of the mortgage, the amount of insurance proceeds, and the length of time required repairing or reconstructing the property, and the market conditions in the area. If the property will not be repaired or rebuilt, the insurance proceeds must be applied to the unpaid principal loan balance.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6430, Feb. 8, 2016]

§§ 3555.308–3555.349 [Reserved]

§ 3555.350 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart H—Collecting on the Guarantee

§ 3555.351 Loan guarantee limits.

(a) *Original loan amount.* For the purposes of this section, the term ''Original Loan Amount'' means the original promissory note amount minus any loans funds not actually disbursed to the borrower or on behalf of the borrower at the time the SFHGLP loan was made or thereafter.

(b) *Maximum loss payment.* The maximum payment for a loss sustained by the lender under the SFHGLP is the lesser of:

(1) 90 percent of the Original Loan Amount; or

(2) 100 percent of any loss equal to or less than 35 percent of the Original Loan Amount plus 85 percent of any remaining loss up to 65 percent of the Original Loan Amount.

§ 3555.352 Loss covered by the guarantee.

Subject to § 3555.351, the loss claim payment will be calculated as the difference between the Total Indebtedness on the loan and the Net Recovery Value calculated according to § 3555.353. The Total Indebtedness on the loan includes:

(a) *Principal balance.* The unpaid principal balance;

(b) *Accrued interest.* Accrued interest at the guaranteed loan note rate from the last day interest was paid by the borrower to the settlement date, as defined at § 3555.10;

(c) *Additional interest.* Additional interest on the unsatisfied principal accrued from the settlement date to the date the claim is paid, but not more than 60 days from the settlement date;

(d) *Protective advances.* Principal and interest for protective advances, as described in § 3555.303; and

(e) *Liquidation costs.* Reasonable and customary liquidation costs, such as

attorney fees, market value appraisals, and foreclosure costs. Annual fees advanced by the lender to the Agency are ineligible for reimbursement when calculating the loss claim payment.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 31164, May 18, 2016; 84 FR 70886, Dec. 26, 2019]

§ 3555.353 Net recovery value.

The net recovery value of the property is determined differently for properties that have been sold than for properties that remain in the lender's inventory at the time the loss claim is filed.

(a) *For a property that has been sold.* When a loss claim is filed on a property that was sold to a third party at the foreclosure sale or through an approved pre-foreclosure sale, net recovery value is calculated as follows:

(1) The proceeds from the sale plus any other amounts recovered, minus

(2) The amount of actual liquidation and disposition costs provided those costs are reasonable and customary for the area. Costs incurred by in-house staff may not be included.

(b) *For a property that has been acquired.* When a loss claim is filed on a property acquired by the lender through a foreclosure sale or a deed-in-lieu of foreclosure, the net recovery value is based on an estimated sales price calculated using a market value appraisal along with holding and disposition costs calculated using the acquisition and management factor (also known as the VA Net Value Factor) published by the VA, and other factors as determined by the Agency. The lender must submit a loss claim package, including a market value appraisal, within 60 days of the foreclosure sale date or the date the lender acquires title. If eviction action is required in order to obtain a market value appraisal, the lender must submit the loss claim package, including the market value appraisal, within 60 days of the date the occupants clear the premises and in accordance with other requirements of this subpart. with any loss claim request in accordance with subpart H.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 31165, May 18, 2016; 84 FR 70887, Dec. 26, 2019]

§ 3555.354 Loss claim procedures.

All lenders must use a web-based automated system designated by the Agency to submit all loss claim requests.

(a) *Sold property.* For property that has been sold, the lender must submit a loss claim within 45 calendar days of the sale. Late claims made beyond this period of time may be rejected or reduced by Rural Development. Instructions and forms may be obtained from Rural Development.

(b) *REO.* If at liquidation, the title to the property is conveyed to the lender, the lender will submit a loss claim package, including a market value appraisal, within 60 days of the foreclosure sale date or the date the lender acquires title. If eviction action is required in order to obtain a market value appraisal, the lender must submit the loss claim package within 60 days of the date the occupants clear the premises. The lender must order a market value appraisal and include the market value appraisal with the loss claim package. The Agency will use the market value appraisal, along with other Agency required documentation, to determine the property value for the basis of the loss claim. The Agency will apply an acquisition and management resale factor to estimate holding and disposition costs, based on the most current VA Management and Acquisition Factor found at *https://www.benefits.va.gov/HOMELOANS/servicers_valeri.asp.*

(c) *Deficiency judgments.* The lender must enforce any judgment for which there are current prospects of collection before submitting a loss claim, and amounts collected must be applied against the outstanding debt. Rural Development will process the loss claim if there are no current prospects for collection.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 31165, May 18, 2016; 84 FR 70887, Dec. 26, 2019]

§ 3555.355 Reducing or denying the claim.

(a) *Determination of loss payment.* Subject to the requirements of § 3555.108, if Rural Development determines that the amount of the loss was increased due to the lender's failure to comply

with the conditions of the Loan Note Guarantee, the Agency may reduce or deny any loss claim by the portion of the loss determined was caused by the lender's action or failure to act. The circumstances under which loss claims may be denied or reduced include, but are not limited to, the following lender actions:

(1) Failure to adhere to required servicing and liquidation procedures as set forth in Agency regulations and guidance, including the payment of real estate taxes or hazard insurance when due;

(2) Failure to report defaulted loans to Rural Development within required timeframes;

(3) Failure to ensure that the security property is adequately maintained during liquidation;

(4) Delay in filing a loss claim;

(5) Claiming unauthorized expenses;

(6) Providing unauthorized assistance;

(7) Failure to obtain the required security or maintain the security position;

(8) Violating usury laws;

(9) Negligence, gross negligence or misrepresentation; or

(10) Committing fraud, or failing to report knowledge of fraud or false information.

(b) *Disputes.* If the lender disputes the loss claim amount determined by Rural Development, Rural Development will pay the undisputed portion of the loss claim, and the lender may appeal the decision in accordance with §3555.4.

§§ 3555.356–3555.399 [Reserved]

§ 3555.400 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

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Subpart A—General Provisions and Definitions

§ 3560.1 Applicability and purpose.

(a) This part sets forth requirements, policies, and procedures for multi-family housing (MFH) direct loan and grant programs to serve eligible very-low, low- and moderate income households. The programs covered by this part are authorized by title V of the Housing Act of 1949 and are:

(1) *Section 515 Rural Rental Housing, which includes congregate housing, group homes, and Rural Cooperative Housing.* Section 515 loans may be made to finance multi-family units in rural areas as defined in § 3560.11.

(2) *Sections 514 and 516 Farm Labor Housing loans and grants.* Housing under these programs may be built in any area with a need and demand for housing for farm workers.

(3) *Section 521 Rental Assistance.* A project-based tenant rent subsidy which may be provided to Rural Rental Housing and Farm Labor Housing facilities.

(b) The programs covered by this part provide economically designed and constructed rural rental, cooperative, and farm labor housing and related facilities operated and managed in an affordable, decent, safe, and sanitary manner.

(c) Internal Agency procedures containing details for Agency processing under these regulations can be found in the program handbooks, available in any Rural Development office, or from the Rural Development Web site.

§ 3560.2 Civil rights.

(a) As per the Fair Housing Act, as amended and section 504 of the Rehabilitation Act of 1973, all actions taken by recipients of loans and grants will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or disability. These actions include any actions in the sale, rental, or advertising of the dwellings, in the provision of brokerage services, or in residential real estate transactions involving Rural Housing Service (RHS) assistance. It is unlawful for a borrower or grantee or an agent of a borrower or grantee:

(1) To refuse to make reasonable accommodations in rules, policies, practices, or services that would provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; or

(2) To refuse to provide a reasonable accommodation at the borrower's expense that would not cause an undue financial or administrative burden, or to refuse to allow an individual with a disability to make reasonable modifications to the unit at their own expense with the understanding that the owner may require the tenant to return the unit to its original condition when the unit is vacated by the tenant making the modifications (see § 3560.104(c)).

(b) Borrowers and grantees must take reasonable steps to ensure that Limited English Proficiency (LEP) persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. USDA has issued guidance to clarify the responsibilities of recipients and subrecipients who receive financial assistance from USDA and to assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act, as amended, and implementing regulations.

(c) Any tenant/member or prospective tenant seeking occupancy in or

use of facilities financed by the Agency who believes he or she is being discriminated against because of race, color, religion, sex, familial status, national origin, or disability may file a complaint in person with, or by mail to the U. S. Department of Agriculture's Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, Washington, DC 20410. Complaints received by Agency employees must be directed to the National Office Civil Rights staff through the State Civil Rights Manager/Coordinator.

(d) Borrowers or grantees that fail to comply with the requirements of federal civil rights requirements are subject to sanctions authorized by law. The following are the major civil rights laws affecting multifamily housing loan and grant programs:

(1) Equal Credit Opportunity Act (ECOA).

(2) Title VI of the Civil Rights Act of 1964.

(3) Title VIII of the Civil Rights Act of 1968.

(4) Section 504 of the Rehabilitation Act of 1973.

(5) Age Discrimination Act of 1975.

(6) Title IX of the Education Amendments of 1972.

§ 3560.3 Environmental review requirements.

RHS will consider environmental impacts of proposed housing as equal with economic, social, and other factors. By working with applicants, Federal agencies, Indian tribes, state and local governments, interested citizens, and organizations, RHS will formulate actions that advance program goals in a manner that protects, enhances, and restores environmental quality. Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970. Servicing actions as defined in § 1970.6 of this title are part of financial assistance already provided and do not require additional NEPA review. However, certain post-financial assistance actions that have the potential to have an effect on the environment, such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8 of this title, are actions for the purposes of this part.

[81 FR 11049, Mar. 2, 2016]

§ 3560.4 Compliance with other Federal requirements.

RHS is responsible for ensuring that the application is in compliance with all applicable Federal requirements, including the following specific requirements:

(a) *Intergovernmental review.* 7 CFR part 3015, subpart V, or any successor regulation, including the Agency supplemental administrative instruction, RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B, or any successor regulation.

(c) *Clean Air Act and Water Pollution Control Act Requirements.* For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act, Executive Order 11738, and 40 CFR part 32.

(d) *Historic preservation requirements.* The provisions of 7 CFR part 1901, subpart F or any successor regulation.

(e) *Lead-based paint requirements.* The applicable provisions of 24 CFR part 35, subparts A through D, J, and R, as published by the U.S. Department of Housing and Urban Development.

[69 FR 69106, Nov. 26, 2004, as amended at 76 FR 80731, Dec. 27, 2011]

§ 3560.5 State, local or tribal laws.

Borrowers must comply with all applicable state and local laws, and laws of Federally-recognized Indian tribes to the extent they are not inconsistent with this part.

§ 3560.6 Borrower responsibility and requirements.

(a) Borrower responsibilities and requirements specified in this part may be carried out by an individual or entity designated by the borrower to act on

behalf of the borrower such as a resident manager or management agent. Ultimate accountability to the Agency, however, is with the borrower whether or not the borrower designated another person or entity to act on the borrower's behalf.

(b) Borrowers who have not executed a loan agreement, and who were not required to execute a loan agreement by the regulations in effect at the time of their loan closing are exempt from the requirements of subparts D through G of this part, as long as the borrower is not in default of any applicable requirement, security instrument, payment, or any other agreement with the Agency. Such borrowers must provide evidence of tenant income eligibility in accordance with §3560.152(a), except in Farm Labor Housing where the tenant is not paying shelter cost.

§ 3560.7 Delegation of responsibility.

The RHS Administrator may delegate, on an individual or other basis, any decision-making responsibility for Agency programs, unless otherwise noted.

§ 3560.8 Administrator's exception authority.

The RHS Administrator may make an exception to any provision of this part or address any omissions provided that the exception is consistent with the applicable statute, does not adversely affect the interest of the Federal Government, and does not adversely affect the accomplishment of the purposes of the MFH programs or application of the requirement would result in undue hardship on the tenants. Exception requests presented to the RHS Administrator must have the concurrence of a Rural Development Leadership Designee or a Deputy Administrator for MFH.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11279, Mar. 1, 2022]

§ 3560.9 Reviews and appeals.

Rural Housing Service decisions may be appealed pursuant to 7 CFR part 11.

§ 3560.10 Conflict of interest.

To reduce the potential for employee conflict of interest, all RHS activities will be conducted in accordance with 7 CFR part 1900, subpart D.

§ 3560.11 Definitions.

Unless otherwise noted, terms listed in this part shall be defined as follows:

Administrator. The head of the Rural Housing Service who reports directly to the Under Secretary for Rural Development in the U.S. Department of Agriculture.

Agency. The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture.

Amortization. Payment of debt in regular, periodic installments of principal and interest, as opposed to interest only payments.

Applicant. An individual, partnership or limited partnership, consumer cooperative, trust, state or local public agency, corporation, limited liability company, nonprofit organization, Indian tribe, association, or other entity that will be the owner of the project for which an application for funding from the Agency is submitted.

Appraisal. As used by the Agency, a written report developed by a qualified appraiser as established in subpart P that concludes an opinion of value(s) for a specific real property.

Assistance. Financial assistance in the form of a loan, grant, interest credit, or rental assistance.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Borrower. An individual, partnership or limited partnership, consumer cooperative, trust, state or local public agency, corporation, limited liability company, nonprofit organization, Indian tribe, association, or other entity that has received a loan from the Agency.

Capital Needs Assessment. A Capital Needs Assessment is designed to capture and report on the immediate and the long-range capital needs of an individual property. It includes attention to site features, mechanical and electrical systems, building exterior and common area systems, and dwelling unit interiors.

Caretaker. An individual employed by a borrower or a management agent to handle routine interior and exterior maintenance and upkeep of a MFH project.

Congregate housing. A housing program authorized by section 515 of the Housing Act of 1949 which provides housing for elderly persons, individuals with disabilities, and families who require some supervision and central services but are otherwise able to care for themselves. Such housing does not include any licensed healthcare facility.

Consumer cooperative. A corporation organized under the cooperative laws of a state or Federally recognized Indian tribe that will own and operate the housing on a cooperative basis solely for the benefit of its members.

Conventional rents for comparable units (CRCU). Market rents for comparable rental units in conventional housing located in the same geographic area as a particular Section 514, 515, or 516 project.

Current appraisal. An appraisal with a report date that is no more than 1 year old.

Current Comprehensive Credit Report. A credit report no older than six months from the date of issuance, that contains details of both current open credit accounts and closed accounts, and that is provided by one of the three accredited major credit bureaus (Experian, Equifax, or TransUnion).

Daily Interest Accrual System (DIAS). A system where interest is charged daily on outstanding principal. Level loan payments are made by the borrower. The amount of interest due on any date is equal to the unpaid daily interest that has accrued.

Default. Failure by a borrower to meet significant monetary or non-monetary obligations or terms of a loan, grant, or other agreement with the Agency which remain unpaid or unperformed for more than 30 days after the date such obligation is due or required to be paid or performed, or within time periods specified in notices of compliance violations.

Disability. The term disability is considered equivalent to the term handicap. Eligibility requirements for fully accessible units are contained in §§ 3560.154(g)(1)(i) and 3560.155(b). A person is considered to have a disability if either of the following two situations occur:

(1) *As defined in section 501(b) of the Housing Act of 1949*. The person is the head of household (or his or her spouse) and is determined to have an impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 102(7) of the Developmental Disability and Bill of Rights Act (42 U.S.C. 6001(7)).

(2) *As defined in the Fair Housing Act; the Americans with Disabilities Act; and section 504 of the Rehabilitation Act of 1973*. The person has a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of such impairment; or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance. As used in this definition, physical or mental impairment includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism;

(iii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iv) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(v) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by the borrower or management agent as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments described in this definition but is treated by another person as having such an impairment.

Disabled domestic farm laborer. An individual with a disability as separately defined in this paragraph and who was a domestic farm laborer at the time of becoming disabled.

Domestic farm laborer. A person who, consistent with the requirements in § 3560.576(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, or a person legally admitted to the United States and authorized to work in agriculture. This definition may include the immediate family members residing with such a person.

Due diligence on hazardous substances. Due diligence is the process of inquiring into the environmental conditions of real estate, in the context of a real estate transaction to determine the presence of contamination from hazardous substances, and to determine the impact such contamination may have on the market value of the property.

Elderly household or individual with a handicapped household. A household in which the tenant or co-tenant of the household is 62 years old or older or is an individual with a disability. An elderly household may include persons younger than 62 years old and the household of an individual with a handicap may include persons without disabilities.

Elderly person. A person who is at least 62 years old. The term also means a person with a disability as separately defined in this paragraph, regardless of age.

Familial status. One or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Family farm corporation or partnership. A private corporation or partnership involved in agricultural production in which at least 90 percent of the stock or interest is owned and controlled by persons related by blood, which shall include parents, siblings, and children, or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the state;

(2) Legally able to carry out the purposes of the loan; and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm. A tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural

residence. The term ''farm'' also includes the term ''ranch.'' It may also include land and improvements and facilities used in a non-eligible enterprise or the residence that, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a ''farm.''

Farm labor. Services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage.

Farm labor contractor. A person—other than an agricultural employer, a member of an agricultural association, or an employee of an agricultural employer or agricultural association—who recruits, solicits, hires, employs, furnishes, or transports any year-round or seasonal migrant farm laborer for money or other valuable consideration.

Farm labor housing. On-farm or off-farm housing for farm laborers authorized by section 514 and section 516 of the Housing Act of 1949.

Farm owner. A natural person, persons, or legal entity who are the owners of a ''farm'' as this term is further defined in this section.

Foreclosure. A proceeding in or out of court to extinguish all rights, title, and interest of the owners of property in order to sell the property to satisfy a lien against it.

General overhead. Includes general operation items necessary for the contractor to be in business. They may include, but are not limited to the following: tools and minor equipment; worker's compensation and employer's liability; unemployment tax; Social Security and Medicare; manager's, clerical, and estimator's salaries; pension and bonus plans; main office insurance, rental, utilities, miscellaneous expenses; general liability insurance; legal, accounting, and data processing; automotive and light truck expense; vehicle expenses; depreciation of overhead capital expenditures; and office equipment maintenance.

General requirements. Includes items that are required in the construction contract for the contractor to provide for the specific project. They do not include items that pertain to a specific trade nor overhead expenses of the contractor's general operation. Items may include, but are not limited to, the following: Field supervision; field engineering such as field office, sheds, toilets, phone; performance and payment or latent defects bonds; cost certification; building permits; site security; temporary utilities; property insurance; and cleaning or rubbish removal.

Grantee. An entity that has received a grant from the Agency.

Group home. Housing that is occupied by elderly persons or individuals with disabilities who share living space within a rental unit and in which a resident assistant may be required.

Household. The tenant or co-tenant and the persons or dependents living with a tenant or co-tenant, but not including a resident assistant.

Household furnishings. Basic durable items such as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers and beds.

Housing project. A property with two or more affordable, decent, safe and sanitary rental units and related facilities operated under one management plan and financed with funds appropriated under the authority of sections 515, 514, or 516 of the Housing Act of 1949.

Identity-of-Interest (IOI). A relationship between applicants, borrowers, grantees, management agents, or suppliers of materials or services described under, but not limited to, any of the following conditions:

(1) There is a financial interest between the applicant, borrower, grantee and a management agent or the supplying entity;

(2) One or more of the officers, directors, stockholders or partners of the applicant, borrower, or management

agent is also an officer, director, stockholder, or partner of the supplying entity;

(3) An officer, director, stockholder, or partner of the applicant, borrower, or management agent has a 10 percent or more financial interest in the supplying entity;

(4) The supplying entity has or will advance funds to an applicant, borrower, or management agent;

(5) The supplying entity provides or pays on behalf of the applicant, borrower, or management agent the cost of any materials or services in connection with obligations under the management plan or management agreement;

(6) The supplying entity takes stock or a financial interest in the applicant, borrower, or management agent as part of the consideration to be paid them; or

(7) There exists or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or canceling any of the management plan, management agreement documents, organization documents, or other legal documents pertaining to the property, except as approved by the Agency.

Indian tribe. The term ''Indian tribe'' means any Indian tribe, band, group, and nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan-Native Village, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92–512).

Interest credit. A form of assistance available to eligible borrowers that reduces the effective interest rate of the loan.

Lease. A contract setting forth the rights and obligations of a tenant or cooperative member and a property owner, including charges and terms under which a tenant or cooperative member will occupy or use the housing or related facilities.

Legal or qualified alien. Legal or qualified alien refers to any person lawfully admitted to the country who meets the criteria in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

Letter of Priority Entitlement (LOPE). A letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-financed housing projects for 120 days from the date of the LOPE.

Life cycle cost. The life cycle cost has 2 purposes: (1) To determine the expected usable life (utility) of a building component or furnishing and (2) to determine which building components or furnishings are the most cost efficient over the life of the building. Cost efficient is not to be construed to mean the least initial cost.

Life cycle cost analysis. Life cycle cost analysis is the comparison of different materials to examine anticipated useful life and the cost of using a specific material or building component. The analysis has multiple uses, such as: (1) To conduct a cost efficiency comparison between products, (2) for developing component replacement time tables, and (3) for estimating future component replacement costs. Life cycle cost analysis can be accomplished through various methods, such as; insurance actuary tables or Agency documentation of a component's life expectancy. Life cycle cost analysis is conducted by a design professional. For Agency financed projects, a life cycle cost analysis is to be conducted for specific components: (1) drives and parking, (2) roofing system and roofing material, (3) exterior finishes, and (4) energy source items.

Limited Liability Company (LLC). An unincorporated organization of one or more persons or entities established in accordance with applicable state laws and whose members may actively participate in the organization without being personally liable for the debts, obligations or liabilities of the organization.

Limited partnership. An ownership arrangement consisting of general and limited partners; general partners manage the business, while limited partners are passive and liable only for their own capital contributions.

Loan agreement. A written agreement between the Agency and the borrower that sets forth the borrower's responsibilities with respect to Agency financing.

Low-income household. A household that has an adjusted income that is greater than the Department of Housing and Urban Development's (HUD) established very-low income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size for the county where the property is or will be located).

Low-Income Housing Tax Credit (LIHTC). A federal tax credit allowed for investment in qualified low-income housing administered by the Internal Revenue Service (IRS) under section 42 of the Internal Revenue Code.

Management agent. A firm or individual employed or designated by a borrower to act on the borrower's behalf in accordance with a written management agreement.

Management agreement. A written agreement between a borrower and an identity-of-interest (IOI) management agent or independent fee management agent setting forth the management agent's responsibilities and fees for management services.

Management fee. The compensation provided to a management agent for services provided in accordance with an approved management certification, Form RD 3560–13, ''Multi-Family Project Borrower's/Management Agent's Management Certification.''

Management plan. A detailed description of the policies and procedures to be followed by the borrower in managing a MFH project.

Manufactured housing. Housing, constructed of one or more factory-built sections, which includes the plumbing, heating, and electrical systems contained therein, which is built to comply with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), and which is designed to be used with a permanent foundation.

Market area. The geographic or locational delineation of the market for a specific project, including outlaying areas that will be impacted by the project, *i.e.*, the area in which alternative, similar properties effectively compete with the subject property.

Market rent. The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement, including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as a specified date and the passing of the leasehold from lessor to lessee.

Maximum debt limit. The maximum amount that the Agency will lend or grant for a MFH project based on the appraised value or total development cost excluding costs ineligible for payment from loan or grant funds, whichever is less, reduced by all funding available to the borrower from sources other than the Agency, multiplied by 95, 97, or 102 percent depending upon the applicant entity and their use of the low-income housing tax credit, in accordance with § 3560.63(b).

Member or co-member. A stockholder or other person who has executed documents or stock pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

Migrants or migrant agricultural laborer. A person (and the family of such person) who receives a substantial portion of his or her income from farm labor employment and who establishes a residence in a location on a seasonal or temporary basis, in an attempt to receive farm labor employment at one or more locations away from their home base state, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence.

Minor. An individual under 18 years of age who is a dependent of a tenant or an individual age 18 or older who is a full-time student and a dependent of a tenant.

Moderate-income household. A household that has an adjusted income that is greater than the HUD-established low-income limit but does not exceed the low-income limit by more than $5,500.

Mortgage or Deed of Trust. A form or security instrument or consensual lien on real property.

Net recovery value. The value realized from the Government's acquisition of security property in a default situation

after subtracting all costs, actual or anticipated, from acquiring, holding, and disposing of the security property.

New construction. A MFH project being constructed to be occupied for the first time.

Nonprofit organization. A private organization that:

(1) Is organized under state or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(3) Is approved by the Secretary of Agriculture and considered to be financially responsible.

Nonprofit organization for section 515 program (Prepayment or Purchase). To be eligible to purchase properties under the conditions of subpart N of this part, nonprofit organizations may not have among their officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid or have requested prepayment.

Nonprofit organization of farm workers. A nonprofit organization, as defined in this section, whose membership is composed of at least 51 percent farm workers.

Notice of Funding Availability (NOFA). A ''Notice of Funding Availability'' issued by the Agency to inform interested parties of the availability of assistance and other matters pertinent to the program.

Occupancy agreement. A contract establishing the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing.

Occupancy charge. The amount of money charged a cooperative member to cover their proportional share of the cooperative's operating costs and cash requirements.

Off-farm labor housing. Housing for farm laborers in any location approved by the Agency but not on the farm where the laborer works.

Office of the General Counsel (OGC). The USDA Office of the General Counsel, including the Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney.

Office of the Inspector General (OIG). The USDA Office of the Inspector General.

On-farm labor housing. Housing for farm laborers located on the farm where they work that is away from service buildings or in the nearby community.

Overage. That portion of a tenant's net tenant contribution that exceeds basic rent up to note rent. Full overage is an amount equal to the difference between the note rent for a unit and the basic rent.

Plan I. A type of interest subsidy available to borrowers prior to October 27, 1980. Budgets and rental rates developed for Plan I loans are based on a 3 percent loan amortization.

Plan II. A type of interest subsidy available to borrowers operating on a limited profit basis. Budgets and rental rates developed for Plan II loans are based on both the loan being amortized at the interest rate shown on the promissory note and at a 1 percent subsidized rate.

Predetermined Amortization Schedule System (PASS). A system where loan payments are applied based on an amortization schedule.

Prepayment. Payment in full of the outstanding balance on an Agency loan prior to the note's originally scheduled maturity date.

Program requirements. All provisions related to MFH contained in the loan document, grant agreement, statute, regulation, handbook, or administrative notice.

Promissory note. A legal document containing conditions (interest rate and timing) for repayment of indebtedness.

Real estate owned (REO) property. The real estate owned by the Agency acquired through voluntary conveyance, foreclosure or other action.

Rehabilitation. Rehabilitation is when the remodeling of a property is of a complex nature involving structural repairs or when two or more of the life cycle cost components are included in the remodeling of a property.

Related facilities. Facilities in a MFH project that are related to the housing and are in addition to rental units,

(e.g., community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply).

Rent. The amount established as a charge for occupancy in a rental unit of Agency-financed MFH. Rents must be established at the same rate for all similar units in the housing project. The following terms are used to describe rents for various program purposes.

(1) *Note rent* is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in the promissory note.

(2) *Basic rent* is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in the promissory note reduced by the interest credit agreement.

(3) *HUD contract rent* is the rental charge established for housing receiving project-based Section 8 rental subsidies in accordance with 24 CFR part 880 or part 884, as applicable.

(4) *Low-income housing tax credit (LIHTC) rent* is the rental charge established in accordance with LIHTC requirements.

Rental assistance (RA). The portion of the approved shelter cost paid by the Agency to compensate a borrower for the difference between the approved shelter cost and the tenant contribution when such contribution is less than the basic rent.

Rental assistance units. Dwelling units in a MFH project qualified for rental assistance. There are three types of rental assistance units.

(1) New construction units are units provided in conjunction with initial loans for construction or substantial rehabilitation of the MFH projects.

(2) Replacement units are Agency-funded rental assistance units which replace units with expiring rental assistance agreements or which replace Section 8 units which have expired under the Section 8 contract.

(3) Servicing units are units provided to an operational MFH project as a part of the Agency's general loan servicing or preservation activities.

Repair and replacement. Repair and replacement is the restoration of minor building materials, elements, components, equipment and fixtures. Examples include: Painting, carpeting, appliances, cabinets, and other fixtures.

Resident assistant. A person residing in a rental unit who is essential to the well-being and care of an elderly person or an individual with a disability, but who:

(1) Is not obligated for the tenant's financial support;

(2) Would not be living in the unit except to provide the needed services;

(3) May be a family member, but is not a dependent of the tenant for tax purposes;

(4) Is not subject to the eligibility requirements of a tenant; and

(5) Is not considered a household member in the determination of household income.

Resident or site manager. The individual employed by the borrower and who is responsible for the day-to-day operations of the housing.

Retired domestic farm laborer. An individual who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer.

Return on Investment (ROI). The annual amount of profit an owner operating on a limited or full profit basis may withdraw from a project, as established in the loan agreement. The amount is calculated as a percentage of the owner's investment in the project.

Rural area. An area classified as a rural area prior to October 1, 1990, (even if within a Metropolitan Statistical Area), and any area deemed to be a 'rural area' under any other provision of law at any time during the period beginning January 1, 2000, and ending December 31, 2010, shall continue to be so classified until the receipt of data from the decennial census in the year 2020 if such area has a population exceeding 10,000, but not in excess of 35,000, is rural in character, and has a

serious lack of mortgage credit for low- and moderate-income families.

Rural Cooperative Housing (RCH). A housing program authorized under section 515 of the Housing Act of 1949, in which a consumer cooperative, organized and operating on a nonprofit basis, may own and operate a MFH development.

Rural Housing Service (RHS). The Agency within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers programs authorized by sections 514, 515, 516, and 521 of the Housing Act of 1949, as amended.

Rural Rental Housing (RRH). A housing program authorized by section 515 of the Housing Act of 1949 to provide rental housing in rural areas for persons of very-low, low- and moderate income.

Seasonal housing. Housing operated on a seasonal basis, typically for migrants or migrant agricultural laborers as opposed to year round.

Security deposit. A one-time fee charged a tenant prior to occupancy of a unit to cover possible loss or damage to the housing unit caused by the tenant.

Self-employed. A person who meets the IRS definition of self-employed at 26 CFR 1.401–10.

Service agreement. A written agreement between a borrower and a service provider establishing the specific service to be provided to a MFH project, the cost of the service, and the length of time the service will be provided.

Service plan. A written plan describing how services will be provided to a MFH project and which, at a minimum, must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Service provider. A person who signs a written agreement with a borrower to provide services to a MFH project.

Shelter costs. Basic or note rent plus the utility allowance, when used, or the occupancy charge plus the utility allowance. If the utility costs are included in the rent, the rent will equal shelter costs.

Sources and Uses Comprehensive Evaluation (SAUCE). A computer software program used by the Agency to analyze the total funds provided to a MFH project to ensure that the Agency is not providing excess assistance.

Special note rent (SNR). A rental rate charged at a Plan II project experiencing vacancies that is less than note rent but higher than basic rent.

State consolidated plan. A planning document for an individual state that includes a housing and homeless needs assessment; a housing market analysis; a strategic plan for addressing the state's housing challenges; an Action Plan that is an annual description of the state's Federal and other resources that are expected to be available to address its priority housing needs and how the Federal funds will leverage other resources; certifications relating to fair housing, its antidisplacement and relocation plan, a drug-free workplace, and other statutory and program requirements; and a monitoring plan to ensure that the state is using its Federal funds appropriately and effectively.

Tenant or co-tenant. An individual who signs a lease and occupies or will occupy a rental unit in a MFH project. The term tenant or co-tenant also refers to a member of cooperative housing occupying or planning to occupy a dwelling unit in cooperative housing.

Tenant contribution. The portion of the approved shelter cost paid by the tenant household. The proportion of tenant income and adjusted income paid will vary according to the type of subsidy provided to the tenant household.

Total development cost (TDC). The cost of constructing, purchasing, improving, altering, or repairing MFH and related facilities, buying household furnishings (for sections 514/516 only), and purchasing or improving the necessary land, including architectural, engineering, or legal fees, and charges and other technical and professional fees and charges, but excluding fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. Although a developer's fee is part of the project's development cost, such fees

are not eligible for payment from Agency loan or grant funds and are not included in determining the Agency authorized development cost.

Utility allowance. An amount determined by a borrower as the amount to be considered a tenant's portion of utility cost in the calculation of a tenant's total shelter cost when utility costs are not included in the rent.

Very low-income household. A household that has an adjusted income that does not exceed the HUD established very low-income limit (generally 50 percent of median income adjusted for household size in the county where the property is or will be located).

Workout agreement. An agreement between a borrower and the Agency listing actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

[69 FR 69106, Nov. 26, 2004, as amended at 80 FR 9912, Feb. 24, 2015; 82 FR 49285, Oct. 25, 2017; 87 FR 11279, Mar. 1, 2022; 89 FR 106980, Dec. 31, 2024]

§§ 3560.12–3560.49 [Reserved]

§ 3560.50 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart B—Direct Loan and Grant Origination

§ 3560.51 General.

This subpart contains the Agency's loan origination requirements for multi-family housing (MFH) direct loans for Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing. Additional requirements for farm labor housing loans and grants are contained in subpart L of this part for Off-Farm Labor Housing and subpart M of this part for On-Farm Labor Housing.

§ 3560.52 Program objectives.

The Agency uses appropriated funds to finance the construction, rehabilitation of program properties, or purchase and rehabilitation of MFH and related facilities to serve eligible persons in rural areas. The Agency encourages the use of such financing in conjunction with funding or financing from other sources.

§ 3560.53 Eligible use of funds.

Funds may be used for the following purposes.

(a) *Construct housing.* Funds may be used to construct MFH.

(b) *Purchase and rehabilitate buildings.* Funds may be used to purchase and rehabilitate buildings that have not been previously financed by the Agency.

(1) Rehabilitation must meet the definition of either moderate or substantial rehabilitation as defined in 7 CFR part 1924, subpart A.

(2) The building to be rehabilitated must be structurally sound and the improvements to the building must be necessary to meet the requirements of decent, safe, and sanitary living units.

(3) The total development cost (TDC) for the purchase and rehabilitation of existing buildings must not be more than the estimated TDC for construction of a similar type and unit size property in the same area.

(c) *Subsequent loans.* Funds may be used to provide subsequent loans in accordance with the provisions of § 3560.73.

(d) *Purchase and improve sites.* Funds may be used to purchase and improve the site on which MFH will be located, provided that the amount of loan funds used to purchase the site does not exceed the appraised market value of the site immediately prior to purchase.

(e) *Develop and install necessary systems.* Funds may be used to install streets, a water supply, sewage disposal, heating and cooling systems, electric, gas, solar, or other power sources for lighting and other features

necessary for the housing. If such facilities are located off-site, loan funds may only be used if the following additional requirements are met:

(1) The loan applicant will hold title to the facility or have a legal right to use the facility in the form of an easement or other instrument acceptable to the Agency for a period of at least 50 percent longer than the term of the loan or grant and the title or right is transferable to any subsequent owner of the housing.

(2) The facilities will either be provided for the exclusive use of the proposed housing project, or Agency funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the MFH project. If entities other than the housing project financed by the Agency use the facilities on a reimbursable fee basis, the loan applicant must agree, in writing, to apply any fees collected in excess of operating expenses to their Agency loan account as an extra loan payment.

(f) *Landscaping and site development.* Funds may be used to provide landscaping and site development related to a MFH project such as lighting, walks, fences, parking areas, and driveways.

(g) *Tenant-related facilities.* Funds may be used to develop tenant-related facilities appropriate to the size, economics, and prospective tenants of a MFH project, such as a community room, development of space for education and training purposes for tenants, central laundry facility, outdoor seating, space for passive recreation, tot lots, and a small emergency care infirmary. In congregate housing and group homes, funds may be used for central cooking and dining areas.

(h) *Management-related facilities.* Funds may be used to develop management-related facilities appropriate to the size and economics of a MFH project such as a maintenance workshop, storage facilities, office, and living quarters for a resident manager and other personnel.

(i) *Purchase and install equipment and appliances.* Funds may be used to purchase and install equipment and appliances affixed to the property as customary and appropriate for the area in which the housing is located.

(j) *Household furnishings (Section 514/516).* For farm labor housing sections 514 and 516 only, funds may be used to purchase household furnishings.

(k) *Initial operating capital.* Loan funds equal to 2 percent of total development cost or appraised value, whichever is less, may be used by a state or political subdivision thereof, Indian tribe, consumer cooperative, or any public or private nonprofit borrower who is not receiving low-income housing tax credits (LIHTC), to make the initial operating capital contribution required by § 3560.64. Other borrowers must use their own resources to make the required initial operating capital contribution and may not use loan funds for that purpose.

(l) *Builder's profit, overhead and general requirements.* Subject to the following limits, funds may be used for builder's profit, overhead and general requirements.

(1) Up to 10 percent of the construction contract may be used for builder's profit.

(2) Up to 4 percent of the construction contract may be used for general overhead.

(3) Up to 7 percent of the construction contract may be used for general requirements.

(m) *Legal, technical and professional services.* Funds may be used for the costs of legal, technical, and professional services related to the borrower's MFH project, including appraisals, environmental documentation, and construction plans and specifications.

(n) *Permit and application fees.* Funds may be used for required MFH permits and application fees.

(o) *Reimbursement to nonprofit organizations and public bodies.* Funds may be used to reimburse a nonprofit organization or public body for up to 2 percent of total development costs for section 515, or up to 4 percent of total development costs for off-farm labor housing, for costs that are reasonable and typical for the area, including:

(1) Development and packaging of a loan application and a MFH proposal; and

(2) Legal, technical, and professional fees incurred in the formation of the loan application and MFH proposal; or

(3) Technical assistance from another nonprofit organization to assist in the organization's formation and in the development and packaging of a loan application and MFH proposal.

(p) *Educational programs.* Funds may be used for educational programs related to owning and managing a cooperative housing project for the board of directors of a housing cooperative during the first year of the housing operation. Such funds will be available from the initial operating account. The amount of the funds disbursed will be subject to Agency approval and availability of financial resources from the project.

(q) *Interest and customary charges.* Funds may be used for interest accrued and customary charges necessary to obtain interim financing.

(r) *Purchase housing from an interim lender.* Funds may be used to purchase MFH from an interim lender that holds fee simple title to Agency-financed housing upon which construction commenced and a letter of commitment had been issued by the Agency but the original applicant for whom funds were obligated will not or cannot continue with construction of the housing. In order for the purchase to take place, there must be no outstanding unpaid obligations in connection with the housing.

(s) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Funds may be used for necessary costs incurred to comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(t) *Demonstration programs.* With the RHS Administrator's approval, funds may be used to construct demonstration housing involving innovative units and systems which do not meet existing published standards, rules, regulations, or policies but meet the intent of providing affordable, decent, safe, and sanitary rural housing, and are consistent with the requirements of Title V of the Housing Act of 1949.

(u) *Conversion of section 502 properties.* In accordance with § 3560.506, loan funds may be used to finance the conversion of real estate owned units originally financed under section 502 of the Housing Act of 1949, to MFH authorized by section 515 of the Housing Act of 1949.

§ 3560.54 Restrictions on the use of funds.

(a) *Ineligible uses of funds.* Funds may not be used for:

(1) Housing intended to serve temporary and transient residents, with the exception of housing to serve migrant farm workers in accordance with § 3560.554;

(2) Special care facilities or institutional-type homes;

(3) Facilities which are not in compliance with the design requirements specified in § 3560.60;

(4) Any costs associated with space in a housing project that is leased for commercial use or any commercial facilities except essential service-type facilities when otherwise not conveniently available;

(5) Specialized equipment for training and therapy;

(6) Operating capital for a central dining facility or any items which do not become affixed to the real estate security with the exception of household furnishings for farm labor housing units financed under sections 514 and 516;

(7) Compensation to a loan applicant for value of land contributed in excess of the equity contribution requirements in § 3560.63(c);

(8) Refinancing of an applicant's debt except when the debt involves interim financing or when refinancing is necessary to obtain a release of an existing lien on land owned by a nonprofit organization;

(9) Payment of any fee, charge, or commission to a broker or anyone else as a developer's fee or for referral of a prospective loan applicant or solicitation of a loan;

(10) Payment to any officer, director, trustee, stockholder, member, or agent of an applicant; or

(11) Purchasing land for a site in excess of what is needed, except when:

(i) The applicant cannot acquire an alternate site or cannot acquire the needed land as a separate parcel;

(ii) The applicant agrees to sell the excess land as soon as practical and to apply the proceeds to the loan; and

(iii) Program site density requirements are met in accordance with the site requirements established under § 3560.58.

(b) *Obligations incurred before loan approval.* Funds may not be used for expenses incurred by an applicant prior to approval except when all the following conditions are met:

(1) The debts were incurred for eligible purposes;

(2) Contracts, materials, construction, and any land purchased meet Agency standards and requirements;

(3) Payment of the debts will remove any attached liens and any basis for liens that may attach to the property on account of such debts; and

(4) The completion of environmental review requirements in accordance with 7 CFR part 1970.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016]

§ 3560.55 Applicant eligibility requirements.

Applicants for off-farm labor housing loans and grants should also refer to § 3560.555, and applicants for on-farm labor housing loans should refer to § 3560.605.

(a) *General.* To be eligible for Agency assistance, applicants must meet the following requirements:

(1) Be a U. S. citizen or qualified alien(s); a corporation; a state or local public Agency; an Indian tribe as defined in § 3560.11; or a limited liability company (LLC), nonprofit organization, consumer cooperative, trust, partnership, or limited partnership in which the principals are U.S. citizens or qualified aliens;

(2) Be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents;

(3) Possess the legal and financial capacity to carry out the obligations required for the loan or grant;

(4) Be able to maintain, manage, and operate the housing for its intended purpose and in accordance with all Agency requirements;

(5) With the exception of applicants who are a nonprofit organization, housing cooperative or public body, be able to provide the borrower contribution from their own resources (this contribution must be in the form of cash, or land, or a combination thereof);

(6) Have or be able to obtain a minimum of 2 percent of the total development costs for use as initial operating capital (for nonprofit organizations, cooperatives, or public bodies, this amount may be financed through Agency funds); and

(7) Not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs.'' The list is available to Federal agencies from the U.S. Government Printing Office. Non-federal parties should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

(8) Not delinquent on Federal debt or a Federal judgment debtor, with the exception of those debtors described in § 3560.55 (b).

(b) *Additional requirement for applicants with prior debt.* If an applicant or the managing general partner of a borrower, as well as any affiliated entity having a 10 percent or more ownership interest, has a prior or existing Agency debt, the following additional requirements must be met.

(1) The applicant must be in compliance with any existing loan or grant agreements and with all legal and regulatory requirements or must have an Agency-approved workout agreement and be in compliance with the provisions of the workout agreement. The Agency may require that applicants with monetary or non-monetary deficiencies be in compliance with an Agency-approved workout agreement for a minimum of 6 consecutive months before becoming eligible for further assistance.

(2) The applicant must be in compliance with the Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and all other applicable civil rights laws.

(c) *Additional requirements for nonprofit organizations.* In addition to the eligibility requirements of paragraphs (a) and (b) of this section, nonprofit organizations must meet the following criteria:

(1) The applicant must have received a tax-exempt ruling from the IRS designating the applicant as a 501(c)(3) or 501(c)(4) organization.

(2) The applicant must have in its charter the provision of affordable housing.

(3) No part of the applicant's earnings may benefit any of its members, founders, or contributors.

(4) The applicant must be legally organized under state and local law.

(5) In the case of off-farm labor housing loans and grants, nonprofit organizations must be ''broad-based'' nonprofit organizations (refer to § 3560.555(a)(1)).

(d) *Additional requirements for limited partnerships.* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, limited partnership loan applicants must meet the following criteria:

(1) The general partners must be able to meet the borrower contribution requirements if the partnership is not able to do so at the time of loan request.

(2) The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds in accordance with the partnership organizational documents.

(3) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of the Agency.

(e) *Additional requirements for Limited Liability Companies (LLCs).* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, LLC loan applicants must meet the following criteria:

(1) One member who holds at least a 5 percent financial interest in the LLC must be designated the authorized agent to act on the LLC's behalf to bind the LLC and carry out the management functions of the LLC.

(2) No new members may be brought into the organization without prior consent of the Agency.

(3) The members must commit to meet the equity contribution requirements if the LLC is not able to do so at the time of loan request.

§ 3560.56 Processing section 515 housing proposals.

Processing requirements for farm labor housing proposals are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) *Notice of Funding Availability (NOFA) responses.* (1) The Agency will publish an annual NOFA with deadlines and other information related to submission of new construction MFH proposals, including expansion of existing MFH in designated places selected in accordance with § 3560.57.

(2) To be eligible for funding consideration, MFH proposals must be submitted in accordance with the NOFA and must provide information requested in the NOFA for the Agency to score and rank the proposals.

(3) MFH proposals needing rental subsidies must include requests for Agency rental assistance or a description of any non-Agency rental subsidy to be used with the proposal and must provide information required by § 3560.260 (c).

(4) The Agency will consider housing proposals requesting rental assistance in rank order to the extent rental assistance is available. When there is no rental assistance available, the Agency will consider only those housing proposals in rank order that do not require rental assistance.

(b) *Preliminary proposal assessment.* The Agency will make a preliminary assessment of the application using the following criteria and will reject those applications which do not meet all of these criteria:

(1) The proposal was received by the submission deadline specified in the NOFA,

(2) The proposal is complete as specified in the NOFA,

(3) The proposal is for an authorized purpose, and

(4) The applicant meets Agency eligibility requirements.

(c) *Scoring and ranking project proposals.* The Agency will score and rank each housing proposal that meets the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score housing proposals as more completely established in the NOFA:

(i) The presence and extent of leveraged assistance in the proposal for the

units that will serve tenants meeting Agency income limits at basic rents comparable to what the rent would be if the Agency provided full financing.

(ii) The proposal will provide rental units in a colonia, tribal land, Rural Economic Area Partnership (REAP) community, Enterprise Zone or Empowerment Community (EZ/EC) or in a place identified in the state Consolidated Plan or a state needs assessment as a high need community for MFH.

(iii) The proposal supports Agency initiatives announced in the NOFA.

(iv) The proposal uses a donated site which meets the following conditions:

(A) The site is donated by a state, unit of local government, public body or a nonprofit organization;

(B) The site is suitable for the housing proposals and meets Agency requirements;

(C) Site development costs do not exceed what they would be to purchase and develop an alternative site;

(D) The overall cost of the MFH is reduced by the donation of the site; and

(E) A return on investment is not paid to the borrower for the value of the donated site nor is the value of the site considered as part of the borrower's contribution.

(2) The Agency will rank housing proposals based on their scoring.

(i) When proposals have an equal score, preference will be given to Indian tribes as defined in § 3560.11 and local nonprofit organizations or public bodies whose principal purposes include low-income housing that meet the conditions of § 3560.55(c) and the following conditions.

(A) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue code;

(B) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(C) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(D) Is not co-venturing with another entity; and

(E) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(ii) A drawing will be held in the event of a tie score, first for proposals from applicants who meet the conditions of paragraph (c)(2)(i) of this section and next for proposals from applicants for which paragraph (c)(2)(i) of this section is not applicable. Each proposal will be numbered in the order in which it is drawn.

(3) The Agency will request initial loan applications from parties who submitted the housing proposals with the highest ranking, taking into consideration available funds. The Agency will notify non-selected parties with the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(d) *Processing initial loan applications.* The Agency will review all initial loan applications submitted in accordance with Agency requirements to further evaluate the eligibility and feasibility of the housing proposals. This determination will include:

(1) A review of the preliminary plans and cost estimates,

(2) A market feasibility review,

(3) An Agency site visit to gather preliminary environmental information and determine that the proposed site meets the site requirements of § 3560.58,

(4) A review of the Affirmative Fair Housing Marketing Plan,

(5) An analysis of current credit reports in accordance with subpart R of this part;

(6) A review of Civil Rights Impact Analysis in accordance with 7 CFR part 2006, subpart P, and

(7) Completion of environmental review requirements in accordance with 7 CFR part 1970.

(e) *Processing order of initial loan applications.* The Agency will process initial loan applications in rank order, taking into account available funds. If any initial loan applications are withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle, the Agency will process, in rank order, the next initial loan application as funding levels permit.

(f) *Other assistance.* During each stage of loan application processing, loan applicants must notify the Agency of all other assistance, including other Federal Government assistance proposed or approved for use in connection with the loan application.

(g) *Proposal withdrawal or rejection.* An applicant may withdraw a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process with a written request. The Agency may reject a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process when an applicant fails to provide information requested by the Agency within the time frame specified by the Agency.

(h) *Final applications.* Applicants, with initial loan applications that are selected by the Agency for further processing, must submit a final application, with any additional information requested by the Agency, to confirm and document a housing proposal's eligibility and feasibility, including an affirmative fair housing marketing plan. The Agency will notify applicants with initial loan applications that are not selected for further processing of their non-selection, the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(i) *Rural cooperative housing proposals.* Rural cooperative housing loan proposals will be solicited through a NOFA and will be assessed and processed in the same manner described in paragraphs (a) through (h) of this section.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016; 89 FR 106980, Dec. 31, 2024]

§ 3560.57 Designated places for section 515 housing.

(a) *Establish a list of designated places.* The Agency will establish a list of designated places from which loan proposals will be accepted. The list is updated each fiscal year and is available when the NOFA is published. The NOFA provides information on obtaining the list. This list will be developed from a list of rural places which the Agency identifies as having the greatest need for multifamily housing based on the following factors:

(1) Qualification as a rural area as defined in § 3560.11,

(2) Lack of mortgage credit, and

(3) Demonstrated need for MFH based on:

(i) The incidence of poverty,

(ii) The existence of substandard housing,

(iii) The lack of affordable housing, and

(iv) The following high need areas:

(A) Places identified in the state Consolidated Plan or similar state plan or needs assessment report,

(B) Indian reservations or communities located within the boundaries of tribal allotted or trust land, and

(C) EZ/EC or REAP communities.

(b) *Establishing partnership designated place list.* The Agency, in states with an active leveraging program and formal partnership agreement with the state agency, may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership designated place list must have the concurrence of the Administrator.

(c) *Administrator's discretion.* The Administrator may add to the list of designated places any place that is determined to have a compelling need for MFH, for example, a place that has had a substantial increase in population not reflected in the most recent decennial Census of the United States, or a place that has experienced a loss of affordable housing because of a natural disaster.

(d) *Restrictions on loans in certain designated places.* (1) Initial loan applications will not be requested and final loan applications will not be closed for housing proposals in designated places where any of the following conditions exist:

(i) The Agency has selected another MFH proposal in the designated place for processing.

(ii) A previously funded Agency, the U.S. Department of Housing and Urban Development (HUD), low-income housing tax credit or other similar assisted MFH in the designated place has not been completed or has not reached projected occupancy levels.

(iii) Existing assisted MFH in the designated place is experiencing high vacancy levels.

(iv) A special note rent or other loan servicing tool is pending or in effect for

other assisted housing in the designated place, or

(v) The need in the market area is for additional rental assistance and not additional rental units.

(2) Exceptions to the provisions in § 3560.57(d)(1) may be made:

(i) When a group home is proposed for persons with disabilities in an area where the existing MFH is insufficient or unavailable for their needs; or

(ii) There is a compelling need for additional MFH, for example when the units that have been approved or are under development represent only a small portion of the total units needed in the community.

[69 FR 69106, Nov. 26, 2004, as amended at 80 FR 9912, Feb. 24, 2015]

§ 3560.58 Site requirements.

(a) *Location.* (1) New construction section 515 loans will be made only in designated places selected by the Agency in accordance with the requirements of § 3560.57.

(2) Agency-financed MFH must be located in residential areas as part of established rural communities, except as permitted in § 3560.58(b), and for farm labor housing units financed under sections 514 and 516, which may be developed in any area where a need for farm labor housing exists.

(3) Communities in which Agency-financed MFH is located must have adequate facilities and services to support the needs of tenants.

(4) Housing complexes will not be located in areas where there are undesirable influences such as high activity railroad tracks; adjacent to or near industrial sites; bordering sites or structures which are not decent, safe, or sanitary; or bordering sites which have potential environmental concerns such as processing plants. Sites which are not an integral part of a residential community and do not have reasonable access, either by location or terrain, to essential community facilities such as water, sewerage removal, schools, shopping, employment opportunities, medical facilities, may not be acceptable. Consistent with Federal law and Departmental Regulation, the Agency must conduct an environmental assessment and a civil rights impact analysis before a site can be accepted. Sites may be determined by the Agency to be unacceptable if any of the adverse conditions described in this paragraph exist.

(b) *Structures located in central business areas.* The Agency will consider financing construction or the purchase and substantial rehabilitation of an existing structure located in the central business area of a rural community. With prior consent from the Agency, a portion of such a structure may be designated for commercial use on a lease basis. RHS funds may not be used to finance any cost associated with the commercial space.

(c) *Site development costs and standards.* The cost of site development must be less than or comparable to the cost of site development at other available sites in the community and the site must be developed in accordance with 7 CFR part 1924, subpart C and any applicable standards imposed by a state or local government.

(d) *Densities.* Allowable site densities will be determined based on the following criteria:

(1) Compatibility and consistency with the community in which the MFH is located;

(2) Impact on the total development costs; and

(3) Size sufficient to accommodate necessary site features.

(e) *Flood or mudslide-prone areas.* (1) The Agency will not approve sites subject to 100-year floods when non-floodplain sites exist. The environmental review process will assess the availability of a reasonable site outside the 100-year floodplain.

(2) Sites located within the 100 year floodplain are not eligible for federal financial assistance unless flood insurance is available through the National Flood Insurance Program (NFIP). The Agency will complete Federal Emergency Management Agency (FEMA) Form 81–93, Standard Flood Hazard Determination, to document the site's location in relation to the floodplain and the availability of insurance under NFIP.

§ 3560.59 Environmental review requirements.

Under the National Environmental Policy Act, the Agency is required to

assess the potential impact of the proposed action on protected environmental resources. Measures to avoid or mitigate adverse impacts to protected resources may require a change in the site or project design. Therefore, a site cannot be approved until the Agency has completed the environmental review requirements in accordance with 7 CFR part 1970. Likewise, the applicant should be informed that the environmental review must be completed and approved before the Agency can make a commitment of resources to the project.

[81 FR 11049, Mar. 2, 2016]

§ 3560.60 Design requirements.

(a) *Standards.* All Agency-financed MFH will be constructed in accordance with 7 CFR part 1924, subpart A and will consist of two or more rental units plus appropriate related facilities. Single family structures may be used for group homes and cooperative housing. Also, manufactured homes may be used to create MFH and single family housing originally financed through section 502 of the Housing Act of 1949 may be converted to MFH. Maintenance requirements are listed in § 3560.103(a)(3).

(b) *Residential design.* All MFH must be residential in character, except as provided for in § 3560.58(b), and must meet the needs of eligible residents.

(c) *Economical construction, operation and maintenance.* Taking into consideration life-cycle costs, all housing must be economical to construct, operate, and maintain and must not be of elaborate design or materials.

(1) Economical construction means construction that results in housing of at least average quality with amenities that are reasonable and customary for the community and necessary to appropriately serve tenants.

(2) Economical operating and maintenance means housing with operational and maintenance costs that allow a basic rent structure less than or consistent with conventional rents for comparable units in the community or in a similar community except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case may the rent exceed 150% of the comparable rent for conventional unit rent level.

(3) In meeting the Agency objective of economical construction, operation and maintenance, housing proposals must:

(i) Contain costs without jeopardizing the quality and marketability of the housing;

(ii) Employ life-cycle cost analyses acceptable to the Agency to determine the types of materials which will reduce overall costs by lowering operation and maintenance costs, even though their initial costs may be higher; and

(iii) Provide assurances that costs will be reduced when the Agency determines that housing costs are not economical. If assurances cannot be provided, funding may be withdrawn.

(4) The housing proposal will give maximum consideration to energy conservation measures and practices.

(d) *Accessibility.* All housing will meet the following accessibility requirements.

(1) For new construction of MFH, at least 5 percent of the units (but not less than one) must be constructed as fully accessible units to persons with disabilities. The Uniform Federal Accessibility Standards (UFAS) will be followed. Individual copies of these standards are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, DC 20004–1111, Telephone: (202) 272–0080, TTY: (202) 272–0082, e-mail address: *info@accessboard.gov.* When calculating how many accessible units are required, always round up to the next whole number to ensure the 5 percent requirement is met.

(2) For existing properties that do not have fully accessible units, the 5 percent requirement will apply when making substantial alterations as defined by UFAS. The UFAS defines substantial alteration as ''alteration to any building or facility is to be considered substantial if the total cost for a twelve month period amounts to 50 percent or more of the full and fair cash

value of the building * * *'' UFAS further defines full and fair cash value as ''the assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation, or the replacement cost, or the fair market value.'' The 5 percent rule will also apply to repair or renovation work on a single unit. For instance, if a unit is damaged by fire and extensive repair is necessary, to the extent possible the unit is to be converted to a fully accessible unit.

(3) The variety of bedroom quantities of fully accessible units will be comparable to the variety of bedroom quantities of units which are not fully accessible. Borrowers will not, however, be required to exceed the 5 percent requirement simply to have an accessible unit of each bedroom quantity. In addition, accessible units should be distributed throughout the complex so not to concentrate the units in one location.

(4) All MFH must meet:

(i) The accessibility requirements as contained in section 504 of the Rehabilitation Act of 1973;

(ii) The requirements of the Fair Housing Amendments Act of 1988;

(iii) The requirements of the Americans with Disabilities Act of 1990, as applicable; and

(iv) All other Federal, State, and local requirements. When architectural standards differ, the most stringent standard will be followed.

(e) *Applicable codes and standards.* All housing and related facilities must meet the Qualifying Smoke Alarm requirements in § 3560.103(a)(3)(xx).

[69 FR 69106, Nov. 26, 2004, as amended at 89 FR 103630, Dec. 19, 2024]

§ 3560.61 Loan security.

(a) *General.* Each loan made by the Agency will be secured in a manner that adequately protects the financial interest of the Federal Government throughout the period of the loan.

(b) *Lien position.* (1) The Agency will seek a first or parity lien position on Agency-financed property in all instances. The Agency may accept a junior lien position if the Federal Government's interests are adequately secured.

(2) The Agency will seek a first or parity lien on revenue from rent; Agency, HUD, state or private rental subsidy payments; chattels; assignments; and operating and reserve accounts. The Agency will accept a junior lien position if the Federal Government's interests are adequately secured.

(c) *Liability.* Personal liability will be required of all individual borrowers. Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership.

(d) *Housing and land ownership.* Applicants must own the MFH and related land for which the loan is being requested, or become the owner when the loan is closed or have a leasehold interest in the land. If an applicant is not the owner of the housing and the related land, the following conditions must be met prior to or at loan closing.

(1) A recorded mortgage on the improvements is given as collateral.

(2) The amount of the loan against the collateral does not exceed its estimated security value.

(3) The unexpired term of the lease on the date of loan closing is at least 50 percent longer than the term of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(4) The applicant's leasehold interest is not subject to summary foreclosure or cancellation.

(5) The lease permits:

(i) The Agency to foreclose the mortgage and to transfer the lease;

(ii) The Agency to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure;

(iii) The Agency to occupy the property, sublet the property, or sell the leasehold for cash or credit if the leasehold is acquired through foreclosure, if the Agency accepts voluntary conveyance in lieu of foreclosure, or if the borrower abandons the property; and

(iv) The applicant, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold subject to the mortgage to a transferee that will assume the property ownership obligations.

§ 3560.62 Technical, legal, insurance, and other services.

(a) *Legal services.* Applicants must have written contracts for any legal services that are to be paid out of Agency loan funds.

(b) *Title clearance.* Applicants must obtain title clearance in accordance with the provisions of 7 CFR part 1927, subpart B applicable to title clearance, which would include title insurance or title opinion, unless the loan applicant is leasing the property or is an organization or an individual with special title or loan closing problems, in which case title clearance and related legal services will be obtained in accordance with procedures approved by the Agency.

(c) *Architectural services.* Applicants must obtain a written contract for architectural services in accordance with the provisions of 7 CFR part 1924, subpart A.

(d) *Insurance.* Applicants must have property and liability coverage at loan closing as well as flood insurance, if needed. Fidelity coverage must be in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. At a minimum, applicants must meet the property, liability, flood, and fidelity insurance requirements in § 3560.105.

(e) *Surety bonding.* Applicants must comply with the surety bonding provisions of 7 CFR part 1924, subpart A.

§ 3560.63 Loan limits.

(a) *Determining the security value.* The security value for an Agency loan is the lesser of the total development cost (exclusive of any developer's fee as provided by paragraph (d)(2) of this section) or the housing project's security value as determined by an appraisal conducted in accordance with subpart P of this part, minus any prior or parity liens on the housing project. For purposes of determining security value:

(1) Total development cost must be calculated excluding costs not considered allowable under § 3560.54(a), and excluding costs related to compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(2) The appraisal, which will determine the market value, subject to restricted rents, will be obtained by the Agency and conducted in accordance with subpart P of this part.

(b) *Limitations on loan amounts.* The Agency will not make any loans without adequate security. The following limitations will be set on loan amounts:

(1) For all loan applicants who will receive benefits from the low-income housing tax credit program, the amount of Agency financing for the housing will not exceed 95 percent of the security value available for the Agency loan.

(2) For all loan applicants who will not receive low-income housing tax credit benefits and who are comprised solely of nonprofit organizations, consumer cooperatives, or state or local public agencies, the amount of the loan will be limited to the security value available for the Agency loan, plus the 2 percent initial operating capital and any necessary relocation costs incurred.

(3) For all other loan applicants who will not receive low-income housing tax credit benefits, the loan amount will be limited to no more than 97 percent of the security value available for the Agency loan.

(c) *Equity contribution.* Loan applicants, with the exception of nonprofit organizations, consumer cooperatives, or state or local public agencies who will not be receiving tax credits, must make an equity contribution from their own resources.

(1) Loan applicants who will receive benefits from the low-income housing tax credit program must make an equity contribution in the amount of 5 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(2) Loan applicants who will not receive benefits from the low-income housing tax credit program and are not nonprofit organizations, consumer cooperatives, or state or local public agencies must make an equity contribution in the amount of 3 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(d) *Review of assistance from multiple sources.* The Agency will analyze Federal Government and other assistance provided to any MFH project to establish the maximum loan amount and to assure that the assistance is not more than the minimum necessary to make the housing affordable, decent, safe, and sanitary to potential tenants.

(1) *Determining minimum assistance.* For purposes of determining minimum assistance, the total amount paid for builder's profit, overhead, and general requirements may not exceed 21 percent of the construction contract. Unless specified differently in a Memorandum of Understanding between the Agency and the state agency that allocates low-income housing tax credits, limits will be those specified in § 3560.53(l).

(2) *Developer's fee.* While, in accordance with § 3560.54(a)(9), payment of a developer's fee is not an eligible use of Agency loan funds, the Agency will include in total development costs a developer's fee paid from other sources when analyzing the Federal Government assistance to the housing. The Agency may recognize a developer's fee paid from other sources on construction or rehabilitation of up to 15 percent of the total development costs authorized for low-income housing tax credit purposes, or by another Federal Government program. Likewise for transfer proposals that include acquisition costs, the developer's fee on the acquisition cost may be recognized up to 8 percent of the acquisition costs only when authorized under a Federal Government program providing assistance. The developer's fee is not included in determining the Agency's maximum debt limit and loan amount.

(e) *Limits on equity loans.* For equity loans to avert prepayment, the amount of the Agency equity loan will be limited to no more than the difference between 90 percent of market value of the property when appraised as conventional unsubsidized MFH and all current unpaid balances. For information on appraisal issues, refer to subpart P of this part.

(f) *Cost overruns.* (1) All applicants must agree in writing to provide funds at no cost to the housing and without pledging the housing as security to pay any cost for completing planned construction after the maximum debt limit is reached.

(2) After loan approval, the Agency will only approve cost increases for housing proposals involving new construction or major rehabilitation when the additional costs will not cause the limits specified in § 3560.53(l) or the maximum debt limit to be exceeded and the cost increases were caused by:

(i) Unforeseen factors that are determined by the Agency to be beyond the borrower's control;

(ii) Design changes required by the Agency, state, or the local government; or

(iii) Financing changes approved by the Agency.

§ 3560.64 Initial operating capital contribution.

Borrowers are required to make an initial operating capital contribution to the general operating account in the amount of at least 2 percent of the total development cost or appraised value, whichever is less.

(a) Borrowers that are nonprofit organizations, consumer cooperatives, or state or local public agencies and are not receiving low-income housing tax credits, may use loan funds for their initial operating capital contribution. All other borrowers must fund the initial operating capital contribution from their own resources.

(b) Borrowers must provide to the Agency for approval a list of materials and equipment to be funded from the general operating account for initial operating expenses. As specified in § 3560.304(b), initial operating capital may be used only to pay for approved budgeted expenses. If total initial operating expenses exceed 2 percent, the additional amount must be paid by the borrower from its own resources, except that borrowers meeting the provisions of § 3560.64(a) who do not have sufficient resources for this purpose may request Agency assistance. Withdrawals from the reserve account will not be approved for such expenses.

(c) Borrowers must provide the Agency with documentation of their initial operating capital contribution deposited into the general operating account prior to the start of construction or

loan closing, whichever comes first, and such funds thereafter, may only be used for authorized budgeted purposes.

(d) If the conditions specified in § 3560.304(c) are met, funds contributed as initial operating capital may be returned to the borrower.

§ 3560.65 Reserve account.

(a) For new construction, to meet major capital expenses of a housing project, applicants must establish and fund a reserve account that meets the requirements of § 3560.306. The applicant must agree to make monthly contributions to the reserve account pursuant to a reserve account analysis which sets forth how the reserve account funds will meet the capital needs of the property over an acceptable 20-year period. The reserve account analysis is based on either a Capital Needs Assessment or life cycle cost analysis, provided and acceptable to Rural Development by the applicant. Adjustments may be made to the contribution amount at 5 or 10-year intervals, either through an updated Capital Needs Assessment or as part of the original life cycle cost analysis. The cost of conducting either a Capital Needs Assessment or life cycle cost analysis will be paid for by the applicant. The cost of the initial Capital Needs Assessment or life cycle cost analysis may be included in the loan financing.

(b) For ownership transfers or sales, the requirements of § 3560.406(d)(5) will be met.

(c) For other existing properties, at a minimum the borrower must agree to make monthly contributions to the reserve account at the rate of 1 percent annually of the amount of total development cost until the reserve account equals 10 percent of the total development cost.

(d) The agency may establish an escrow account for the collection and disbursement of reserve account funds.

[77 FR 40255, July 9, 2012, as amended at 87 FR 11280, Mar. 1, 2022]

§ 3560.66 Participation with other funding or financing sources.

(a) *General requirements.* The Agency encourages the use of funding or financing from other sources in conjunction with Agency loans. When the Agency is not the sole source of financing for MFH, the following conditions must be met.

(1) The Agency will enter into a participation (or intercreditor) agreement with the other participants that clearly defines each party's relationship and responsibilities to the others.

(2) The rental units that will serve tenants eligible for housing under the Agency's income standards must meet Agency standards and the number of units that will serve the Agency's tenants are at least equal to the units financed by the Agency.

(3) All rental units must be operated and managed in compliance with the requirements of the Agency and the other sources. To the extent these requirements overlap, the most stringent requirement must be met. The Agency may negotiate the resolution of overlapping requirements on a case-by-case basis; however, at a minimum, Agency requirements must be met.

(4) If the number of units subject to the LIHTC rent and income restrictions is greater than the number of units projected to receive Agency rental assistance (RA) or similar tenant subsidy, the market feasibility documentation must clearly reflect a need and demand by LIHTC income-eligible households financially able to afford the projected rents without such a subsidy for the units not receiving RA or similar tenant subsidy.

(b) *Rental assistance.* The Agency may provide rental assistance with MFH loans participating with other sources of funding under the following conditions:

(1) The Agency's loan equals at least 25 percent of the housing's total development cost.

(2) The rental assistance is provided only to those rental units where the basic rents do not exceed what basic rents would have been had the Agency provided full financing.

(3) The provisions of subpart F of this part are met.

(c) *Security requirements.* The security requirements of § 3560.61 must be met for all Agency-financed MFH participating with other sources of funding.

(d) *Reserve requirements.* Reserve account requirements will be determined

on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the aggregate fully funded reserve account is consistent with the requirements of §3560.65. Reserve requirements and procedures for reserve account withdrawals must be agreed upon by all lenders and included in the intercreditor or participation agreement.

(e) *Design requirements.* Housing and related facilities must be planned and constructed in accordance with 7 CFR 1924, subparts A and C. If housing includes non-Agency financed common facilities, the following conditions must be met:

(1) The non-Agency-financed common facility's operating and maintenance costs must be paid through collection of a user fee from residents who use the facility,

(2) The non-Agency-financed common facility must be designed and operated with appropriate safeguards for the health and safety of tenants, and

(3) The facility must be fully available and accessible to all tenants.

§ 3560.67 Rates and terms for section 515 loans.

Rates and terms for farm labor housing loans are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) *Interest.* Loans will be closed at the lower of the interest rate in effect at the time of loan approval or the interest rate that is in effect at time of loan closing.

(b) *Interest credit.* The Agency will provide interest credit to subsidize the interest on the Agency loan to a payment rate of 1 percent for all of the Agency's initial and subsequent loans.

(c) *Amortization period and term.* (1) Except for manufactured housing, loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed 30 years from the date of loan. The Agency may make a loan to the borrower to finance the final payment of a loan in accordance with §3560.74.

(2) Loans for manufactured housing will be amortized and paid over a term not to exceed 30 years as specified in §3560.70(c).

§ 3560.68 Permitted return on investment (ROI).

(a) *Permitted return.* Borrowers operating on a limited profit basis will be permitted a return not to exceed 8 percent of their required initial investment determined at the time of loan approval in accordance with §3560.63(c).

(b) *Calculation of permitted return.* The permitted return will be based on the borrower's contributions from their own resources, which, when added to the Agency loan amount and all sources of funding or financing, do not exceed the security value of the MFH project as specified in §3560.63(a).

(1) Proceeds received by the borrower from the syndication of low-income housing tax credit and contributed to the MFH project may be considered funds from the borrower's own resources for the portion of the proceeds which exceeds:

(i) The allowable developer's fee determined by the state agency administering the low-income housing tax credit, and

(ii) The borrower's expected contribution to the transaction, as determined by the state agency administering the low-income housing tax credit.

(2) A building site contributed by the borrower will be appraised by the Agency to determine its market value. A return may not be allowed on the amount above the equity contribution required by §3560.63(c) if the market value as determined by the Agency, when added to the loan and grant amounts from all sources, exceeds the security value of the MFH project as specified in §3560.63(a).

(c) *Return on additional investment.* The initial investment may exceed the equity contribution required by §3560.63(c) and a return allowed on the investment if the additional return does not increase basic rents and rental assistance costs above what basic rents and rental assistance costs would have been with the Agency financing 95 or 97 percent of the total development cost.

(d) *Compensation to nonprofit organizations.* Although nonprofit organizations are not eligible to take a return on investment, with prior Agency approval,

cooperatives and nonprofit organizations may use housing project funds to pay asset management expenses directly attributable to ownership responsibilities, as described in § 3560.303(b)(1)(ii).

§ 3560.69 Supplemental requirements for congregate housing and group homes.

(a) *General.* Congregate housing and group homes must be planned and developed in accordance with 7 CFR part 1924, subparts A and C.

(b) *Design criteria.* Congregate housing and group homes must be designed to accommodate all special services that will be provided.

(c) *Services.* Congregate housing and group home loan applicants, as part of their loan request, must submit a plan to make affordable services available to residents to assist the residents in living independently. The plan must address the availability of this assistance from service providers throughout the term of the loan.

(1) For congregate housing, the resident services plan must address how the following services will be provided or made available:

(i) One cooked meal per day, seven days per week;

(ii) Transportation to and from the property;

(iii) Assistance in housekeeping;

(iv) Personal services;

(v) Recreational and social activities; and

(vi) Access to medical services.

(2) For group homes, the resident services plan must address how access to the following services will be provided or made available:

(i) A common kitchen in which to prepare meals;

(ii) Transportation;

(iii) Nearby recreational and social activities which may be coordinated by the resident assistant, if applicable; and

(iv) Medical services as necessary.

(d) *Necessary items.* Borrowers must ensure items such as tables, chairs, and cookware necessary to furnish common areas are made available to congregate housing or group homes. The 2 percent initial operating capital may be used to purchase these items.

(e) *Association with other organizations.* Congregate housing and group homes may coordinate services or training with another organization, such as a workshop for the developmentally disabled. However, the housing facility must be a separate entity and not dependent on the other organization.

(f) *Market feasibility documentation.* Market feasibility documentation for congregate housing and group homes is subject to the following requirements:

(1) Must address the need for housing with services and include information concerning alternative service providers;

(2) Must contain demographic information pertaining to the population that is to be served by the congregate housing or group home project; and

(3) May consider an expanded market area that includes nondesignated places, but the facility must be located in a designated place.

(g) *Rental assistance for group homes.* A unit in a group home consists of a space occupied by a specific tenant household, which may be an apartment unit, a bedroom, or a part of a bedroom. Agency rental assistance will be made available to tenants sharing a unit so long as the total rent for the unit does not exceed conventional rents for comparable units in the area or a similar area.

§ 3560.70 Supplemental requirements for manufactured housing.

(a) *Design requirements.* Manufactured housing must meet the requirements of 7 CFR part 1924, subpart A applicable to manufactured housing.

(b) *Eligible properties.* The manufactured housing must include two or more housing units. The applicant will become the first owner purchasing the manufactured homes for purposes other than resale. The following exceptions may be made to this provision:

(1) A housing proposal may include the purchase of the real property with existing manufactured housing which will be redeveloped with the placement of new manufactured homes.

(2) A housing proposal may include the rehabilitation of existing manufactured housing only if the units to be rehabilitated are currently financed by

the Agency. The proposal will include the results of the applicant's consultation with the manufacturer to determine if the proposed rehabilitation work will affect the structural integrity of the unit and, if so, the statement will include an explanation as to how.

(c) *Terms.* The maximum loan amount will be determined in accordance with the requirements of § 3560.63. The amortization period and term of loans for manufactured housing will not exceed the lesser of the economic life of the housing being financed or 30 years.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the housing as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the housing is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Special warranty requirements.* The general contractor or dealer-contractor, as applicable, must provide a warranty in accordance with the provisions of 7 CFR part 1924, subpart A.

(1) The warranty must establish that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements, are constructed in conformity with applicable approved plans and specifications.

(2) The warranty must include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed.

(3) The general contractor or dealer contractor must warrant that the manufacturer's warranty is in addition to and does not diminish or limit all other warranties, rights, and remedies that the borrower or lender may have.

(4) The seller of the manufactured homes must deliver to the borrower the manufacturer's warranty with an additional copy for RHS. The warranty must identify the units by serial number.

§ 3560.71 Construction financing.

(a) *Construction financing plan.* Prior to loan approval, applicants must submit to the Agency for its concurrence a plan for the construction financing and securing of the loan.

(b) *Interim financing.* Interim financing is required by the Agency for any construction, except as noted in paragraph (c) of this section.

(1) The Agency reserves the right to review and approve the interim financing arrangements proposed by the applicant.

(2) When interim financing is used, the Agency will obligate the funds and provide an interim financing letter to the lender that will confirm the procedures and conditions for the construction financing. The take-out loan will be closed and the interim lender paid off when the conditions of the interim financing letter have been met.

(3) The applicable provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(4) An environmental review in accordance with 7 CFR part 1970 must be completed prior to issuance of the interim financing letter.

(c) *Multiple advances.* When interim financing is not available or when it is in the best interest of the Federal Government, the Agency may provide for multiple advances of the funds to cover the cost of construction.

(1) The Agency will review and approve the multiple advances proposed by the borrower.

(2) When multiple advances are used, the Agency will close the loan prior to any advancement of funds and the relevant provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(3) The loan check will be handled in accordance with 7 CFR part 1902, subpart A.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016]

§ 3560.72 Loan closing.

(a) *Requirements.* Loans will be closed in accordance with 7 CFR part 1927, subpart B and any state supplements. In all cases, the borrower must:

(1) Provide evidence that an Agency-approved accounting system is in place;

(2) Execute a restrictive-use contract acceptable to the Agency that establishes the borrower's obligation to operate the housing for program purposes for the term of the Agency loan;

(i) For all section 514 loans, except as provided in § 3560.621, made pursuant to a contract entered into on or after the effective date of this regulation, the following language will be included in the mortgage and deed of trust: ''The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in sections 514 and 516 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in effect. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government.''

(ii) All other loans are subject to restrictive-use provisions as outlined in subpart N of this part.

(3) Provide evidence that construction financing arrangements are adequate when interim financing is going to be used;

(4) Provide evidence that all the funds from other sources as proposed in the application are available and that there have been no changes in the Sources and Uses Comprehensive Evaluation (SAUCE).

(5) Provide evidence of the title to all security required by the Agency;

(6) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be paid;

(7) Provide, in the case of interim financing, a dated and signed statement from the owner's architect certifying to substantial completion of the housing project;

(8) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be in accordance with the plans and specifications concurred in by the Agency;

(9) Provide evidence, if applicable, that the conditions of the interim financing letter have been met; and

(10) Attend a pre-occupancy conference with the Agency.

(b) *Cost certification.* In all cases, the borrower must report actual construction costs. Whenever the Leadership Designee determines it appropriate, and in all situations where there is an identity of interest as defined in 7 CFR 1924.4 (i), the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification as to the actual cost of the work performed in connection with the construction contract in accordance with 7 CFR part 1924, subpart A. The construction costs must also be audited in accordance with Governmental Auditing Standards, by a Certified Public Accountant (CPA). In some cases, the Agency will contract directly with a CPA for the cost certification. Funds that were included in the loan for cost certification and which are ultimately not needed because Agency contracts for the cost certification will be returned on the loan. Agency personnel will utilize exhibit M of 7 CFR part 1924, subpart A to assist in the evaluation of the cost certification process.

(c) *Notification of loan cancellation.* Loans may be canceled after approval and before loan closing. The Agency will notify all parties of the cancellation and the reasons for the cancellation in accordance with 7 CFR part 1927, subpart B.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11280, Mar. 1, 2022]

§ 3560.73 Subsequent loans.

(a) *Applicability.* The Agency may make a subsequent loan to a borrower to complete, improve, repair, or make modifications to MFH initially financed by the Agency or for equity for preservation purposes. Loan requests to add units to comply with accessibility requirements may be processed as a subsequent loan; however, loan requests to add units to meet market demand will be processed as an initial

loan request and must compete under the NOFA.

(b) *Application requirements and processing.* Upon receipt of a subsequent loan request, the Agency will inform the applicant what information is required based on the nature and purpose of the loan request. Subsequent loan requests do not have to compete for funding against initial loan proposals.

(c) *Amortization and payment period.* Subsequent loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed the lesser of the economic life of the housing or 30 years from the date of the loan.

(d) *Equity contribution.* Applicants for subsequent loans must make contributions on the loans in the same proportion as outlined in §3560.63(c). Loan applicants will not be given consideration for any increased equity value that the property may have since the initial loan.

(1) Excess initial investment on an initial loan may be credited toward the required investment on a subsequent loan.

(2) An initial operating capital contribution to the general operating account as described in §3560.64 is required for a subsequent loan approved under the conditions set in §3560.63(f) to complete housing construction but is not required for a subsequent loan to repair or improve existing housing.

(e) *Environmental review requirements.* Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(f) *Design requirements.* All improvements, repairs, and modifications will be in accordance with 7 CFR part 1924, subparts A and C.

(g) *Architectural services.* The applicant must obtain architectural services when any of the following conditions exist:

(1) Enclosed space is being added,

(2) When required by state law, and

(3) When the Agency determines that the work being proposed requires architectural services.

(h) *Restrictive-use requirements.* Subsequent loans are subject to restrictive-use provisions as outlined in §3560.662(a) and borrowers must execute a restrictive-use contract in accordance with §3560.72(a)(2).

(i) *Designation changes from rural to nonrural.* If the designation of an area changes from rural to nonrural after the initial loan is made, a subsequent loan may be made only to make necessary improvements and repairs to the property or for equity when needed to avert prepayment.

(j) *Agency's discretion.* The Administrator may approve a subsequent loan in a place that is not on the list of designated places as a servicing action, for example, to replace units destroyed by a natural disaster.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016]

§ 3560.74 Loan for final payments.

(a) *Use.* The Agency may finance final payments for borrowers holding existing loans for which the Agency approved an amortization period that exceeded the term of the loan.

(b) *Requirements.* The Agency may finance final payments if documentation regarding the market area shows that a need for low-income rental housing still exists for that area and one of the following conditions has been met.

(1) It is more cost efficient and serves the tenant base more effectively to maintain existing MFH than to build another property in the same location; or

(2) The MFH has been maintained to such an extent that it can be expected to continue providing affordable, decent, safe and sanitary housing for 20 years beyond the date of the loan to finance a final payment; and

(3) Funds are available.

(c) *Term.* The term of Agency loans to finance final payments will not exceed 20 years from the date of the initial loan final payment.

§§ 3560.75–3560.99 [Reserved]

§ 3560.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden

for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart C—Borrower Management and Operations Responsibilities

§ 3560.101 General.

This subpart sets forth borrower obligations regarding management and operations of multi-family housing (MFH) projects financed by the Agency. As noted in § 3560.6, the borrower requirements listed in this subpart must be complied with by the borrower. The borrower may designate in writing a person to act as the borrower's authorized agent.

§ 3560.102 Housing project management.

(a) *General.* Borrowers hold final responsibility for housing project management and must ensure that operations comply with the terms of all loan or grant documents, Agency requirements and applicable local, state and Federal laws and ordinances. Project operations shall be conducted to meet the actual needs and necessary expenses of the property or for any other purpose authorized under Agency regulations. Any party not meeting these responsibilities may be subject to penalties. It is expected that only typical and reasonable expenses be incurred for the services rendered. Consequently, methods to inflate, duplicate, obscure, or failure to disclose the true nature and cost of work performed for the services rendered will cause the Agency to deny budget requests for the services or issue a demand for recovery and reimbursement for unauthorized actions.

(b) *Management plan.* Borrowers must develop and maintain a management plan for each housing project covered by their loan or grant. The management plan must establish the systems and procedures necessary to ensure that housing project operations comply with Agency requirements in this part. The management plan should describe whether administrative expenses are to be paid from management agent fees or project operations, including a task list of charges covered by the fee as outlined in paragraph (i)(3)(i)(A) of this section. The management plan must meet the standards set out in this part.

(c) *Management plan effective period.* A management plan remains in effect as long as it accurately reflects housing project operations and the housing project is in compliance with the Agency requirements.

(1) Borrowers must submit an updated management plan to the Agency if operations change or are no longer consistent with the management plan on file with the Agency.

(2) When there are no changes in operations, borrowers must submit a certification to the Agency every 3 years stating that operations are consistent with the management plan and the plan is adequate to assure compliance with the loan and grant documents and Agency requirements or applicable local, state and Federal laws.

(3) If the Agency determines that operations are in compliance with Agency requirements, loan or grant agreements, or applicable local, state, and Federal laws, but are not consistent with the management plan, the Agency will require the borrower to:

(i) Revise the management plan to accurately reflect housing operations;

(ii) Take actions to ensure the management plan is followed; or

(iii) Advise the Agency in writing of the action taken.

(4) When a housing project is being transferred from one borrower to another, the transferee must submit a management plan that addresses the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to give final approval of the transfer.

(d) *Housing projects with compliance violations.* Upon receiving notice of compliance violations in accordance with § 3560.354, borrowers must submit to the Agency:

(1) Revisions to the management plan establishing the changes in housing operations that will be made to restore compliance;

(2) If the borrower determines the compliance violations were due to a failure to follow the management plan, the borrower must certify to the Agency that the management plan is adequate to assure compliance with the applicable requirements of this part and submit a written description of the actions they will take to ensure the management plan is followed; or

(3) If the Agency discovers continued discrepancies between a management plan and housing project operations or compliance violations, the Agency may require the borrower to install a different management agent acceptable to the Agency as described in paragraph (e) of this section.

(e) *Acceptable management agents.* Borrowers must obtain Agency approval of the agent proposed to manage a housing project prior to entering into any formal agreement with the agent and prior to allowing the agent to assume responsibility for housing project operations. Borrowers that plan to self-manage a housing project also must receive Agency approval before assuming responsibility for housing operations.

(1) Borrowers must submit a written request for Agency approval of the proposed management agent at least 45 days prior to the date the agent is to assume responsibility for operations. This request must include a profile of the proposed management agent that provides sufficient information to allow the Agency to evaluate whether the agent is acceptable.

(2) The Agency will deny approval of any proposed management agent that cannot provide evidence of at least two years of experience and satisfactory performance in directing and overseeing the management of similar federally-assisted MFH.

(3) The Agency may issue approval of a management agent that does not meet the requirements of § 3560.102(e)(2) if the management agent can provide evidence that indicates the ability to successfully manage a MFH project in accordance with Agency requirements.

(4) If a borrower enters into an agreement with a management agent or begins to self-manage prior to receiving Agency approval, the Agency will place the borrower in non-monetary default status and will require the borrower to immediately terminate the contract with the management agent.

(f) *Self-management.* Borrowers may self-manage a housing project but must receive Agency approval before assuming responsibility for housing operations. Borrowers that plan to self-manage must meet all requirements of § 3560.102, except for paragraph (h) of this section.

(g) *Identity-of-interest disclosure.* Borrowers and management agents must disclose to the Agency all identity-of-interest relationships which they have with firms and must receive Agency approval to use such firms prior to entering into any contractual relationships with such entities that involve Agency funds.

(1) This disclosure must include any identity-of-interest relationships between:

(i) The borrower and the management agent;

(ii) The borrower or management agent and the providers of supplies and services to the housing project;

(iii) The borrower or the management agent and employees of anyone listed in paragraphs (g)(1)(i) and (ii) of this section;

(iv) Any borrower's entity control, or interest held or possessed by a person's spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person for the determination under this paragraph (g)(1).

(2) Failure to disclose such relationships may subject the borrower, the management agent, and the other firms or employees found to have an identity of interest relationship to suspension, debarment, or other remedies available to the Agency.

(3) After disclosure of an identity-of-interest relationship:

(i) The borrower, management agent, and supplier of goods and services must provide documentation proving that use of identity-of-interest firms is in the best interest of the housing project;

(ii) Any supplier of goods and services must certify in writing to the

Agency that the individual or organization has a viable, on-going trade or business qualified and licensed, if appropriate, to do the work for which a contract is being proposed;

(iii) The borrower, management agent, and supplier of goods and services must agree, in writing, that all records related to the housing project will be made available to the Agency, Office of the Inspector General (OIG), General Accountability Office (GAO), or a representative of the Agency, upon request; and

(iv) The Agency will deny the use of an identity-of-interest firm when the Agency determines such use is not in the best interest of the Federal Government or the tenants.

(h) *Management agreement.* Borrowers contracting with a management agent must execute a management agreement that establishes:

(1) The management agent's responsibility to comply with Agency requirements and local, state, and Federal laws;

(2) That the management fee is payable out of the housing project's general operating account consistent with the requirements of paragraph (i) of this section; and

(3) The Agency's authority to terminate the agreement for failure to operate the housing project in accordance with Agency requirements or local, state, or Federal laws.

(i) *Management fees.* Management fees will be an allowable expense to be paid from the housing project's general operating account only if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. Management fees must be developed in accordance with the following:

(1) The management fee may compensate the management entity for the following costs and services:

(i) Supervision by the management agent and its staff (time, knowledge, and expertise) of overall operations and capital improvements of the site.

(ii) Hiring, supervision, and termination of on-site staff.

(iii) General maintenance of project books and records (general ledger, accounts payable and receivable, payroll, etc.). Preparation and distribution of payroll for all on-site employees, including the costs of preparing and submitting all appropriate tax reports and deposits, unemployment and workers' compensation reports, and other IRS- or state-required reports.

(iv) In-house training provided to on-site staff by the management company.

(v) Preparation and submission of proposed annual budgets and negotiation of approval with the Agency.

(vi) Preparation and distribution of the Agency forms and routine financial reports to borrowers.

(vii) Preparation and distribution of required year-end reports to the Agency.

(viii) Preparation of requests for reserve withdrawals, rent increases, or other required adjustments.

(ix) Arranging for preparation by outside contractors of utility allowance analysis.

(x) Preparation and implementation of Affirmative Fair Housing Marketing Plans as well as general marketing plans and efforts.

(xi) Review of tenant certifications and submission of monthly rental assistance requests, and overage. Submission of payments where required.

(xii) Preparation, approval, and distribution of operating disbursements; oversight of project receipts; and reconciliation of deposits.

(xiii) Overhead of management agent, including:

(A) Establish, maintain, and control an accounting system sufficient to carry out accounting supervision responsibilities.

(B) Maintain agent office arrangements, staff, equipment, furniture, and services necessary to communicate effectively with the properties, to include consultation and support to site-staff, the Agency and with the borrowers.

(C) Postage expenses unrelated to site operation.

(D) Expense of telephone and facsimile communication, unrelated to site operations.

(E) Direct costs of insurance (fidelity bonds covering central office staff, computer and data coverage, general liability, etc.) directly related to protection of the funds and records of the

borrower. Insurance coverage for agent's office and operations (Property, Auto, Liability, Errors and Omissions, Casualty, Workers Compensation, etc.).

(F) Central office staff training and ongoing certifications.

(G) Maintenance of all required profession and business licenses and permits. (This does not include project site office permits or licenses.)

(H) Travel of agent staff to the properties for on-site inspection, training, or supervision activities.

(I) Agent bookkeeping for their own business.

(xiv) Attendance at meetings (including travel) with tenants, owners, and the Agency or other governmental agency.

(xv) Development, preparation, and revision of management plans, agreements, and management certifications.

(xvi) Directing the investment of project funds into required accounts.

(xvii) Maintenance of bank accounts and monthly reconciliations.

(xviii) Preparation, request for, and disbursement of borrower's initial operating capital (for new projects) as well as administration of annual owner's return on investment.

(xix) Account maintenance, settlement, and disbursement of security deposits.

(xx) Working with auditors for initial Agency annual financial reports.

(xxi) Storage of records, to include electronic records, and adherence to records retention requirements.

(xxii) Assist on-site staff with tenant relations and problems. Provide assistance to on-site staff in severe actions (eviction, death, insurance loss, etc.).

(xxiii) Oversight of general and preventive maintenance procedures and policies.

(xxiv) Development and oversight of asset replacement plans.

(xxv) Oversight of preparation of section 504 reviews, development of plans, and implementation of improvements necessary to comply with plans and section 504 requirements.

(2) Management fees may consist of a base per occupied revenue producing unit fee and add-on fees for specific housing project characteristics. Management entities may be eligible to receive the full base per occupied unit fee for any month or part of a month during which the unit is occupied.

(i) Periodically, the Agency will develop a range of base per occupied unit fees that will be paid in each state. The Agency will develop the fees based on a review of housing industry data. The final base for occupied unit fees for each state will be made available to all borrowers.

(ii) Periodically, the Agency will develop the amount and qualifications to receive add-on fees. The final set of qualifications will be made available to all borrowers.

(3) Management plans and agreements must describe if administrative expenses are to be paid from the management fee or paid for as a project cost.

(i) A task list should be used to identify which services are included in the management fee, which services are included in project operations, and which are pro-rated along with the methodology used to pro-rating of expenses between management agent fees and project operations. Some property responsibilities are completed at the property and some offsite. Agent responsibilities may be performed at the property, the management office, or at some other location.

(ii) Disputes may arise as to who performs certain services. The management plan and job descriptions should normally provide sufficient clarity to avoid or resolve any such disputes; however, sometimes clarifications and supporting materials may be required to resolve disputes. The decision must be made based on the most complete evaluation of the facts presented.

(j) *Management certification.* (1) As a condition of approval of project management, including borrowers who self-manage, borrower and management agents must execute an Agency-approved certification certifying that:

(i) Borrowers and management agent agree to operate the housing project in accordance with the management plan;

(ii) Borrowers and the management agent will comply with Agency requirements, loan or grant agreements, applicable local, State, Tribal, and Federal laws and ordinances, and contract obligations, will certify that no payments have been made to anyone in return for

awarding the management contract to the management agent, and will agree that such payments will not be made in the future;

(iii) Borrowers and the management agent will comply with Agency notices or other policy directives that relate to the management of the housing project;

(iv) Management agreement between the borrower and management agent complies with the requirements of this section;

(v) Allowable management fees are assessed and paid out of the housing projects' general operating account. Borrowers and management agents will comply with Agency requirements regarding management fees as specified in paragraph (i) of this section, and allocation of management costs between the management fee and the housing project financial accounts specified in § 3560.302(c)(3);

(vi) The borrower and the management agent will not purchase goods and services from entities that have an identity-of-interest (IOI) with the borrower or the management agent until the IOI relationship has been disclosed to the Agency according to paragraph (g) of this section, not denied by the Agency under paragraph (d)(3) of this section, and it has been determined that the costs are as low as or lower than arms-length, open-market purchases; and

(vii) The borrower and the management agent agree that all records related to the housing project are the property of the housing project and that the Agency, OIG, or GAO may inspect the housing records and the records of the borrower, management agent, and suppliers of goods and services having an IOI with the borrower or with a management agent acting as an agent of the borrower upon demand.

(2) A certification will be executed each time new management is proposed and/or a management agreement is executed or renewed. Any amendment to a management certification must be approved by the Agency and the borrower.

(k) *Procurement.* The borrower and the agents of the borrower must obtain contracts, materials, supplies, utilities, and services at a reasonable cost and seek the most advantageous terms to the housing project. Any discounts, rebates, fees, proceeds, or commissions obtainable with respect to purchases, service contracts, or other transactions must be credited to the housing project.

(l) *Electronic Submission of Data to Agency.* For properties with eight or more housing units, the Agency may specify that borrowers submit information required by this part electronically.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11280, Mar. 1, 2022]

§ 3560.103 Maintaining housing projects.

(a) *Physical maintenance.* (1) The purposes of physical maintenance are the following:

(i) Provide decent, safe, and sanitary housing; and

(ii) Maintain the security of the property.

(2) Borrowers are responsible for the long-term, cost-effective preservation of the housing project.

(3) At all times, borrowers must maintain housing projects in compliance with local, state and federal laws and regulations and according to the following Agency requirements for affordable, decent, safe, and sanitary housing. Agency design requirements are discussed in § 3560.60. The Agency acknowledges that property maintenance is an ongoing process and will not penalize borrowers for less than 100 percent compliance as long as it is evident that the borrower is striving to achieve the standards listed in this paragraph. In addition, the Agency understands that although its multifamily housing portfolio is relatively homogeneous, no one standard is appropriate for all properties.

(i) *Utilities.* The housing project must have an adequate and safe water supply, a functional and safe waste disposal system, and must be free of hazardous waste material.

(ii) *Drainage and erosion control.* The housing project must have drainage that effectively protects the housing project from water damage from standing water and erosion. Units, basements, and crawl spaces must be free of water seepage.

(iii) *Landscaping and grounds.* The housing project must be landscaped attractively. Lawns, plants and shrubs must be maintained and must allow air to windows, vents, and sills. Recreation areas must be maintained in a safe and clean manner and trash collection areas must be adequately sized, screened, and maintained.

(iv) *Drives, parking services and walks.* The housing project must have drives, parking lots, and walks that are free of holes and deterioration. Walks with changes in height between slabs of approximately ½ inch or greater will be considered unacceptable.

(v) *Exterior signage.* All signs at the housing project, including those related to the housing project name, buildings, parking spaces, unit numbers and other informational directions must be visible and well-kept. Sign requirements must conform to § 3560.104(d).

(vi) *Fences and retaining walls.* The housing project must have fence lines that are free of trash, weeds, vines, and other vegetation. Fences must be free of holes and damaged or loose sections. The bases of all retaining walls must be erosion free and drainage weep holes must be cleaned out to prevent excessive pressure behind the retaining wall.

(vii) *Debris and graffiti.* The housing project, including common areas, must be free of trash, litter, and debris. Public walkways, walls of buildings and common areas must be free of graffiti.

(viii) *Lighting.* The housing project must have functional exterior lighting and functional interior lighting in common areas which permits safe access and security.

(ix) *Foundation.* The housing project must have a foundation that is free of evidence of structural failure, such as uneven settlement indicated by horizontal cracks or severe bowing of the foundation wall. Structural members must not have evidence of rot or insect or rodent infestation.

(x) *Exterior walls and siding.* The housing project must have walls that are free from deterioration which allows elements to infiltrate the structure, eaves, gables, and window trim that are free from deterioration, exterior wall coverings that are intact, securely attached, and in good condition. Brick veneers must be free of missing mortar or bricks.

(xi) *Roofs, flashing, and gutters.* The housing project must have gutters and downspouts, where appropriate for climatic conditions, that are securely attached, clean, and finished or painted properly with splash blocks or extenders that direct water flow away from the building. The housing project must have a roof that is free of leaks, defective covering, curled or missing shingles and which is not sagging or buckling. Fascia and soffits must be intact.

(xii) *Windows, doors, and exterior structures.* The housing project must have screens that are free of tears, breaks and rips and windows that are unbroken. Window thermopane seals must be unbroken and caulking on the exterior of windows and doors must be continuous and free of cracks. Doors must be weather tight, free of holes, and provide security with functional locks. Porches, balconies, and exterior stairs must be free of broken, missing, or rotting components.

(xiii) *Common area accessibility.* The housing project must have accessible, designated handicapped parking spaces with handicapped space signs properly posted. Common areas must be accessible through walks, ramps, porches, and thresholds. The laundry room must have accessible appliances and mailboxes must be at an accessible level. Elevators or mechanical lifts must be functional and kept in good repair.

(xiv) *Common area signage.* The following must be posted in a conspicuous place in a common area: ''Justice for All'' poster, HUD equal housing opportunity poster including the Spanish version if there are Hispanic Limited English Proficiency tenants or applicants, current affirmative fair housing marketing plan, the tenant grievance and appeal procedure, housing project occupancy rules, office hours and phone number, and emergency hours and phone number.

(xv) *Flooring.* If a housing project has carpeting, the carpet must be clean, without excessive wear, and seams that are secure and stretched properly. If the housing project has resilient flooring, the flooring must be clean, unstained, free of tears and breaks, and seams that are secure.

(xvi) *Walls, floors, and ceilings.* The housing project must have walls, floors, and ceilings that are free of holes, evidence of current water leaks, and free of material that appears in danger of falling. The housing project must have wallboard joints that are secure and free of cracks.

(xvii) *Doors and windows.* The housing project must have doors that are free of holes, secure, unbroken and easily operable hardware, deadbolt locks which are in place and secure, and, if doors are metal, free of rust. The housing project must have windows which are easily operated, free of bent blinds or torn curtains, and window interiors must be free of evidence of moisture damage.

(xviii) *Electrical, air conditioning and heating.* The housing project must have heating and cooling units that are free of bare wires and which are functioning properly, including thermostats. The housing project must not have uncovered outlets or other evident safety hazards, switches which work improperly, or light fixtures which are broken and inoperable.

(xix) *Water heaters.* The housing project must have water heaters which are operating properly, free of leaks, supply adequate hot water, and are fitted with temperature and pressure relief valves.

(xx) *Smoke alarms.* The housing project must have Qualifying Smoke Alarms which are installed in accordance with applicable codes and standards as set forth in sections 514(k), 515(m), and 516(c) of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), in each level and in or near each sleeping area in such dwelling unit, including in basements but excepting crawl spaces and unfinished attics, and in each common area in a project containing such a dwelling unit.

(A) Dwelling units built before December 29, 2022, and not substantially rehabilitated after December 29, 2022, smoke alarms must:

(*1*) Be hardwired; or

(*2*) Use 10-year non rechargeable, non-replaceable primary batteries,

(*i*) Be sealed,

(*ii*) Tamper resistant,

(*iii*) Contain silencing means; and

(*3*) Provide notification for persons with hearing loss as required by applicable standards set forth in sections 514(k), 515(m), and 516(c) of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*).

(B) Dwelling units built or substantially rehabilitated after December 29, 2022; smoke alarms must be hardwired.

(xxi) *Emergency call system.* If a housing project has an emergency call system, the switches must be located in the bathroom and bedroom, furnished with a pull cord, with the down position set to ''ON'', and must operate properly.

(xxii) *Insect or vermin infestation.* The housing project must have all units free of visible signs of insects or rodents and must be free of signs of insect or rodent damage.

(xxiii) *Range and range hood.* The housing project must have range units in which all elements are operable, electrical connections are secure and insulated, doors and drawers which are secure, control knobs and handles which are in place and secure, and housing which is sound and the finish is free of chips, damage, or signs of rust. The range hood fan and light must be operable.

(xxiv) *Refrigerator.* The housing project must have refrigerators in which the cooler and freezer are operating properly, the shelves and door containers are secure and free of rust, door gaskets are in good condition and functioning properly, and the housing is sound and the finish is free of chips, damage, or signs of rust.

(xxv) *Sinks.* The housing project must have sinks in which the fittings work properly and are free of leaks, plumbing connections under the cabinet which are free of leaks, the finish is free of chips, damage, or signs of rust, the strainer is in good condition and in place, and which are secured to a wall, counter, or vanity top.

(xxvi) *Cabinets.* The housing project must have cabinets and vanities which are secure to walls or floor and have faces, doors, and drawer fronts that are in good condition and free of breaks and peeling. Shelving must be in place, fastened securely, and free of warps. The housing project must have counter tops which are secure and free of burn marks or chips, bottoms under sinks

which are free of evidence of warping, breaks, or being water soaked. Kitchen counter, vanity tops, and back splashes must be properly caulked.

(xxvii) *Water closets.* The housing project must have the base of the water closets at the floor properly caulked. The tanks must be free of cracks or leaks and have a lid which fits and is in good condition. The seats must be secure and in good condition, and the flushing mechanisms must be in good condition and operating properly. The stools must be free of cracks and breaks and be securely fastened to the floor.

(xviii) *Bathtub and shower stalls.* The housing project must have tubs or shower stalls which are free of cracks, breaks, and leaks, and a strainer in good condition and in place. The housing project must have walls and floors of the bathtubs which are properly caulked, tops and sides of shower stalls must be properly caulked, and the finish is free of chips, damage, or signs of rust.

(4) The Agency expects that upon discovery of a condition not in compliance with the standards listed in this section that the borrower will remedy the situation in a timeframe required by the Agency. The Borrower must provide documentation and justification for any failure to meet such timeframe. Properties with deficiencies in the process of being addressed will not be deemed to be out of compliance unless there are so many deficiencies that it would result in a declaration of substantial noncompliance and call into questions the viability of the property and the effectiveness of the borrower's maintenance program. Failure to make such corrections or repairs constitutes a non-monetary default under § 3560.452(e).

(b) *Maintenance systems.* Borrowers must establish the following maintenance systems and must describe these systems in their management plan.

(1) A system for routine maintenance, including:

(i) Regular maintenance tasks that can be prescheduled or planned; and

(ii) Tasks performed on a regular basis to maintain compliance with the standards established in paragraph (a)(3) of this section.

(2) A system for responsive maintenance including:

(i) A process for responding to requests for maintenance from tenants;

(ii) A process for responding to unexpected malfunctions of equipment or damages to building systems such as a furnace breakdown or a water leak; and

(iii) A ''work order'' process for managing and tracking responses to maintenance requests and the performance of maintenance tasks.

(3) A system for preventive maintenance including:

(i) Maintenance of mechanical systems, building exteriors, elevators, and heating and cooling systems which require specially trained personnel; and

(ii) Maintenance that supports energy-efficient operation of the housing project.

(4) A system for correcting deficiencies identified by periodic inspections, which must include:

(i) A move-in inspection;

(ii) A move-out inspection; and

(iii) An annual inspection of occupied units.

(c) *Capital budgeting and planning.* (1) Borrowers must develop a capital budget as part of their annual housing project budget required under § 3560.303. The capital budget must include anticipated expenditures on the long-term capital needs of the housing project to assure adequate maintenance and replacement of capital items.

(2) If the borrower requests an increase in the project's reserve for replacement account, the borrower must have a capital needs assessment prepared and submitted to the Agency to reflect anticipated needs of the housing project for replacement of capital equipment and systems. The cost for preparation of a capital needs assessment will be approved by the Agency as an eligible housing project expense provided the capital needs assessment is reasonable in cost and meets Agency requirements.

(3) [Reserved]

(4) As a part of the annual budget process, borrowers may request an increase in the amount to be contributed and held in the housing project reserve account to fund the needs identified in

an Agency-approved capital needs assessment.

(5) At any time, borrowers may request and the Agency may approve amendments to loan or grant documents to increase the amount of funds to be contributed and held in a reserve account to cover the cost of capital improvements based on the needs identified in an Agency approved capital needs assessment. Borrowers must assure improvements are performed as specified in the capital needs assessment.

[69 FR 69106, Nov. 26, 2004, as amended at 89 FR 103630, Dec. 19, 2024]

§ 3560.104 Fair housing.

(a) *General.* Borrowers must comply with the requirements of the Fair Housing Amendments Act of 1988, and this section to meet their fair housing responsibilities.

(b) *Affirmative Fair Housing Marketing Plan.* (1) Borrowers with housing projects that have five or more rental units must prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

(2) Loan or grant applicants must submit an AFHMP for Agency approval prior to loan closing or grant approval. Plans must be updated by the borrower whenever components of the plan change.

(3) Borrowers must post the approved AFHMP for public inspection at the housing project site, rental office, or at any other location where tenant applications for the project are received.

(4) When developing the plan, the following items must be considered by the borrower:

(i) *Direction of marketing activities.* The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area, regardless of race, color, religion, sex, age, familial status, national origin, or disability. The plan must show which efforts will be made to reach very low-income or low-income groups who would least likely be expected to apply without special outreach efforts.

(ii) *Marketing program.* The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc., are best suited to reach those very low-income or low-income groups who are in the market area but who are least likely to apply for occupancy. Marketing must not rely on ''word of mouth'' advertising.

(A) *Advertising.* (*1*) *Frequency.* The borrower should advertise availability of housing units in advance of their availability to allow time to receive and process applications. Advertising by newsprint or electronic media must occur at least annually to promote project visibility, even if there is an adequate waiting list.

(*2*) *Posters, brochures, etc.* Any radio, TV or newspaper advertisement, pamphlets, or brochures used must identify that the complex is operated on an equal housing opportunity basis. This must be done through the use of the equal housing opportunity statement, slogan, or logo type. Copies of the proposed material must be sent when requesting approval of the plan.

(B) *Community contacts.* Community leaders and special interest groups such as community, public interest, religious organizations, and organizations for the disabled must be contacted. Owners and managers of projects with fully accessible apartments must adopt suitable means to ensure that information regarding the availability of accessible units reaches eligible persons with disabilities. In addition, owners and managers of elderly housing must ensure that information regarding eligibility reaches people who are less than 62 years old but who are eligible because they are disabled. Appropriate contacts are with physical rehabilitation centers, hospitals, workshops for the disabled, commissions on aging, and veterans organizations.

(C) *Rental staff.* All staff persons responsible for renting the units must have had training provided on Federal, state, and local fair housing laws and regulations and in the requirements of fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair housing and a summary of the training they have received must be attached to the plan when requesting approval.

(iii) *Marketing records.* Records must be maintained by the borrower reflecting efforts to fulfill the plan. These records will be reviewed by the Agency during civil rights compliance reviews. Plans will be updated as needed.

(c) *Accommodations and communication.* The borrower must take appropriate steps to ensure effective communication with applicants, tenants, and members of the public with disabilities. At a minimum, the following steps must be taken:

(1) Furnish appropriate auxiliary aids (electronic, mechanical, or personal assistance) where necessary, to afford an individual with disabilities an equal opportunity to participate in and enjoy the benefits of Agency financed housing.

(i) In determining what auxiliary aids are necessary, the borrower must give primary consideration to the requests of individuals with disabilities.

(ii) The borrower is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a borrower communicates with applicants and tenants by telephone, telecommunication devices for deaf persons or equally effective communication systems must be available for use.

(3) The borrower must implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of accessible services, activities, and facilities in the housing project and community.

(4) The borrower is required to provide reasonable accommodations at the project's expense unless doing so would result in undue financial or administrative burden on the project. Examples of reasonable accommodations may include such items as the installation of grab bars, ramps, and roll-in showers. Reasonable accommodations may also include the modification of rules or policies such as permitting a disabled tenant to have a two-bedroom unit to accommodate a resident assistant or to permit a disabled tenant to have a companion animal. The decision whether the requested accommodation is reasonable or unreasonable or whether to provide the accommodation would cause an undue financial or administrative burden lies with the borrower and would be for the borrower to defend should a complaint subsequently be filed. Borrowers may wish to consult with their legal counsel prior to denying a request. If the borrower takes the position that providing an accommodation would cause an undue financial or administrative burden, the borrower must permit the tenant to make reasonable modifications at the tenant's expense. Requests for reasonable accommodations must be handled in accordance with the management plan.

(d) *Housing sign requirements.* (1) A permanent sign identifying the housing project is required for all housing projects approved on or after September 13, 1977. Permanent signs are recommended for all housing projects approved prior to September 13, 1977. The sign must meet the following requirements:

(i) Must be located at the primary site entrance and be readable and recognizable from the roadside;

(ii) Must be located near the site manager's office when the housing project has multiple sites and portable signs must be placed where vacancies exist at other site locations of a ''scattered site'' housing project;

(iii) May be of any shape;

(iv) Must be not less than 16 square feet of area for housing projects with 8 or more rental units (smaller housing projects may have smaller signs);

(v) Must be made of durable material including its supports;

(vi) Must include the housing project name;

(vii) Must show rental contact information including but not limited to the office location of the housing project and a telephone number where applicant inquiries may be made;

(viii) Must show either the equal housing opportunity logotype (the house and equal sign, with the words equal housing opportunity underneath the house); the equal housing opportunity slogan ''equal housing opportunity''; or the equal housing opportunity statement, ''We are pledged to the letter and spirit of U.S. policy for

the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.'' If the logotype is used, the size of the logo must be no less than 5 percent of the total size of the project sign.

(ix) May display the Agency or Department logotype; and

(x) Must comply with state and local codes.

(2) Accessible parking spaces must be reserved for individuals with disabilities by a sign showing the international symbol of accessibility. The sign must be mounted on a post at a height that is readily visible from an occupied vehicle. In snow areas, the sign must be visible above piled snow. If there is an office, the designated parking space must be van accessible.

(3) When the continuous unobstructed ingress or egress disabled accessibility route to a primary building entrance is other than the usual or obvious route, the alternate route for disabled accessibility must be clearly marked with international accessibility symbols and directional signs to aid a disabled person's ingress or egress to the building, through an accessible entrance, and to the accessible common use and public and living areas.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11281, Mar. 1, 2022]

§ 3560.105 Insurance and taxes.

(a) *General.* Borrowers must purchase and maintain property insurance on all buildings included as security for an Agency loan. Also, borrowers must furnish fidelity coverage, liability insurance, and any other insurance coverage required by the Agency in accordance with this paragraph to protect the security of the asset. Failure to maintain adequate insurance coverage or pay taxes may lead to a non-monetary default under § 3560.452(c).

(b) *General insurance requirements.* All insurance policies must meet the requirements established by the loan documents and this section.

(1) At loan closing, prior to loan approval, applicants must provide documentary evidence that insurance requirements have been met. The borrower must maintain insurance in accordance with requirements of their loan or grant documents and this section until the loan is repaid or the terms of the grant expire.

(2) Insurance companies must meet the requirements of paragraph (e) of this section.

(3) Insurance coverage amount, terms, and conditions must meet the requirements of paragraph (f) of this section.

(4) The Agency must be named as loss co-payee on all property insurance policies where it holds first lien position. The Agency must be named as an additional insured if its lien position is other than first.

(c) *Borrower failure or inability to meet insurance requirements.* The Agency will take the following actions in cases where a borrower is unwilling or unable to meet the Agency's insurance requirements:

(1) The Agency will obtain insurance for Agency financed property if the borrower fails to do so. If borrowers refuse to pay the insurance premium, the Agency will pay the insurance premium and charge the premium payment amount to the borrower's Agency account and will place the borrower in default as described in § 3560.452(c).

(2) If borrowers habitually fail to pay premiums in a timely manner, the Agency will require borrowers to escrow amounts appropriate to pay insurance premiums.

(3) If insurance that meets the Agency's specified requirements is not available (e.g., flood or hurricane insurance), the Agency may accept the insurance policy that most nearly conforms to established requirements.

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(9) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency prior to loan or grant approval.

(d) *Credits, refunds, or rebates.* Borrowers must credit any refund or rebate from an insurance company to the

project's general operating account or reserve account.

(e) *Insurance company requirements.* All insurers, insurance agents, and brokers must meet the following requirements:

(1) Be licensed or authorized to do business in the state or jurisdiction where the housing project is located; and

(2) Be deemed reputable and financially sound as determined by the Agency.

(f) *Property insurance.* The following conditions apply to property insurance purchased for Agency-financed housing projects.

(1) At a minimum, borrowers must obtain the following types of property insurance:

(i) *Hazard insurance.* A policy which generally covers loss or damage by fire, smoke, lightning, hail, explosion, riot, civil commotion, aircraft, and vehicles. These policies may also be known as ''Fire and Extended Coverage,'' ''Homeowners,'' ''All Physical Loss,'' or ''Broad Form'' policies.

(ii) *Flood insurance.* This coverage is required for properties located in Special Flood Hazard Areas (SFHA) as defined in 44 CFR part 65, as determined by the Federal Emergency Management Agency (FEMA).

(iii) *Builder's risk insurance.* A policy that insures dwellings under construction or rehabilitation.

(iv) *Elevators, boiler, and machinery coverage.* This coverage is required for properties that operate elevators, steam boilers, turbines, engines, or other pressure vessels.

(2) Other types of insurance that the Agency may require:

(i) Windstorm Coverage.

(ii) Earthquake Coverage.

(iii) Sinkhole Insurance or Mine Subsidence Insurance.

(3) For property insurance, the minimum coverage amount must equal the ''Total Estimated Reproduction Cost of New Improvements,'' as reflected in the housing project's most recent appraisal. At a minimum, property insurance coverage must be adequate to cover the lesser of the depreciated replacement value of essential buildings or the unpaid balance of all secured debt, unless such coverage is financially unfeasible for the housing project.

(i) If the cost of the minimum level of property insurance coverage exceeds what the housing project can reasonably afford, the borrower, with Agency concurrence, must obtain the maximum amount of property insurance coverage that the housing project can afford.

(ii) If the coverage amount is less than the depreciated replacement value of all essential buildings, borrowers must obtain coverage on one or more of the most essential buildings, as determined by the Agency.

(iii) When required, the coverage amount for flood insurance must equal the outstanding loan balance or the maximum coverage allowed by FEMA's ''National Flood Insurance Program.''

(4) Except for flood insurance, property insurance is not required if the housing project:

(i) Has a depreciated replacement value of $2,500 or less; or

(ii) Is in a condition which the Agency determines makes insurance coverage not economical.

(5) Policies for several buildings or properties located on noncontiguous sites are acceptable if the insurer provides proof that each secured building or property related to the housing project is as fully protected as if a separate policy were issued.

(6) Borrowers must notify the Agency and their insurance company agents of any loss or damage to insured property and collect the amount of the loss.

(7) When the Agency is in the first lien position and an insurance settlement represents a satisfactory adjustment of a loss, the insurance settlement will be deposited in the housing project's general operating account unless the settlement exceeds $5,000. If the settlement exceeds $5,000, the funds will be placed in the reserve account for the housing project.

(i) Insurance settlement funds which remain after all repairs, replacements, and other authorized disbursements have been made retain their status as housing project funds.

(ii) If the indebtedness secured by the insured property has been paid in full or the insurance settlement is in payment for loss of property on which the

Agency has no claim; a loss draft which includes the Agency as co-payee may be endorsed by the Agency without recourse and delivered to the borrower.

(8) When the Agency is not in the first lien position and the insurance settlement represents satisfactory adjustment of the loss, the Agency will release the settlement funds to the primary mortgagee upon agreement of all parties to the provisions contained in agreements between the Agency and the primary lienholder.

(9) Allowable deductible amounts are as follows:

(i) *Hazard/Property Insurance.* (A) $1,000 on any housing project with an insurable value under $200,000; or

(B) One-half of one percent (0.0050) of the insurable value, up to $10,000 on housing projects with insurance values over $200,000.

(ii) *Flood Insurance.* The Agency allows a maximum deductible of $5,000 per building.

(iii) *Windstorm Coverage.* When windstorm coverage is excluded from the ''All Risk'' policy, the deductible must not exceed five percent of the total insured value.

(iv) *Earthquake Coverage.* In the event that the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no more than 10 percent of the coverage amount.

(v) *Sinkhole Insurance or Mine Subsidence Insurance.* The deductible for sinkhole insurance or mine subsidence insurance should be similar to what would be required for earthquake insurance.

(10) Deductible amounts (excluding flood, windstorm, earthquake and sinkhole insurance, or mine subsidence insurance) must be accounted for in the replacement reserve account, unless the deductible does not exceed the maximum deductible allowable as indicated in paragraph (f)(9)(i) of this section. Borrowers who wish to increase the deductible amount must deposit an additional amount to the reserve account equal to the difference between the Agency's maximum deductible and the requested new deductible. The Borrower will be required to maintain this additional amount so long as the higher deductible is in force.

(g) *Liability insurance.* The borrower must carry comprehensive general liability insurance with coverage amounts that meet or exceed Agency requirements. This coverage must insure all common areas, commercial space, and public ways in the security premises. Coverage may also include borrower exposure to certain risks such as errors and omissions, environmental damages, or protection against discrimination claims. The insurer's limit of liability per occurrence for personal injury, bodily injury, or property damage under the terms of coverage must be at least $1 million.

(h) *Fidelity coverage.* Borrowers must provide fidelity coverage on any personnel entrusted with the receipt, custody, and disbursement of any housing monies, securities, or readily salable property other than money or securities. Borrowers must have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. In addition, the following conditions apply to fidelity insurance:

(1) Fidelity insurance coverage must be documented on a bond form acceptable to the Agency.

(2) Fidelity coverage policies must declare in the insuring agreements that the insurance company will provide protection to the insured against the loss of money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by any employee, whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage.

(i) The fidelity insurance policy, at a minimum, must include an insuring agreement that covers employee dishonesty.

(ii) Fidelity coverage amounts and deductible:

Fidelity coverage	Deductible level
Under $50,000	$1,000
In the area of $100,000	2,500
In the area of $250,000	5,000
In the area of $500,000	10,000
In the area of $1,000,000	15,000

(3) Blanket crime insurance coverage or fidelity bonds are acceptable types of fidelity coverage.

(4) At a minimum, borrowers must provide an endorsement, listing all of the borrower's Agency financed properties and their locations covered under the policy or bond as evidence of required fidelity insurance. The policy or bond may also include properties or operations other than Agency financed properties on separate endorsement listings.

(5) Individual or organizational borrowers must have fidelity coverage when they have employees with access to the MFH complex assets. Borrowers who use a management agent with exclusive access to housing assets must require the agent to have fidelity coverage on all principals and employees with access to the housing assets. If active management reverts to the borrower, the borrower must obtain fidelity coverage, as a first course of business.

(6) Fidelity coverage is not required under the following circumstances:

(i) The borrower is an individual or a general partnership and the individual or general partner will be responsible for the financial activities of the housing project.

(ii) In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

(iii) A limited partnership (or its general partners) unless one or more of its general partners perform financial acts within the scope of the usual duties of an ''employee.''

(7) The premium for fidelity coverage of employees and general partners at a housing project is an eligible operating account expense.

(i) The premium of a management agent's fidelity coverage for the agent's principals and employees will be the management agent's business expense (*i.e.*, it is included within the management fee).

(ii) When a housing project employee is covered under the ''umbrella'' of the management agent's fidelity coverage, the premium may be prorated among the housing projects covered.

(8) Borrowers must review fidelity coverage annually and adjust it as necessary to comply with the requirements of this section.

(i) *Taxes.* The borrower is responsible for paying all taxes and assessments on a housing project before they become delinquent.

(1) An exception to the above may be made if the borrower has formally contested the amount of the property assessment and escrowed the amount of taxes in question in a manner approved by the Agency.

(2) Failure to pay taxes and assessments when due will be considered a default. If a borrower fails to pay outstanding taxes and assessments, the Agency will pay the outstanding balance and charge the tax or assessment amount, assessed penalties, and any additional incurred costs to the borrower's Agency account.

(3) The Agency will require borrowers who have demonstrated an inability to pay taxes in a timely manner to escrow amounts sufficient to pay taxes.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11281, Mar. 1, 2022]

§§ 3560.106–3560.149 [Reserved]

§ 3560.150 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart D—Multi-Family Housing Occupancy

§ 3560.151 General.

(a) *Applicability.* This subpart contains borrower and tenant requirements and Agency responsibilities related to occupancy of Agency-financed multi-family housing (MFH) projects.

Occupancy eligibility requirements apply to the following:

(1) Family housing projects, including farm labor housing;

(2) Elderly housing projects; and

(3) Congregate housing or group homes for persons with special needs.

(b) *Civil rights requirements.* All occupancy policies must meet applicable civil rights requirements, as stated in § 3560.2.

§ 3560.152 Tenant eligibility.

(a) *General requirements.* Except as specified in paragraph (b) of this section, a tenant eligible for occupancy in Agency-financed housing must either:

(1) Be a United States citizen or qualified alien, and

(2) Qualify as a very low-, low-, or moderate-income household; or

(3) Be eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as U.S. Department of Housing and Urban Development (HUD) Section 8 assistance or Low Income Housing Tax Credit (LIHTC), when a tenant receives such housing benefits.

(b) *Exception.* Households with incomes above the moderate-income level may occupy housing projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

(c) *Requirements for elderly housing, congregate housing, and group homes.* In addition to the requirements of paragraph (a) of this section, the following occupancy requirements apply to elderly housing and congregate housing or group homes:

(1) For elderly housing and congregate housing, the following provisions apply:

(i) Households must meet the definition of an elderly household in § 3560.11 to be eligible for occupancy in elderly or congregate housing.

(ii) If non-elderly persons are members of a household where the tenant or co-tenant is an elderly person, the non-elderly persons are eligible for occupancy in the tenant's or co-tenant's rental unit.

(iii) Applicants who will agree to participate in the services provided by a congregate housing project may be given occupancy priority.

(2) For group homes, the following provisions apply:

(i) Occupancy may be limited to a specific group of tenants, such as elderly persons or persons with developmental disabilities, or mental impairments, if such an occupancy limitation is contained in the borrower's management plan.

(ii) Tenants must be able to demonstrate a need for the special services provided by the group home.

(iii) Tenants cannot be required to participate in an ongoing training or rehabilitation program.

(iv) Tenants must be selected from the market area prior to considering applicants from other areas.

(d) *Ineligible tenant waiver.* The Agency may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move to allow an eligible applicant to obtain occupancy, should one become available. The Agency must make the following determinations:

(1) There are no eligible persons on a waiting list.

(2) The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, posting notices in several public places, including places where persons seeking rental housing would likely make contacts, holding open houses, making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies.

(3) The borrower agrees to continue with aggressive efforts to locate eligible tenants and retain documentation of all marketing.

(4) The borrower is temporarily unable to achieve or maintain a level of

occupancy sufficient to prevent financial default and foreclosure. The Agency's approval of the waiver would then be for a limited duration.

(5) The lease agreement will not be more than 12 months and at its expiration will convert to a month-to-month lease. The monthly lease will require that the unit be vacated upon 30 days notice when an eligible applicant is available.

(6) Tenants residing in Rural Rental Housing (RRH) units who are ineligible because their adjusted annual income exceeds the maximum for the RRH project will be charged the Rural Housing Service (RHS) approved note rent for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged a rental surcharge of 25 percent of the approved note rent.

(e) *Tenant certification and verification.* Tenants and borrowers must execute an Agency-approved tenant certification form establishing the tenant's eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually or whenever a change in household income of $100 or more per month occurs. Borrowers must recertify for changes of $50 per month, if the tenant requests that such a change be made.

(1) *Tenant requirements.* (i) Tenants must provide borrowers with the necessary income and other household information required by the Agency to determine eligibility.

(ii) Tenants must authorize borrowers to verify information provided to establish their eligibility or determination of tenant contribution.

(iii) Tenants must report all changes in household status that may affect their eligibility to borrowers.

(iv) Tenants who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subject to unauthorized assistance claims, if applicable, as specified in subpart O of this part.

(2) *Borrower requirements.* (i) Borrowers must verify household income and other information necessary to establish tenant eligibility for the requested rental unit type, in a format approved by the Agency, prior to a tenant's initial occupancy and prior to annual or other recertifications.

(ii) Borrowers must review all reported changes in household status and assess the impact of these changes on the tenant's eligibility or tenant contribution.

(iii) Borrowers must submit initial or updated tenant certification forms to the Agency within 10 days of the effective date of an initial certification or any changes in a tenant's status. The effective date of an initial or updated tenant certification form will always be a first day of the month.

(iv) Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in paragraph (e)(2)(iii) of this section will be charged overage, as specified in § 3560.203(c) and lost rental assistance. Unauthorized assistance, if any, will be handled in accordance with subpart O of this part.

(v) Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.

(vi) Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer.

(3) The Agency maintains the right to independently verify tenant eligibility information.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11281, Mar. 1, 2022]

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.152(a)(1), implementation of the words ''Be a United States citizen or qualified alien, and'' was delayed indefinitely.

§ 3560.153 Calculation of household income and assets.

(a) Annual income will be calculated in accordance with 24 CFR 5.609.

(b) Adjusted income will be calculated in accordance with 24 CFR 5.611.

§ 3560.154 Tenant selection.

(a) *Application for occupancy.* Borrowers must use tenant application forms that collect sufficient information to properly determine household eligibility and to enable the Agency to monitor compliance with the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title VI of the Civil Rights Act of 1964 during compliance reviews. At a minimum, borrowers must use application forms that collect the following information:

(1) Name of the applicant and present address;

(2) Number of household members and their birthdates;

(3) Annual income information calculated in accordance with § 3560.153(a);

(4) Adjustments to income calculated in accordance with § 3560.153(b);

(5) Net assets calculated in accordance with § 3560.153(c);

(6) Indication of a need for a unit accessible to individuals with disabilities and any disability adjustments to income;

(7) Certification by the applicant that the unit will serve as the household's primary residence, and a certification that the applicant is a U.S. citizen or a qualified alien as defined in § 3560.11;

(8) Signature of the applicant and date;

(9) Race, ethnicity, and gender designation. The following disclosure notice shall be used:

''The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname,'' and

(10) Social security number.

(b) *Additional information.* Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information). The list of information will be restricted to the same items for all Agency-assisted properties of a particular type, such as a family or elderly complex.

(c) *Application submission.* Borrowers must establish when applications may be submitted. Information on the place and times for tenant application submission must be documented in the housing project's management plan and Affirmative Fair Housing Marketing Plan.

(d) *Selection of eligible applicants.* (1) Applicants may be determined ineligible for occupancy based on selection criteria other than Agency requirements only if such criteria are contained in the borrower's management plan. Borrower established selection criteria may not contain arbitrary or discriminatory rejection criteria, but may consider an applicant's past rental and credit history and relations with other tenants.

(2) Borrowers with projects receiving low-income housing tax credits (LIHTCs), may leave a housing unit vacant if they are required to rent the available unit to an LIHTC-eligible applicant, and none of the applicants on the waiting list meet the applicable LIHTC eligibility requirements.

(e) *Recordkeeping.* Borrowers must retain all tenant application forms for at least 3 years. The Agency may require borrowers to submit application information for Agency review.

(f) *Waiting lists.* (1) When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, whether complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

(2) The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application (see paragraph (a) of this section), they must be notified in writing within 10 days of the items

that are needed for the application to be considered complete and that priority will not be established until the additional items are received.

(3) The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on the Agency tenant certification form available in the servicing office.

(4) Within 10 days of receipt of a complete application, the Borrower must notify the applicant in writing that he has been selected for immediate occupancy, placed on a waiting list, or rejected.

(5) Selections from the completed applications on the waiting list shall be made in the following priority order:

(i) Very low-income applicants;

(ii) Low-income applicants; and

(iii) Moderate-income applicants.

(g) *Priorities and preferences for admission.* (1) Eligible applicants that meet the following conditions must be given priority for occupancy over all other tenants regardless of income. Such applicants, however, will be ranked among themselves by income level, giving priority first to very low-income households, then to low-income households, and finally to moderate-income households.

(i) Persons who require the special design features of a unit accessible to individuals with disabilities will have priority only for units with these features.

(ii) In congregate housing facilities, persons who agree to use the services provided by the facility will have priority over other applicants.

(2) Eligible applicants that meet any of the following conditions must be given priority over other applicants in their same income category.

(i) The applicant has a Letter of Priority Entitlement (LOPE) issued in accordance with § 3560.660(c).

(ii) The applicant was displaced from Agency-financed housing but was not issued a LOPE.

(iii) The applicant was displaced in a Federally declared disaster area.

(3) Borrowers receiving Section 8 project-based assistance may establish preferences in accordance with U.S. Department of Housing and Urban Development (HUD) regulations. The use of such preferences must be documented in the project's management plan.

(h) *Notices of ineligibility or rejection.* Borrowers must provide written notification to applicants who are determined to be ineligible or who are rejected for occupancy. Notices of ineligibility or rejection must give specific reasons for the ineligibility determination or rejection and, in accordance with § 3560.160, the notice must advise the applicant of ''the right to respond to the notice within ten calendar days after receipt'' and of ''the right to a hearing in accordance with § 3560.160 which is available upon request.'' When an applicant is rejected based on the information from a credit bureau report, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

(i) *Purging waiting list.* Procedures used by borrowers to purge waiting list must be documented in the project's management plan and must be based on the length of the waiting list or the extent of time an applicant will be expected to wait for housing. At a minimum, borrowers must document removal of any names from the waiting list with the time and date of the removal. If an electronic waiting list is used, borrowers must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name.

(j) *Criminal activity.* Borrowers will deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.854, 5.855, 5.856, and 5.857.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11281, Mar. 1, 2022]

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.154(a)(7), implementation of the words ''* * * and a certification that the applicant is a U.S. citizen or a qualified alien as defined in § 3560.11 * * *'' was delayed indefinitely.

§ 3560.155 Assignment of rental units and occupancy policies.

(a) *General.* Available rental units are assigned in accordance with the requirements of this section and the priorities and preferences outlined in § 3560.154.

(b) *Rental units accessible to individuals with disabilities.* If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, borrowers may rent the unit to a non-disabled tenant subject to the inclusion of a lease provision that requires the tenant to vacate the unit within 30 days of notification from management that an eligible individual with disabilities requires the unit and provided the accessible unit has been marketed as an accessible unit, outreach has been made to organizations representing the disabled, and marketing of the unit as an accessible unit continues after it has been rented to a tenant who is not in need of the special design features.

(c) *Transfer of existing tenants within a housing project.* When a rental unit becomes available for occupancy and an eligible tenant in the housing project is either over housed or under housed as provided for in paragraph (e) of this section, the borrower must use the available unit for the over housed or under housed tenant, if suitable, prior to selecting an eligible applicant from the waiting list.

(d) *Applicant placement.* When a specific rental unit type becomes available for occupancy, borrowers must select eligible applicants suitable for the available unit according to the priorities established in § 3560.154.

(e) *Occupancy policies.* Borrowers must establish occupancy policies for each housing project. Households living in a rental unit with more bedrooms than persons in the household will be considered over housed and must be relocated in accordance with paragraph (c) of this section. Households under housed as defined by the project's occupancy standards must be relocated in accordance with paragraph (c) of this section. Borrowers with no one-bedroom units in a housing project may make an exception to this requirement in their occupancy policies. In addition, a borrower's occupancy policies must establish:

(1) Reasonable standards for determining when a tenant household is considered under housed. The standards will describe the maximum number of persons that may occupy units of a given size based on occupancy guidelines provided by the Agency or another governmental source;

(2) The order in which eligible applicants and existing tenants will be housed or re-housed; and

(3) How fair housing requirements will be met, including how reasonable accommodations will be made for applicants and tenants with disabilities.

(f) *Agency concurrence.* The Agency must concur with a borrower's occupancy rules prior to initial occupancy of the housing project. All modifications to occupancy rules must be posted for tenant comment in accordance with § 3560.160 and receive Agency concurrence prior to implementation.

§ 3560.156 Lease requirements.

(a) *Agency approval.* Borrowers must use a lease approved by the Agency. The lease must be consistent with Agency requirements and the requirements of all programs participating in the housing project. Prior to submitting the lease to the Agency for approval, borrowers must have their attorney certify that the lease complies with state and local laws, Agency requirements, and the requirements of all programs participating in the housing project. If there are conflicting requirements the borrower shall notify the Agency of the conflict and request guidance. Borrowers must execute their Agency approved lease with each tenant household prior to tenant occupancy of a rental unit.

(b) *Lease requirements.* (1) All leases must be in writing.

(2) Initial leases must be for a 1-year period.

(3) If the tenant is not subject to occupancy termination according to § 3560.158 and § 3560.159, a renewal lease or lease extension must be for a 1-year period.

(4) In areas with a concentration of non-English speaking populations, leases (including the occupancy rules)

must be available in both English and the non-English language.

(5) Leases must give the address of the management agent to which tenants may direct complaints.

(6) Leases must include a statement of the terms and conditions for modifying the lease.

(c) *Required items and provisions.* (1) Leases for tenants who hold a Letter of Priority Entitlement (LOPE) issued according to § 3560.660(c) and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available in the housing project.

(2) Leases must contain a clause permitting escalation in the tenant contribution when there is an Agency-approved change in basic or note rate rents prior to the expiration of the lease. The escalation clause also must specify that the tenant contribution may be changed prior to expiration of the lease if the change is due to changes in tenant status, as documented on the tenant certification form, or the tenant's failure to properly recertify.

(3) Leases must specify that no change in the tenant contribution will occur due to monetary or non-monetary default or when rental assistance or interest credit, is suspended, canceled, or terminated due to the borrower's fault. For information on tenant contributions when a borrower prepays the Agency loan, refer to subpart N of this part.

(4) Leases must contain a requirement that tenants make restitution when unauthorized assistance is received due to applicant or tenant fraud or misrepresentation and a statement advising tenants that submission of false information could result in legal action.

(5) Leases must include a statement that the housing project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.

(6) Leases must state that the housing project is subject to:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title VIII of the Fair Housing Act;

(iii) Section 504 of the Rehabilitation Act of 1973;

(iv) The Age Discrimination Act of 1975; and

(v) The Violence Against Women Reauthorization Act of 2013 and any amendments thereto.

(7) Leases must establish the tenant's responsibility according to the housing project's occupancy rules to move to the next available appropriately sized rental unit if the household becomes over housed or under housed in the unit they occupy.

(8) Leases must include provisions that establish when a guest will be considered a member of the household and be required to be added to the tenant certification.

(9) Leases must include a provision stating that tenancy continues until the tenant's possessions are removed from the housing either voluntarily or by legal means, subject to state and local law.

(10) Leases must include a requirement that tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in § 3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, or whichever is greater, unless the conditions cited in § 3560.158(c) exist;

(11) Leases for rental units receiving rental assistance must include clauses that specify that the tenant's monthly tenant contribution and a description of the circumstances under which the tenant's contribution may change.

(12) Leases must include a requirement that tenants notify borrowers when changes occur in their income or assets, their qualifications for adjustments to income, their citizenship status, or the number of persons living in the unit.

(13) A requirement that tenants agree to fulfill the tenant income verification and certification requirements established under § 3560.152.

(14) Leases for tenants living in Plan II interest credit rental units must include provisions establishing the net monthly tenant contribution.

(15) Leases, including renewals, must include the following language:

''It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, State, Tribal or Federal law) while in or on any part of this apartment complex premises or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereafter called a ''drug violation'') may be evidenced upon the admission to or conviction of the use, possession, manufacture, sale, or distribution of a controlled substance (as defined by local, State, Tribal, or Federal law) in any local, State, Tribal or Federal court.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord, and not thereafter to enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by the remaining members of the tenant's household. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation, agrees not to commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit.

Should a further drug violation be committed by any non-adult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.''

(16) Leases for rental units accessible to individuals with disabilities occupied by those not needing the accessibility features must establish the tenant's responsibility to move to another unit within 30-days of written notification that the unit is needed by an eligible qualified person with disabilities who requires the accessibility features of the unit. Additionally, the lease clause must ensure that the household may remain in the rental unit with accessibility features until an appropriately sized vacant unit within the project becomes available and then must move or vacate within 30 days of notification from borrower.

(17) If loan prepayment occurs and the housing project is subject to restrictive use provisions, leases and renewals must be amended to include a clause specifying the tenant protections required under subpart N of this part.

(18) All leases must contain the following information and provisions:

(i) The name of the tenant, any cotenants, and all members of the household residing in the rental unit;

(ii) The identification of the rental unit;

(iii) The amount and due date of monthly tenant contributions, any late payment penalties, and security deposit amounts;

(iv) The utilities, services, and equipment to be provided for the tenant;

(v) The tenant's utility payment responsibility;

(vi) The certification process for determining tenant occupancy eligibility and contribution;

(vii) The limitations of the tenant's right to use or occupancy of the dwelling;

(viii) The tenant's responsibilities regarding maintenance and consequences if the tenant fails to fulfill these responsibilities;

(ix) The agreement of the borrower to accept the tenant contribution toward rent charges prior to payment of other charges that the tenant owes and a statement that borrowers may seek legal remedy for collecting other charges accrued by the tenant;

(x) The maintenance responsibilities of the borrower in buildings and common areas, according to state and local codes, Agency regulations, and Federal fair housing requirements;

(xi) The responsibility of the borrowers at move-in and move-out to provide the tenant with a written statement of rental unit's condition and provisions for tenant participation in inspection;

(xii) The provision for periodic inspections by the borrower and other circumstances under which the borrower may enter the premises while a tenant is renting;

(xiii) The tenant's responsibility to notify the borrower of an extended absence;

(xiv) A provision that tenants may not assign the lease or sublet the property;

(xv) A provision regarding transfer of the lease if the housing project is sold to an Agency-approved buyer;

(xvi) The procedures that must be followed by the borrower and the tenant in giving notices required under terms of the lease, including lease violation notices. The lease will provide that, in cases of nonpayment of rent, the termination notice will be effective no earlier than 30 days after the tenant's receipt of the written termination notice.

(xvii) The good-cause circumstances under which the borrower may terminate the lease and the length of notice required;

(xviii) The disposition of the lease if the housing project becomes uninhabitable due to fire or other disaster, including rights of the borrower to repair building or terminate the lease;

(xix) The procedures for resolution of tenant grievances consistent with the requirements of § 3560.160;

(xx) The terms under which a tenant may, for good cause, terminate their lease, with 30 days notice, prior to lease expiration; and

(xxi) The signature and date clause indicating that the lease has been executed by the borrower and the tenant.

(d) *Prohibited provisions.* Borrowers are prohibited from including any of the following clauses in the lease:

(1) Clauses prohibiting families with children under 18;

(2) Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease;

(3) Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation;

(4) Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do;

(5) Clauses in which tenants agree that borrowers may institute suit without any notice to the tenant that the suit has been filed;

(6) Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever borrowers determine that a breach or default has occurred;

(7) Clauses authorizing the borrower's attorneys to appear in court on behalf of the tenant, and to waive the tenant's right to a trial by jury;

(8) Clauses authorizing the borrower's attorneys to waive the tenant's right to appeal or to file suit; and

(9) Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even if the court finds in favor of the tenant.

(e) *Housing projects and units receiving HUD assistance.* (1) In housing projects receiving Section 8 project-based assistance, borrowers may use the HUD model lease. The provisions of the HUD model lease will prevail, unless they conflict with Agency lease requirements in accordance with this section. If there is conflict between HUD requirements and Agency requirements, the provision that will be enforced will be the one that is most favorable to the tenant.

(2) For units occupied by Section 8 certificate and voucher holders, borrowers may use:

(i) A standard HUD-approved lease;

(ii) A HUD-approved lease that includes a number of modifications from the standard HUD-approved lease; or

(iii) An Agency-approved lease may be used if acceptable by HUD or the local housing authority.

(f) *State and local requirements.* Borrowers must use a lease that is consistent with state and local requirements.

(1) If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent with the provisions established in paragraph (c) of this section.

(2) Leases must include a procedure for handling tenant's abandoned property, as provided by state or local law.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11282, Mar. 1, 2022; 89 FR 20543, Mar. 25, 2024]

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.156(c)(12), implementation of the words ''* * * their citizenship status, * * *'' was delayed indefinitely.

§ 3560.157 Occupancy rules.

(a) *General.* The purpose of a borrower's occupancy rules is to outline the basis for the tenant and management relationship. Prior to Agency approval of occupancy rules, borrowers must provide written certification from their attorney that the housing project's occupancy rules are consistent with applicable Federal, state, and local laws, as well as Agency requirements, and the requirements of all programs participating in the housing project. Borrowers must obtain Agency approval of the occupancy rules prior to initial occupancy and obtain Agency approval prior to the implementation date of any subsequent modifications to the rules.

(b) *Requirements.* The occupancy rules must be in writing and posted for easy tenant access. A copy of these rules must be attached to the tenant's lease upon initial occupancy. At a minimum, the occupancy rules must address:

(1) The tenant's rights and responsibilities under the lease or occupancy agreement;

(2) The rent payment or occupancy charge policies;

(3) The policies regarding periodic inspection of units;

(4) The system for responding to tenant complaints;

(5) The maintenance request and work order procedures;

(6) The housing services and facilities available to tenants or members;

(7) The office locations, hours, and emergency telephone numbers;

(8) The restrictions on storage and prohibitions on non-functional vehicles in the housing project area;

(9) Other requirements related to a subsidy provided to a tenant from non-Agency sources;

(10) When a guest becomes a member of the tenant household; and

(11) The procedures tenants must follow to request reasonable accommodations.

(c) *Modification of occupancy rules.* The Agency must concur with any modification to the occupancy rules prior to implementation. Proper notice must be given to each tenant at least 30 days in advance of implementation of such rules in accordance with § 3560.160.

(d) *Federal, state and local requirements.* The occupancy rules must be consistent with Federal, state, and local law.

(e) *Pets/Assistance Animals.* All housing projects should establish reasonable written pet rules. No rules may be promulgated that would prevent occupancy by a household member who requires a service or assistance animal. In elderly housing, borrowers must not prohibit tenants from keeping domestic animals in their rental units as pets.

(f) *Tenant organizations.* Borrowers must not infringe on the rights of tenants to organize an association of tenants. Borrowers (or a designated management representative) should be available and willing to work with a tenant organization.

(g) *Community rooms.* Borrowers may not place unreasonable restrictions on tenants that desire to use a community room.

§ 3560.158 Changes in tenant eligibility.

(a) *General requirements.* Tenants must continue to meet the requirements of § 3560.152 to remain eligible for occupancy.

(b) *Tenants no longer eligible.* Tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in § 3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower

that they are no longer eligible for occupancy or at the expiration of their lease, whichever is greater, unless the conditions specified in paragraph (c) of this section exist.

(c) *Temporary continuation of tenancy.* If conditions described in § 3560.454(b) or the following conditions exist, borrowers may permit tenants who are no longer eligible for occupancy to continue to reside at the housing project with prior approval of the Agency.

(1) The waiting list for the specific rental unit type has no eligible applicants; or

(2) The required time period for vacating the rental unit would create a hardship on the tenant household.

(d) *Surviving and remaining household members.* (1) Members of a household may continue to reside in a housing project after the departure or death of the tenant or co-tenant, provided that:

(i) They are eligible with respect to adjusted income;

(ii) They occupied a rental unit in the housing project at the time of the departure or death of the tenant or cotenant;

(iii) They execute a tenant certification form establishing their own tenancy; and

(iv) They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

(2) Surviving or remaining members of the household may remain in the housing project, taking into consideration the conditions of paragraph (d)(1) of this section, but must move to a suitably sized rental unit within 30 days of its availability.

(3) After the death of a tenant or cotenant in elderly housing, the surviving members of the household, regardless of age but taking into consideration the conditions of paragraph (d)(1) of this section, may remain in the rental unit in which they were residing at the time of the tenant's or cotenant's death, even if the household is over housed according to the housing project's occupancy rules except as follows:

(i) Continued occupancy of the rental unit will not be allowed when in either situation of paragraph (d)(1) or (d)(3) of this section, the rental unit has accessibility features for individuals with disabilities, the household no longer has a need for such accessibility features, and the housing project has a tenant application from an individual with a need for the accessibility features;

(ii) If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit with such features until the housing project receives an application from an individual with a need for accessibility features. The household in the unit with accessibility features will be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features if another suitably sized unit without accessibility features is available in the project. If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until the first available unit in the project becomes available and then must move within 30 days.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11282, Mar. 1, 2022]

§ 3560.159 Termination of occupancy.

(a) *Tenants in violation of lease.* Borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenant's lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes. Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.

(1) Material non-compliance with lease provisions or occupancy rules, for purposes of occupancy termination by a borrower, includes actions such as:

(i) Violations of lease provisions or occupancy rules that are substantial and/or repeated;

(ii) Non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules; or

(iii) Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance when such activity occurred on the housing project's premises by the tenant, a member of the tenant's household, a guest of the tenant, or any other person under the tenant's control at the time of the activity.

(2) Good causes, for purposes of occupancy terminations by a borrower, include actions such as:

(i) Actions by the tenant or a member of the tenant's household which disrupt the livability of the housing by threatening the health and safety of other persons or the right of other persons to enjoyment of the premises and related facilities;

(ii) Actions by the tenant or a member of the tenant's household which result in substantial physical damage causing an adverse financial effect on the housing or the property of other persons; or

(iii) Actions prohibited by state and local laws.

(3) In cases of nonpayment of rent, the termination notice will be effective no earlier than 30 days after the tenant's receipt of the written termination notice. Notice will be provided in accordance with § 3560.160(e) of this chapter. All notices of lease termination required by this section due to a tenant's failure to pay rent must also include the following:

(i) Instructions on how the tenant can cure the nonpayment of rent violation;

(ii) Information on how the tenant can recertify their income pursuant to 7 CFR 3560.152; and

(iii) In the event of a presidential declaration of a national emergency, such information as required by the Secretary.

(b) *Lease expiration or tenant eligibility*. A tenant's occupancy in an Agency-financed housing project may not be terminated by a borrower when the lease agreement expires unless the tenant's actions meet the conditions described in paragraph (a) of this section, or the tenant is no longer eligible for occupancy in the housing. Borrowers must handle terminations of occupancy due to a change in tenant eligibility status in accordance with § 3560.158. At a minimum, the occupancy termination notice must include the following information:

(1) A specific date by which lease termination will occur;

(2) A statement of the basis for lease termination with specific reference to the provisions of the lease or occupancy rules that, in the borrower's judgment, have been violated by the tenant in a manner constituting material non-compliance or good cause; and

(3) A statement explaining the conditions under which the borrower may initiate judicial action to enforce the lease termination notice.

(c) *Other terminations*. Should occupancy be terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, and prior to expiration of the disaster declaration, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

(d) *Criminal activity*. Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.858, 5.859, 5.860, and 5.861.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11282, Mar. 1, 2022; 89 FR 20543, Mar. 25, 2024]

§ 3560.160 Tenant grievances.

(a) *General*. (1) The requirements established in this section are designed to ensure that there is a fair and equitable process for addressing tenant or prospective tenant concerns and to ensure fair treatment of tenants in the event that an action or inaction by a borrower, including anyone designated to act for a borrower, adversely affects the tenants of a housing project.

(2) Any tenant/member or prospective tenant/member seeking occupancy in or use of Agency facilities who believes he or she is being discriminated against because of age, race, color, religion, sex, familial status, disability, or national origin may file a complaint in person with, or by mail to the U.S. Department of Agriculture's Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW., Washington DC 20250–9410 or to the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD), Washington, DC 20410. Complaints received by Agency employees must be directed to the National Office Civil Rights Staff through the State Civil Rights Manager/Coordinator.

(b) *Applicability*. (1) The requirements of this section apply to a borrower action regarding housing project operations, or the failure to act, that adversely affects tenants or prospective tenants.

(2) This section does not apply to the following situations:

(i) Rent changes authorized by the Agency in accordance with the requirements of § 3560.203(a);

(ii) Complaints involving discrimination which must be handled in accordance with § 3560.2(b) and paragraph (a)(2) of this section;

(iii) Housing projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternative method of settling grievances;

(iv) Changes required by the Agency in occupancy rules or other operational or management practices in which proper notice and opportunity have been given according to law and the provisions of the lease;

(v) Lease violations by the tenant that would result in the termination of tenancy and eviction;

(vi) Disputes between tenants not involving the borrower; and

(vii) Displacement or other adverse actions against tenant as a result of loan prepayment handled according to subpart N of this part.

(c) *Borrower responsibilities*.

(1) Borrowers must permanently post tenant grievance procedures that meet the requirements of this section in a conspicuous place at the housing project. Borrowers also must maintain copies of the tenant grievance procedures at the housing project's management office for inspection by the tenants and the Agency upon request.

(2) Each tenant must receive an Agency summary of tenant's rights when a lease agreement is signed.

(3) If a tenant has limited English proficiency (LEP), the borrower must provide grievance procedures in both English and the primary language of the person with LEP(s). The notice must include the telephone number and address of USDA's Office of Civil Rights and the appropriate Regional Fair Housing and Enforcement Agency.

(4) If the Secretary determines that all tenants must be provided with information regarding funding that is available due to a presidential declaration of a public health emergency, the Borrower must provide information to all tenants as stated in § 3560.159(a)(3)(iii) of this chapter.

(d) *Reasons for grievance*. Tenants or prospective tenants may file a grievance in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action as provided in paragraph (e) of this section. Acceptable reasons for filing a grievance may include:

(1) Failure to maintain the premises in such a manner that provides decent, safe, sanitary, and affordable housing in accordance with § 3560.103 and applicable state and local laws;

(2) Borrower violation of lease provisions or occupancy rules;

(3) Modification of the lease;

(4) Occupancy rule changes;

(5) Rent changes not authorized by the Agency according to § 3560.205; or

(6) Denial of approval for occupancy.

(e) *Notice of adverse action*. In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. In the case

of a Borrower's proposed adverse action including denial of admission to occupancy, the Borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested, or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant, The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of ''the right to respond to the notice within ten calendar days after date of the notice'' and of ''the right to a hearing in accordance with § 3560.160 (f), which is available upon request.'' The notice must contain the information specified in paragraph (a)(2) of this section. For housing projects in areas with a concentration of non-English speaking individuals, the notice must be in English and the non-English language.

(f) *Grievances and responses to notice of adverse action.* The following procedures must be followed by tenants, prospective tenants, or borrowers involved in a grievance or a response to an adverse action.

(1) The tenant or prospective tenant must communicate to the borrower in writing any grievance or response to a notice within 10 calendar days after occurrence of the adverse action or receipt of a notice of intent to take an adverse action.

(2) Borrowers must offer to meet with tenants to discuss the grievance within 10 calendar days of receiving the grievance. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.

(3) If the grievance is not resolved during an informal meeting to the tenant or prospective tenant's satisfaction, the borrower must prepare a summary of the problem and submit the summary to the tenant or prospective tenant and the Agency within 10 calendar days The summary should include: The borrower's position; the applicant/tenant's position; and the result of the meeting. The tenant also may submit a summary of the problem to the Agency.

(g) *Hearing process.* The following procedures apply to a hearing process.

(1) *Request for hearing.* If the tenant or prospective tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after the receipt of the summary of any informal meeting.

(2) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower and tenant must select a hearing officer or hearing panel. If the borrower and the tenant cannot agree on a hearing officer, then they must each appoint a member to a hearing panel and the members selected must appoint a third member. If within 30 days from the date of the request for a hearing, the tenant and borrower have not agreed upon the selection of a hearing officer or hearing panel, the borrower must notify the Agency by mail of the situation. The Agency will appoint a person to serve as the sole hearing officer. The Agency may not appoint a hearing officer who was earlier considered by either the borrower or the tenant, in the interest of ensuring the integrity of the process.

(3) *Standing hearing panel.* In lieu of the procedure contained in paragraph (g)(2) of this section for each grievance or appeal presented, a borrower may ask the Agency to approve a standing hearing panel for the housing project.

(4) *Examination of records.* The borrower must allow the tenant the opportunity, at a reasonable time before a hearing and at the expense of the tenant, to examine or copy all documents, records, and policies of the borrower that the borrower intends to use at a hearing unless otherwise prohibited by law or confidentiality agreements.

(5) *Scheduling of hearing.* If a standing hearing panel has been approved, a hearing will be scheduled within 15 calendar days after receipt of the tenant's or prospective tenant's request for a hearing. If a hearing officer or hearing panel must be selected, a hearing will be scheduled within 15 calendar days after the selection or appointment of a hearing panel or a hearing officer. All hearings will be held at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(6) *Escrow deposits.* If a grievance involves a rent increase not authorized by the Agency, or a situation where a borrower fails to maintain the property in a decent, safe, and sanitary manner, rental payments may be deposited by the tenant into an escrow account, provided the tenant's rental payments are otherwise current.

(i) The escrow account deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel.

(ii) The escrow account must be in a Federally-insured institution or with a bonded independent agent.

(iii) Failure to make timely rent payments into the escrow account will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease.

(iv) Receipts of escrow account deposits must be available for examination by the borrower.

(7) *Failure to request a hearing.* If the tenant or prospective tenant does not request a hearing within the time provided by paragraph (f)(1) of this section, the borrower's disposition of the grievance or appeal will become final.

(h) *Requirements governing the hearing.* The following requirements will govern the hearing process.

(1) Subject to paragraph (f)(2) of this section, the hearing will proceed before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(2) The hearing must be structured so as to provide basic due process safeguards for both the borrower and the tenants or prospective tenants, which must protect:

(i) The right of both parties to be represented by counsel or another person chosen as their representative;

(ii) The right of the tenant or prospective tenant to a private hearing unless a public hearing is requested;

(iii) The right of the tenant or prospective tenant to present oral or written evidence and arguments in support of their grievance or appeal and to cross-examine and refute the evidence of all witnesses on whose testimony or information the borrower relies; and

(iv) The right of the borrower to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

(3) At the hearing, the tenant or prospective tenant must present evidence that they are entitled to the relief sought, and the borrower must present evidence showing the basis for action or failure to act against that which the grievance or appeal is directed.

(4) The hearing officer or hearing panel must require that the borrower, the tenant or prospective tenant, counsel, and other participants or spectators conduct themselves in an orderly manner. Failure to comply may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(5) If either party or their representative fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for no more than five days or may make a determination that the absent party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. Both the tenant or prospective tenant and the borrower must be notified in writing of the determination of the hearing officer or hearing panel.

(i) *Decision.* Hearing decisions must be issued in accordance with the following requirements.

(1) The hearing officer or hearing panel has the authority to affirm or reverse a borrower's decision.

(2) The hearing officer or hearing panel must prepare a written decision, together with the reasons thereof based solely and exclusively upon the facts presented at the hearing within 10 calendar days after the hearing. The notice must state that the decision is not effective for 10 calendar days to allow time for an Agency review as specified

in paragraphs (i)(3) and (i)(4) of this section.

(3) The hearing officer or hearing panel must send a copy of the decision to the tenant, or prospective tenant, borrower, and the Agency.

(4) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the Agency that the decision is not in compliance with Agency regulations.

(5) Upon receipt of written notification from the hearing officer or hearing panel, the borrower and tenant must take the necessary action, or refrain from any actions, specified in the decision.

[69 FR 69106, Nov. 26, 2004, as amended at 89 FR 20543, Mar. 25, 2024]

§§ 3560.161–3560.199 [Reserved]

§ 3560.200 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart E—Rents

§ 3560.201 General.

This subpart sets forth the requirements for establishing and collecting rents charged to occupants of multifamily housing (MFH) projects financed by the Agency.

§ 3560.202 Establishing rents and utility allowances.

(a) *General.* Rents and utility allowances for rental units in Agency-financed housing projects are set by the borrower and must be based on the operating, management and maintenance expenses and other costs related to the housing project including loan payment amounts due to the Agency.

(b) *Agency approval.* All rents and utility allowances set by borrowers are subject to Agency approval.

(c) *Rents.* As applicable, borrowers must establish the following rents:

(1) Note rent;

(2) Basic rent;

(3) U.S. Department of Housing and Urban Development (HUD) contract rents; and

(4) Low-income housing tax credit (LIHTC) rents.

(d) *Utility allowances.* In projects where tenants pay the utilities, borrowers must establish utility allowances for each size and type of rental unit in the housing project based on estimated utility costs. Borrowers must review utility allowances annually, adjust for accuracy, and submit any utility allowance changes to the Agency for approval. If no changes are needed, the borrower must notify the Agency that no changes were made. Documentation to justify utility allowances must be maintained in the housing project files.

(e) *Funds contributed to reduce rents.* If borrowers use funds contributed from sources other than the Agency (e.g., state or local grants, private contributions) to reduce general operating and management expenses, housing project rents must be reduced to reflect the funding being used to offset housing project expenses. When funds contributed from sources other than the Agency are used for housing project expenses, the borrower must certify to the Agency, in writing, that the funds provided will not need to be repaid with Agency funds. Funds from borrower contributions or rehabilitation loans will not be counted towards reducing rents.

(f) *Rents for resident manager, caretaker, or owner-occupied unit.* (1) If approved as a part of a management plan, a borrower may occupy a rental unit in a housing project when they are acting as a management agent or resident manager as specified in § 3560.102(e).

(2) If the rental unit being occupied by a borrower or resident manager is designated as a revenue-producing unit, borrowers must calculate the

rental charge to the borrower or resident manager in the same manner as tenant contributions.

(3) If the rental unit being occupied by a borrower or resident manager is designated as a non-revenue producing unit, borrowers must treat the cost of providing the unit the same as other non-revenue producing portions of the housing project.

(g) *LIHTC*. Borrowers who receive LIHTCs may establish rents in accordance with LIHTC requirements. However, borrowers are obligated to ensure that sufficient annual funds are available to cover expenses in the housing project's approved budget, including the required payments on the borrower's Agency loan. Borrowers must not use housing project funds to make up any difference between rents required under Agency program requirements and the maximum allowed rents under the LIHTC program.

§ 3560.203 Tenant contributions.

(a) *Tenant contributions*. A tenant's contribution to rent charged for a rental unit in an Agency financed housing project is based on the tenant's income, as calculated on the Agency's tenant certification forms, and the availability of Agency or non-Agency rental subsidies.

(1) *Tenant contributions*. Borrowers must set tenant contributions to rent at the highest of the following standards but never more than the note rent:

(i) Thirty percent of monthly adjusted income;

(ii) Ten percent of gross monthly income;

(iii) An amount equal to the portion of an assistance payment specifically designated to meet the household's shelter costs if the household is receiving assistance payments from a public agency; or

(iv) The basic rent, unless RHS rental assistance is provided to the household.

(2) *Tenant contribution surcharge*. Tenants in a Plan I housing project with incomes above the eligibility standards set in § 3560.152(a)(1) must pay a 25 percent surcharge in addition to note rent.

(b) *Adjustment of tenant contribution*. Borrowers must adjust the tenant contribution whenever there is a change in tenant household status or income sufficient to generate a revised tenant certification in accordance with § 3560.152(e) or an Agency approved rent or utility allowance change that affects the tenant contribution amount.

(c) *Overage*. If a tenant's tenant contribution is higher than basic rent, borrowers must remit to the Agency the rent collected in excess of the basic rent and up to the note rent.

§ 3560.204 Security deposits and membership fees.

(a) *General*. Borrowers may collect security deposits when it is reasonable and customary for the area in which the housing is located. Borrowers must hold security deposits in a separate bank or bookkeeping account in accordance with § 3560.302(c)(3).

(b) *Allowable amounts*. Borrowers may charge security deposits that are typical for the area in which the housing is located, as long as the security deposit charged a tenant does not exceed that tenant's net contribution for one month's rent or basic rent, whichever is greater.

(1) As noted in § 3560.102(b)(1)(viii) and § 3560.156(c)(18)(iii), borrowers must specify in the housing project's management plan how the amount to be charged as a security deposit will be established and must specify the amount to be charged to individual tenants in the lease to be signed by the tenant.

(2) Borrowers may charge security deposits to households receiving HUD assistance in accordance with HUD requirements.

(3) Members of a cooperative shall be required to pay a membership fee no greater than one month's occupancy charge.

(4) Additional security deposits for pets may be charged as long as the additional deposit is not greater than basic rent for 1 month. No additional security deposit for assistance animals is allowed where an assistance animal is necessary for the normal functioning of a household member with a disability.

(5) Borrowers must not charge additional security deposits based on disabilities of tenants or other personal characteristics.

(c) *Payment plans*. Borrowers must offer, for persons who are eligible for

rental assistance or Section 8 assistance, the option of paying the security deposit on an installment payment plan. Should installments not be met, the total charge may become due and payable in full.

(d) *Charges for damage or loss.* Borrowers may charge tenants for damage or loss caused or allowed by the tenant equal to the cost of the damage or loss.

(1) Borrowers must consider expenses due for addressing normal wear and tear as normal operating expenses and must not charge tenants a fee or withhold security deposits to pay for such costs.

(2) Borrowers may withhold security deposits and may charge tenants for damage or loss costs above security deposit amounts.

(e) *State and local security deposit requirements.* Borrowers must follow all state and local laws and other requirements governing the handling and disposition of security deposits.

(1) Resolution of any security deposit disputes must be handled in accordance with state and local law.

(2) Any interest earned on security deposits will accrue in accordance with state law.

(f) *Unclaimed security deposits.* Any funds in the housing project's security deposit account unclaimed by a tenant must be deposited into the housing project's general operating account.

§ 3560.205 Rent and utility allowance changes.

(a) *General.* Borrowers must fully document that changes to rents and utility allowances are necessary to cover housing or utility costs allowed under the approved budget for the housing. Any changes must apply to all similar units in the housing project.

(b) *Agency approval.* Borrowers must submit a fully documented request to the Agency to effect any rent or utility allowance change.

(1) Borrowers must obtain written consent or approval from the Agency as specified in paragraph (e) of this section before implementing any changes in the rents or utility allowances.

(2) If a borrower implements an unauthorized rent or utility allowance charge, the Agency will require the borrower to roll back rents to the last authorized rent charge, and the borrower must reimburse tenants for any unauthorized rents collected.

(c) *Timing of request for changes.* Borrowers must submit rent and utility allowance change requests in conjunction with the annual budget submission as required under § 3560.303(d). The effective dates of any approved changes will coincide with the start of the housing project's fiscal year or the start of the season for seasonally occupied farm labor housing. However, the Agency will accept borrower requests for rent or utility allowance changes anytime during the year if a change is necessary to preserve the financial integrity of the housing complex and the financial distress is due to circumstances beyond the borrower's control.

(d) *Tenant notification.* Borrowers must notify tenants and solicit their comments to proposed rent or utility allowance change requests that are submitted to the Agency at the same time that the initial request is made to the Agency.

(1) Tenants will be given 20 calendar days to provide their comments to the Agency.

(2) Borrowers must deliver the proposed rent or utility allowance change request notice to each tenant and post at least one copy of the notice at the housing project site in a visible location frequented by tenants.

(e) *Approval.* If the Agency approves a rent or utility allowance increase request on which the comments were solicited, tenants or members receiving notice of a proposed rent or utility allowance change in accordance with paragraph (d)(2) of this section shall be notified of the rent or utility allowance change to be effective, at least 30 calendar days from the date of the notification.

(f) *Denial of change request.* The Agency may deny a rent or utility allowance increase request in the following circumstances.

(1) The Agency determines that the borrower did not provide sufficient information to justify operating costs.

(2) The borrower is out of compliance with Agency requirements including any corrective action requirements

agreed to in a workout agreement developed according to subpart J of this part.

(3) Sufficient funds are being collected under existing rents to meet approved expenses.

(g) *Notice of denial.* If the rent change will not be approved as requested, the Agency will notify the borrower of the denial in accordance with § 3560.303(d).

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11282, Mar. 1, 2022]

§ 3560.206 Conversion to Plan II (Interest Credit).

The Agency encourages any borrower not on Plan II to convert to Plan II to provide more favorable rent costs to very-low, low, and moderate-income households.

§ 3560.207 Annual adjustment factors for Section 8 units.

(a) *General.* For rental units receiving project-based Section 8 assistance, the Agency will review rents annually without regard to HUD's automatic annual adjustment.

(b) *Establishing rents in housing with HUD rent assistance.* Borrowers will set basic, note, and HUD contract rents for housing receiving HUD project-based Section 8 assistance, as specified in § 3560.202(c).

(c) *Excess HUD rents.* When permitted by the Agency interest credit agreement, the Agency may reduce or cancel the interest credit on the housing, if excess HUD rents deposited in the reserve account result in the reserve account being funded beyond the fully funded level approved by the Agency.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11282, Mar. 1, 2022]

§ 3560.208 Rents during eviction or failure to recertify.

(a) *Rents during eviction.* If a tenant is appealing an eviction and the borrower refuses to accept rent payment during the appeal of the eviction, the tenant must escrow required rent payments to safeguard their occupancy, unless State or local laws specify otherwise.

(b) *Rents when tenants fail to recertify.* If a borrower can document that a tenant received a notice specifying a tenant recertification date and the tenant fails to comply by the specified date or fails to cooperate with verification or other procedures related to the tenant's recertification so that the tenant recertification cannot be completed by the recertification date, the borrower, within 10 days of the recertification date, shall give the tenant and the Agency written notification that:

(1) Termination proceedings are being initiated, in accordance with § 3560.159; and

(2) The tenant will be charged note rent until the tenant's lease is terminated.

(c) *Unauthorized assistance due to tenant recertification failure.* Any unauthorized assistance received because of the tenant's failure to be recertified will be collected in accordance with the provisions of subpart O of this part.

(d) *Rents when borrowers fail to recertify tenants.* If a borrower cannot document that a tenant received a recertification notice, and a tenant is not recertified within 12 months of the most recently executed tenant certification, tenants shall continue to make net tenant contributions to rent based on their most recent tenant certification and the borrower must remit to the Agency full overage as if the tenant was paying the note rent until the tenant is recertified.

(e) *Unauthorized assistance due to borrower recertification failure.* Any unauthorized assistance received as a result of the borrower's failure to recertify a tenant will be collected from the borrower in accordance with the provisions of subpart O of this part and may not be paid from housing project funds or funds collected from the tenant.

§ 3560.209 Rent collection.

(a) *General.* Borrowers must collect rents on a monthly basis and maintain a system for collecting and tracking rents.

(b) *Fees for late rent payments.* Borrowers may adopt a late fee schedule for overdue rental payments. Late fee schedules must be submitted to the Agency for approval as part of the housing project's management plan, be in accordance with State and local law, and consistent with the following requirements:

(1) A grace period of 10 days from the rental payment due date must be allowed for all tenants.

(2) The late fee must not exceed the higher of $10 or an amount equal to 5 percent of the tenant's gross tenant contribution.

(3) Tenants receiving housing benefits from sources other than the Agency may be subject to the late rent fee requirements of the other funding sources.

(c) *Improperly advanced rents.* Improperly advanced interest credit or rental assistance is considered unauthorized assistance and is subject to recapture in accordance with subpart O of this part.

§ 3560.210 Special note rents (SNRs).

When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge an SNR, which is less than note rent but higher than basic rent, to attract or retain tenants whose income level would require them to pay special note rent. The requirements for requesting and receiving an SNR are established under § 3560.454.

§§ 3560.211–3560.249 [Reserved]

§ 3560.250 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart F—Rental Subsidies

§ 3560.251 General.

This subpart contains policies for borrower administration and tenant use of rental subsidies in Agency financed multi-family housing (MFH) projects.

§ 3560.252 Authorized rental subsidies.

(a) *General.* The purpose of rental subsidies is to reduce amounts paid by tenants for rent. Rental subsidies equal the difference between the approved shelter costs and tenant contributions as calculated in accordance with § 3560.203(a)(1).

(b) *Forms of rental subsidies.* Rental subsidies may be in the form of:

(1) Agency rental assistance;

(2) Agency housing vouchers;

(3) HUD section 8 assistance, including project-based and vouchers;

(4) Private rental subsidies; or

(5) State or local government rental subsidies.

(c) *Multiple rent subsidies.* (1) Multiple types of rent subsidies may be used in the same MFH project.

(2) Tenants with subsidies from sources other than the Agency may be eligible for Agency rental assistance if all the following conditions are met.

(i) The tenant qualifies for Agency rental assistance.

(ii) The rental subsidy the tenant is receiving is not a HUD voucher.

(iii) The rental subsidy being received by the tenant is less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

(d) *Agency rental assistance (RA).* Agency RA is obligated to MFH projects on a rental unit basis. The obligation is composed of a number of rental units and associated dollar amounts of RA specified in a RA agreement with a borrower. The following types of Agency RA may be obligated to a housing project.

(1) *Renewal units.* RA may be assigned to a housing project to replace existing rental unit obligations because funds associated with the units have been fully disbursed.

(2) *New construction units.* RA may be provided in conjunction with initial Agency loans for construction or substantial rehabilitation of MFH projects.

(3) *Servicing units.* Additional RA may be provided to operational MFH projects as a part of the Agency's general loan servicing or preservation activities.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11283, Mar. 1, 2022]

§ 3560.253 [Reserved]

§ 3560.254 Eligibility for rental assistance.

(a) *Eligible housing.* Housing projects eligible for Agency RA include the following types of projects.

(1) Housing projects that operate under an Interest Credit Plan II RA agreement.

(2) Housing projects financed with an Agency off-farm labor housing loan or grant. On-farm labor housing is not eligible for rental assistance.

(3) Housing projects financed with a direct or insured Rural Rental Housing loan approved prior to August 1, 1968, and operated under an interest credit agreement that identifies the housing project as a Plan RA project.

(4) Housing projects financed from Agency and other sources if the conditions of § 3560.66 are met.

(b) *Eligible units.* Borrowers may not request RA for rental units that the Agency determines are not habitable in accordance with § 3560.103.

(c) *Eligible households.* Households eligible for rental assistance are those:

(1) With very low- or low-incomes who are eligible to live in MFH;

(2) Whose net tenant contribution to rent determined in accordance with § 3560.203(a)(1) is less than the basic rent for the unit;

(3) Whose head of the household is a U.S. citizen or a legal alien as defined in § 3560.11;

(4) Who meet the occupancy rules/policies established by the borrower in accordance with § 3560.155(e);

(5) Who have a signed, unexpired tenant certification form on file with the borrower; and

(6) Who is not delinquent on any Agency unauthorized assistance repayment agreements.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11283, Mar. 1, 2022]

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.254(c)(3), implementation of the words ''Whose head of the household is a U.S. citizen or a legal alien as defined in § 3560.11.'' was delayed indefinitely.

§ 3560.255 Requesting rental assistance.

(a) *Submitting requests.* Borrowers seeking an allocation of rental assistance for MFH must request the rental assistance from the Agency as follows.

(1) *Renewal rental assistance.* To the extent sufficient funds are available, the Agency will automatically renew expiring rental assistance agreements at the existing number of units.

(2) *New construction units.* Loan applicants proposing to use Agency rental assistance must include their request for rental assistance in their loan proposal in accordance with § 3560.56.

(3) *Servicing units.* Borrowers requesting rental assistance must have tenants or eligible tenant applicants on a waiting list who are RA eligible.

(b) *Denial of requests.* (1) If a rental assistance request is denied due to the loan applicant's or borrower's ineligibility, the Agency will send the loan applicant or borrower written notification of the decision with an explanation of the denial.

(2) If a rental assistance request to renew expiring rental assistance agreements is denied because funding is not available, the Agency will notify the borrower and the borrower must notify the tenants of rent increases in accordance with their lease and state and local law. Tenants losing rental assistance due to a lack of Agency funding may quit the lease and vacate the housing without penalty in accordance with the terms of their lease.

(3) Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available, beginning with the month following the date of the appeal or funding review decision or beginning in the first month that RA funding becomes available.

§ 3560.256 Rental assistance payments.

(a) *Borrower submission requirements.* The borrower must submit monthly requests for RA payments to the Agency based on occupancy as of the first day

of the month previous to the month in which the request is being made.

(b) *Basis of RA requests.* Borrower requests for RA payments must be based on the difference between the basic rent plus utility allowances for each rental unit eligible for RA and the net tenant contribution of the tenant.

(c) *Payments to borrower.* Prior to making RA payments to a borrower, the Agency will deduct from the approved RA payment amount any unpaid loan payments, late fees, and other amounts which the borrower owes to the Agency.

(d) *Utility payments to tenants.* The borrower must pay tenants the difference between the utility allowance and the tenant's net contribution to rent when a tenant receiving RA is billed directly for utilities and the utility allowance exceeds the net tenant contribution to rent. Such utility payments to tenants must be made on a monthly basis.

(e) *Administrative errors.* Borrowers are responsible for correcting borrower errors made in regard to RA requests for payments. In accordance with subpart O of this part, borrowers will be required to repay the Agency for any unauthorized RA received or any unauthorized use of RA except in certain cases of tenant error or fraud.

§ 3560.257 Assigning rental assistance.

(a) *Priorities for rental assistance.* (1) Borrowers must use the following priorities when assigning available rental assistance.

(i) First priority is to eligible very low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(ii) Second priority, if the housing project has vacant rental units, is to eligible very low-income applicants on the waiting list.

(iii) Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(iv) Fourth priority, if the housing project has vacant rental units, is to eligible low-income applicants on the waiting list.

(v) Fifth priority is to households which are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations.

(2) In order to provide rental assistance to the third, fourth, and fifth priority categories, a borrower must fully document either that there are no very low-income households on the housing project's waiting list or that occupancy by low-income households is limited as follows:

(i) For housing occupied on or after November 30, 1983, no more than 5 percent of the units in the housing are occupied by low-income households; or

(ii) For housing occupied before November 30, 1983, no more than 25 percent of the units in the housing are occupied by low-income households.

(b) *Continued eligibility.* Tenants receiving rental assistance may continue to do so as long as they remain eligible for occupancy and for rental assistance under § 3560.254(c), and as long as rental assistance units are available.

(c) *Assignment of rental assistance.* Except as provided in § 3560.454(c) and using the priorities given in paragraph (a) of this section, borrowers must assign available rental assistance units as soon as rental assistance units become available.

(1) When a rental assistance unit is assigned to an eligible existing tenant on a day other than the first day of a month, the Agency will not provide the borrower rental assistance for the newly assigned existing tenant and the tenant will not pay reduced rental charges until the first of the month following the assignment of the rental assistance.

(2) When an eligible applicant moves into a rental assistance unit on a day other than the first day of a month, they will pay a prorated rent based on the number of days they occupy the rental assistance unit and the amount of rental assistance they will be receiving.

(d) *Incorrectly assigned rental assistance.* Incorrectly assigned rental assistance is viewed as unauthorized assistance and handled in accordance with subpart O of this part.

§ 3560.258 Terms of agreement.

(a) *Term of agreement.* Rental assistance agreements will have a term of the later of 12 months from the first disbursement of the obligation or when funds under the agreement are exhausted.

(b) *Replacing expiring obligations.* Rental assistance agreements may be renewed in accordance with § 3560.255(a)(1).

[87 FR 11283, Mar. 1, 2022]

§ 3560.259 Transferring rental assistance.

(a) *Agency authority.* The Agency may transfer rental assistance in the following instances:

(1) To accompany the transfer of a housing project to a different borrower;

(2) After a voluntary conveyance or a foreclosure sale;

(3) After a liquidation, prepayment, or natural maturity;

(4) To the extent permitted by law, when any rental assistance units have not been used for a 6-month period (Section 515) or a 12-month period (Section 514 or 516); or

(5) When the loan cannot be closed.

(b) *Agency review before transferring rental assistance.* The Agency must perform a review to determine if all eligible tenants in the project are receiving rental assistance before the Agency transfers it to another project.

(c) *Transferring rental assistance for displaced tenants.* The Agency may transfer rental assistance from one housing project to another eligible housing project for a tenant who is moving due to displacement as a result of prepayment, liquidation, or a natural disaster. The tenant must begin using the rental assistance within 4 months of the transfer or the RA will become available for use by the next rental assistance eligible tenant in the housing project.

(d) *Agency use of obligation balances.* In lieu of transferring rental assistance units, the Agency may elect to utilize the remaining obligation balances of units identified in paragraphs (a)(2) and (3) of this section for renewal purposes.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11283, Mar. 1, 2022]

§ 3560.260 Rental subsidies from non-Agency sources.

(a) *General.* The Agency may authorize the use of rental subsidies from sources other than the Agency in Agency financed housing projects. The Agency will make no commitment to providing Agency rental assistance at the expiration of the rental subsidies from other sources.

(b) *HUD vouchers.* For tenants with HUD vouchers, the borrower must set the rental unit rent at the basic rent or the rent standard set by the public housing authority, whichever is less. The public housing authority distributing the HUD vouchers may set the utility allowance.

(c) *Loan proposals using non-Agency rental subsidy.* Loan applicants or borrowers proposing to use rental subsidy from sources other than the Agency must provide:

(1) Documentation demonstrating that a market exists for households eligible for the subsidy and the households are at income levels that would benefit from the amount of rental subsidy that will be provided;

(2) A plan describing actions to be taken when the rental subsidy expires to minimize the impact on tenants losing the rental assistance and to avoid displacement; and

(3) A copy of the project-based rental assistance agreement to be signed by the borrower and the provider of the rental assistance.

(d) *Rental subsidy agreement.* The borrower and the provider of rental subsidies from sources other than the Agency must execute a rental subsidy agreement and submit a copy of the agreement to the Agency. At a minimum, the rental subsidy agreement between the borrower and the source of the rental subsidy must include the following provisions:

(1) A description of how the subsidy will be paid. The rental subsidy payments may be paid directly to the tenants, to the borrower on behalf of the tenants, or deposited to a separate account established for the subsidy. The tenants must be advised of the amount and source of the subsidy through the lease or a supplement to the lease.

(2) The life of a project-based rental subsidy agreement with a non-Agency

source must be similar to existing or current Agency rental assistance funding levels and sufficient funds must be set aside to assure availability of the rental subsidy for this term. The method of supplying the funds must be clearly established.

§ 3560.261 Improperly advanced rental assistance.

Improperly advanced RHS rental assistance resulting from tenant or borrower error or fraud constitutes unauthorized assistance and the provisions of subpart O of this part apply.

§§ 3560.262–3560.299 [Reserved]

§ 3560.300 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart G—Financial Management

§ 3560.301 General.

This subpart contains requirements for the financial management of Agency-financed multi-family housing (MFH) projects, including accounts, budgets, and reports. Financial management systems and procedures must cover all housing operations and provide adequate documentation to ensure that program objectives are met.

[82 FR 49285, Oct. 25, 2017]

§ 3560.302 Accounting, bookkeeping, budgeting, and financial management systems.

(a) *General.* Borrowers must establish the accounting, bookkeeping, budgeting and financial management procedures necessary to conduct housing project operations in a financially safe and sound manner. Borrowers must maintain records in a manner suitable for an audit, and must be able to report accurate operational results to the Agency from these accounts and records.

(b) *Acceptable methods of accounting.* (1) Borrowers are required to use the accrual method of accounting in preparing annual financial reports, as identified in § 3560.308.

(2) Borrowers must describe their accounting, bookkeeping, budget preparation, and financial reporting procedures in their management plan.

(3) Borrowers must notify the Agency of any changes in their accounting, bookkeeping, budget preparation, and financial management reporting systems through a revision of their management plan.

(c) *Account requirements.* (1) As used in this paragraph, the term account is used interchangeably to mean a bookkeeping account (ledger) or a bank account.

(2) At a minimum, borrowers must maintain the accounts required by their loan agreement or resolution.

(3) The following list identifies the financial accounts that are required for each housing project. Additional accounts may be required by third-party lenders. Accounts are to be funded in the following priority order, except that paragraphs (c)(3)(iv), (v), and (vi) of this section are funded directly by tenant security deposits or patron capital receipts respectively:

(i) General operating account;

(ii) Real estate tax and insurance account (if not part of the general operating account or unless escrowed by the Agency);

(iii) Reserve account (unless escrowed by the Agency in accordance with § 3560.65);

(iv) Tenant security deposit account;

(v) Membership fee account for cooperative housing; and

(vi) For cooperative housing only, a patron capital account.

(4) Amounts escrowed for taxes and insurance may be kept in the general operating account as long as the accounting system reflects the amount escrowed.

(5) Regardless of the number or types of accounts established, the borrower must meet the following requirements:

(i) All housing project funds must be held only in financial institution accounts insured by an agency of the Federal Government or held in securities meeting the conditions in this subpart.

(ii) Funds maintained in an institution may not exceed the limit established for Federal deposit insurance. Funds exceeding the Federally insured limit under a Tax ID Number must be moved to a different qualified banking institution that will ensure the funds unless the current financial institution provides additional surety such as a collateral pledge that may already be in place.

(iii) All funds and proceeds in any account must be used only for authorized purposes as described in Agency's regulations, loan or grant documents. Use of funds for non-program purposes constitutes non-monetary default as described in § 3560.452(c).

(iv) All funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, are considered assets of the property and must be held in trust by the borrower for the loan obligations until used and serve as security, through transfers or assumptions for the Agency loan or grant until all outstanding balances are satisfied.

(v) Borrowers must be able to account for housing project funds with accounting methods or practices that maintain the proprietary identity of the funds for each project. A borrower may operate one account for multiple projects as long as the funds for each project themselves are accounted for separately.

(vi) Each borrower must have access to at least one demand deposit or checking account.

(vii) Housing project funds may not be pledged as collateral for debts without Agency approval. If such a need arises for an eligible program purpose, the borrower must obtain prior Agency approval.

(6) Tenant security deposit accounts or membership fee accounts and patron capital accounts must be maintained in a separate account in trust for the tenants or members and handled in a manner consistent with state and local laws.

(d) *Documentation of separate accountability.* Housing project funds may be combined in one or more bank accounts for two or more housing projects as long as the borrower's accounting system segregates and tracks funds for each project separately.

(1) When borrowers request Agency approval of an accounting system that combines funds from two or more housing projects, they must demonstrate to the Agency that the accounting systems are structured to segregate and maintain separate accountability for each housing project. Such demonstration must include a statement issued by a Certified Public Accountant (CPA) stating that the accounting system is structured to meet this principle of separate accountability.

(2) The accounting system and management plan must document the method for prorating revenue and expenses that are not clearly identifiable as being associated with a particular housing project.

(3) Funds for housing projects managed by the same management company must not be co-mingled.

(e) *Records.* (1) Borrowers must retain all housing project financial records, books, and supporting material for at least three years after the issuance of their financial reports. Upon request, these materials will immediately be made available to the Agency, its representatives, the USDA Office of Inspector General (OIG), or the Government Accountability Office (GAO).

(2) Borrower accounts and records will be kept or made available in a location with reasonable access for inspection, review, and copying by the Agency, other authorized representatives of the USDA, OIG, or GAO.

(3) Automated records may be used if they meet the conditions of paragraph (f) of this section.

(f) *Forms generated by automated systems.* (1) The forms and formats approved for use by borrowers may be prepared on automated systems when they meet the requirements of this paragraph.

(2) Forms may be automated if they meet the following requirements:

(i) The identical wording and nomenclature of an official form must be included in the automated version of the form, including the Office of Management and Budget (OMB) approval number.

(ii) The logic or mathematical calculation of an official form must be the same in an automated version of the form.

(iii) The name or logo of the source of the automated form must be visible on each output of the automated form.

(iv) Output size must be 8½ × 11 inches.

(v) Nominal spacing adjustment and colored paper are allowed.

(g) *Farm Labor Housing.* Borrowers with on-farm labor housing units will be considered in compliance with this section by virtue of completing the record keeping and reporting requirements outlined in subpart M of this part.

[69 FR 69106, Nov. 26, 2004, as amended at 82 FR 49285, Oct. 25, 2017; 87 FR 11283, Mar. 1, 2022]

§ 3560.303 Housing project budgets.

(a) *General requirements.* (1) Using an Agency-approved format, borrowers must submit to the Agency for approval a proposed annual housing project budget prior to the start of the housing project's fiscal year. The capital budget section of the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in § 3560.103(c) and will assist the Agency on utilization of the reserve account for current or future rent increase requests.

(2) Budget projections regarding income, expenses, vacancies, and contingencies must be realistic given the housing project's history, current circumstances, and market conditions.

(3) Borrowers must document that the operating expenses included in the budget accurately reflect reasonable and necessary costs to operate the housing project in a manner consistent with the objectives of the loan and in accordance with the applicable Agency requirements in this part.

(4) Borrower must submit supporting documentation to justify housing project utility allowances.

(5) Upon Agency request, borrowers must submit any additional documentation necessary to establish that applicable Agency requirements in this part have been met.

(b) *Allowable and unallowable project expenses.* Expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes.

(1) *Allowable expenses.* Allowable expenses include those expenses that are directly attributable to housing project operations and are necessary to carry out successful operations.

(i) Housing project expenses must not duplicate expenses included in the management fee as defined in § 3560.102(i).

(ii) Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. This includes managers, maintenance staff, and temporary help including their:

(A) Gross salary;

(B) Employer Federal Insurance Contributions Act (FICA) contribution;

(C) Federal unemployment tax;

(D) State unemployment tax;

(E) Workers compensation insurance;

(F) Health insurance premiums;

(G) Cost of fidelity or comparable insurance;

(H) Leasing, performance incentive, or annual bonuses that are clearly provided for by the site manager salary contract;

(I) Direct costs of travel to off-site locations by on-site staff for property business or training; and/or

(J) Retirement benefits.

(iii) Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, and the preparation of all legal documents.

(iv) All outside account and auditing fees, if required by the Agency, directly

related to the preparation of the annual audit, partnership tax returns, and 401–K's, as well as other outside reports and year-end reports to the Agency, or other governmental agency.

(v) All repair and maintenance costs for the project including:

(A) Maintenance staffing costs and related expenses.

(B) Maintenance supplies.

(C) Contract repairs to the projects (*e.g.,* heating and air conditioning, painting, roofing).

(D) Make ready expenses including painting and repairs, flooring replacement, and appliance replacement as well as drapery or mini-blind replacement. (Turnover maintenance.)

(E) Preventive maintenance expenses including occupied unit repairs and maintenance as well as common area systems repairs and maintenance.

(F) Snow removal.

(G) Elevator repairs and maintenance contracts.

(H) Section 504 and other Fair Housing compliance modifications and maintenance.

(I) Landscaping maintenance, replacements, and seasonal plantings.

(J) Pest control services.

(K) Other related maintenance expenses.

(vi) All operational costs related to the project including:

(A) The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.

(B) Photocopying or printing expense related to actual production of project brochures, marketing pieces, forms, reports, notices, and newsletters are allowable project expenses no matter what location or point of origin the work is performed including outsourcing the work to a professional printer.

(C) All bank charges related to the property including purchases of supplies (*e.g.,* checks, deposit slips, returned check fees, service fees).

(D) Costs of site-based telephone including initial installation, basic services, directory listings, and long-distances charges.

(E) All advertising costs related specifically to the operations of that project. This can include advertising for applicants or employees in newspapers, newsletters, social media, radio, cable TV, and telephone books.

(F) Postage expense to mail out rental applications, third-party (asset income and adjustments to income) verifications, application processing correspondence (acceptance or denial letters), mailing project invoice payments, required correspondence, report submittals to various regulatory authorities for the managed property are allowable project expenses no matter what location or point of origin the mail is generated.

(G) State taxes and other mandated Tribal, State, or local fees as well as other relevant expenses required for operation of the property by a third-party governmental unit. Costs of continuation financing statements and site license and permit costs.

(H) Expenses related to site utilities.

(I) Site office furniture and equipment including site-based computer and copiers. Service agreements and warranties for copiers, telephone systems and computers are also included (if approved by the Agency).

(J) Real estate taxes (personal tangible property and real property taxes) and expenses related to controlling or reducing taxes.

(K) All costs of insurance including property liability and casualty as well as fidelity or crime and dishonesty coverage for on-site employees and the owners.

(L) All bookkeeping supplies and recordkeeping items related to costs of collecting rents on-site.

(M) All office supplies and copies related to costs of preparing and maintaining tenant files and processing tenant certifications to include electronic storage.

(N) Public relations expense relative to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. Chamber of Commerce dues, contributions to local charity events, and sponsorship of tenant activities, are examples.

(O) Tax credit compliance monitoring fees imposed by Housing Finance Authorities (HFAs).

(P) All insurance deductibles as well as adjuster expenses.

(Q) Professional service contracts (audits, owner-certified submissions in accordance with § 3560.308(a)(2), tax returns, energy audits, utility allowances, architectural, construction, rehabilitation and inspection contracts, capital needs assessments (CNA), etc.).

(R) Association dues to be paid by the project should be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

(S) Legal fees if found not guilty of civil lawsuits, commercially reasonable legal expenses and costs for defending or settling lawsuits.

(vii) With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to reimburse actual and typical asset management expenses directly attributable to ownership responsibilities. Such expenses may include:

(A) Errors and omissions insurance policy for the Board of Directors. The cost must be prorated if the policy covers multiple Agency housing properties.

(B) Board of Directors review and approval of proposed Agency's annual operating budgets, including proposed repair and replacement outlays and accruals. The cost must be prorated if the policy covers multiple Agency housing properties.

(C) Board of Directors review and approval of capital expenditures, financial statements, and consideration of any management comments noted. The cost must be prorated if the policy covers multiple Agency housing properties.

(D) The cost must be prorated if the policy covers multiple Agency housing properties.

(viii) Agency approved third party debt service for the project.

(2) *Unallowable expenses.* Housing project funds may not be used for any of the following:

(i) Equity skimming as defined in 42 U.S.C. 543(a);

(ii) Purposes unrelated to the housing project;

(iii) Reimbursement of inaccurate or false claims;

(iv) Court ordered settlement agreements, court ordered decrees, legal fees, or other costs that result from the filing of civil rights complaints or legal action alleging the borrower, or a representative of the borrower, has committed a civil rights violation. It is inappropriate to charge for legal services to represent any interest other than the borrower's interest (*i.e.*, representing a general partner or limited partner to defend their individual owner interest is not allowable);

(v) Fines, penalties, and legal fees where the borrower or a borrower's representative has been found guilty of violating laws, including, but not limited to, civil rights, and building codes. Charging for payment of penalties including opposition legal fees resulting from an award finding improper actions on the part of the owner or management agent is generally an inappropriate project expense. The party responsible generally pays such expenses for violating the standards or by their insurance carriers;

(vi) Association dues unless related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project;

(vii) Pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract;

(viii) Billing for parties or gifts to management agent staff;

(ix) Billing for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office;

(x) Billing the project for computer hardware, some software, and internal connections that are beyond the scope and size reasonably needed for the services supplied (*i.e.*, purchasing equipment or software for use by a site manager that is clearly beyond that needed to support project operations). Note that computer learning center activities benefiting tenants are not covered in this prohibition; or

(xi) Costs of tenant services.

(c) *Priorities.* The priority order of planned and actual budget expenditures will be:

(1) Senior position lienholder, if any;

(2) Operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements;

(5) All accounts payable;

(6) Other authorized expenditures; and

(7) Return on owner investment.

(d) *Determining if expenses are reasonable.* Generally, expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes. If such value is not apparent, the service or expense should be examined.

(1) Administrative expenses for project operations exceeding 23 percent, or those typical for the area, of gross potential basic rents and revenues (*i.e.,* referred to as gross potential rents in industry publications) highlight a need for closer review for unnecessary expenditures. Budget approval is required, and project resources may not always permit an otherwise allowable expense to be incurred if it is not fiscally prudent in the market.

(2) Excessive administrative expenses can result in inadequate funds to meet other essential project needs, including expenditures for repair and maintenance needed to keep the project in sound physical condition. Actions that are improper or not fiscally prudent may warrant budget denial and/or a demand for recovery action.

(e) *Agency review and approval.* (1) The Agency will only approve housing project budgets that meet the requirements of paragraphs (a) through (d) of this section.

(2) If no rent change is requested, borrowers must submit budget documents for Agency approval 60 calendar days prior to the start of the housing project's fiscal year. The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a) through (d) of this section. The borrower will have 10 days to submit the additional material.

(3) If a rent change is requested, the borrower must submit budget documents to the Agency and notify tenants of the requested rent change at least 90 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a) through (d) of this section, or if the rent and utility allowance request has been denied in accordance with § 3560.205(f). The borrower will have 10 days to submit the additional material to address any issues raised by the Agency.

(ii) The rent change is not approved until the Agency issues a written approval. If there is no response from the Agency within the 30-day period, the rent change is considered automatic. The following budgets are not eligible for automatic approval:

(A) Budgets with rent increases above $25 per unit; and

(B) Budgets that are submitted late or that miss other deadlines set by the Agency.

(4) If the Agency denies the budget approval, the Agency will notify the borrower in writing.

(5) If budget approval is denied, the borrower shall continue to operate the housing project based on the most recently approved budget.

[87 FR 11283, Mar. 1, 2022]

§ 3560.304 Initial operating capital.

(a) *Purpose.* To provide a source of capital for start-up costs, such as the purchase of equipment, and paying operating, maintenance, and debt service expenses. Borrowers are required to make an initial operating capital contribution to the general operating account as described in § 3560.64.

(b) *Authorized uses of initial operating capital.* Initial operating capital may be used only to pay for approved budgeted expenses.

(c) *Withdrawal of initial operating capital.* Initial operating capital funds may be withdrawn by a borrower if:

(1) The initial operating capital was provided from the borrower's own funds;

(2) The borrower requests the withdrawal after the second year of housing project operations and prior to the 7th year of operations;

(3) The housing project has had a 90 percent occupancy rate for a period of 12 months prior to the withdrawal request;

(4) The withdrawal will not affect the financial viability of the housing project;

(5) Contributions to the reserve account are at authorized levels;

(6) The withdrawal request will not result in rent increases; and

(7) There are no outstanding deficiencies in management's physical maintenance of the housing project.

§ 3560.305 Return on investment.

(a) *Borrower's return on investment.* Borrowers may receive a return on their investment (ROI) in accordance with the terms of their loan agreement and the following:

(1) If there is a positive net cash flow in housing project operations, the ROI may be taken by the borrower after the housing project's fiscal year, provided that the balance of the reserve account is equal to or greater than required deposits minus authorized withdrawals. If the annual financial reports indicate that an ROI should not have been taken, borrowers will be required to return any unauthorized ROI.

(2) If there is negative cash flow in housing project operations, the Agency may authorize the borrower to take the ROI only after the Agency has reviewed the housing project's annual financial reports and determines:

(i) Surplus cash exists in either the general operating account as defined in § 3560.306(d)(1) or the reserve account, if the balance is greater than the required deposits minus authorized withdrawals.

(ii) The housing project has sufficient funds to address identified capital or operational needs.

(b) *Unpaid return on investment.* An earned, but unpaid ROI for the previous year only may be requested by the borrower and authorized by the Agency under the provisions of § 3560.305(a)(2) provided the current year's ROI has been paid first and a rent increase is not required to generate funds to pay the unpaid ROI.

§ 3560.306 Reserve account.

(a) *Purpose.* To meet the major capital expense needs of a housing project, borrowers must establish and maintain a reserve account, unless escrowed by the Agency.

(b) *Financial management of the reserve account.* Unless otherwise approved by the Agency, borrower management of the reserve account is subject to the requirements of 7 CFR part 1902, subpart A, regarding supervised bank accounts.

(c) *Funding of the reserve account.* Borrowers must make payments to the reserve account in the amount established in loan documents, beginning with the first loan payment or a date specified in loan documents.

(d) *Transfer of surplus general operating account funds.* (1) The general operating account will be deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables and priorities, exceeds 20 percent of the operating and maintenance expenses. If the borrower is escrowing taxes and insurance premiums, include the amount that should be escrowed by year end and subtract such tax and insurance premiums from operating and maintenance expenses used to calculate 20 percent of the operating and maintenance expenses.

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year per paragraph (d)(1) of this section, the borrower will be required to use such surplus for one of the following (not in priority order): use the surplus funds to address capital needs, make a deposit in the reserve account or reduce the debt service on the borrower's loans, including Agency-approved third-party debt. The prior written consent of the Agency must be obtained before surplus funds may be used to pay debt service on third-party debt. At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds from the general operating account to the reserve account, the transfer does not change the future required contributions to the reserve account.

(e) *Account requirements.* Borrowers must establish and maintain the reserve account according to § 3560.65, § 3560.302(c)(5), and the following requirements:

(1) Reserve accounts must be deposited in interest-bearing accounts or securities; and

(2) Reserve accounts must be supervised accounts that require the Agency to approve all withdrawals; except, this requirement is not applicable when loan funds guaranteed by the Section 538 GRRH program are used for the construction and/or rehabilitation of a direct MFH loan project. Direct MFH loan borrowers, who are exempted from the supervised account requirement, as described in this section, must follow Section 538 GRRH program regulatory requirements pertaining to reserve accounts. In all cases, Section 538 lenders must get prior written approval from the Agency before reserve account funds involving a direct MFH loan project can be disbursed to the borrower.

(f) *Funds invested in securities.* In addition to the requirements specified in paragraph (e) of this section, the following requirements apply when reserve funds are invested in securities:

(1) The reserve account must be held either at a Federally insured domestic institution such as a bank, savings and loan association, credit union, or at a domestic institution authorized to sell securities.

(2) The borrower must record the price actually paid for the securities. When designated as a reserve deposit, the price paid must equal the required contribution to reserves.

(3) Borrowers must be knowledgeable about industry practices and consider the impact of typical fees and charges for purchases and sales and maintenance of an account when making investment decisions. Such fees may be paid for out of reserves, only with the consent of the Agency. Housing project funds may not be used to pay for a financial advisor.

(g) *Use of the reserve account.* (1) Borrowers must request Agency approval of reserve account withdrawals prior to the withdrawal. Borrowers must inform the Agency of planned uses of reserve accounts in their annual capital budget if known at budget planning time. Any item on the approved capital budget does not require additional preapproval by the Agency.

(2) Borrowers should include any needed capital improvements based on the needs identified in an Agency approved Capital Needs Assessment (if obtained) are completed within a reasonable timeframe.

(3) The Agency will indicate any conditions governing withdrawals from a reserve account at the time it approves the withdrawal.

(4) In emergency situations, the Agency may specify special procedures to provide an expedited approval process for the use of the reserve account.

(5) The Agency may approve the use of reserve funds for operating costs when circumstances that are determined by the Agency to be beyond the borrower's control have resulted in a shortfall in the housing project's general operating account.

(6) Funds from the replacement reserve account cannot be used to pay any fees associated with the Section 538 GRRH loan guarantee, as determined by the Agency.

(h) *Allowable uses.* Allowable uses of reserve funds include the following:

(1) Major capital improvements and replacements.

(2) Housing project operating expenses provided the requirement of paragraph (g)(4) of this section has been met, including:

(i) Payments due on the loan, or

(ii) Payment of a return on investment at the end of the borrower's fiscal year if such payment comes from surplus operating funds in the reserve account.

(3) With Agency approval, borrowers operating on a for-profit or a limited profit basis may make an annual withdrawal from the reserve account, equal to no more than 25 percent of the interest earned on a reserve account during the prior year.

(4) For other purposes, which in the judgment of the Agency will promote the loan purposes, strengthen the security or facilitate, improve, or maintain the housing and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security.

(i) *Records.* Borrowers must maintain records documenting all expenses that were paid by withdrawals from the reserve account.

(j) *Changes to reserve requirements.* (1) As projects age, the required reserve account level may be adjusted to meet anticipated ''life-cycle'' needs, including equipment and facility replacement costs, by amending the loan agreement/resolution.

(2) The Agency will allow for an annual adjustment to increase reserve account funding levels by Operating Cost Adjustment Factor (OCAF) as published by HUD annually. This will require a modification to the Loan agreement and the increase documented with budget submission as outlined in § 3560.303.

(3) The Agency may approve a change in the reserve account funding level based on the findings of an approved capital needs assessment. The approval to increase reserve account funding levels will take into consideration the housing project's approved budget and the housing project's ability to support increased reserve account deposits without causing basic rents to exceed conventional rents for comparable units in the area.

(k) *Excess reserves.* Amounts in the reserve account which exceed the total required by the loan or grant agreement must be used, at the direction of the Agency, for any of the following:

(1) Pay for expenses specified in a long-term capital plan;

(2) Make payments and reamortize the Agency loan;

(3) Reduce rents by a transfer to the general operating account;

(4) Fund preservation incentives authorized in subpart N of this part; or

(5) Cover other expenditures determined to be related to the purpose of the housing project and in the best interest of the Federal Government.

(l) *Procurement.* The requirements of § 3560.102(g), (j), and (k), and all other Agency requirements relating to procurement, bidding, identity-of-interest, cost-reasonableness, and construction management apply to any work or services paid out of reserve funds. Structural repairs and other significant work on major building systems such as heating or air conditioning must be done in accordance with the requirements of 7 CFR part 1924, subpart A.

[69 FR 69106, Nov. 26, 2004, as amended at 80 FR 34532, June 17, 2015; 87 FR 11285, Mar. 1, 2022; 89 FR 19228, Mar. 18, 2024]

§ 3560.307 Reports.

(a) *Required reports.* Borrowers must submit required reports using Agency-approved formats.

(b) *Quarterly and monthly reports.* The Agency may require quarterly or monthly reports to monitor financial progress when closer supervision is warranted.

§ 3560.308 Annual financial reports.

(a) *General.* (1) For-profit borrowers that receive $500,000 or more in combined Federal financial assistance must include an independent auditor's report that includes, financial statements and notes to the financial statements, supplemental information containing Agency approved forms for project budgets and borrower balance sheets, a report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements in accordance with Government Auditing Standards; a report on compliance for each major program and internal control over compliance (if applicable). Federal Financial Assistance is defined in accordance with 2 CFR 200.40.

(2) Non-profit borrowers that receive $1 million or more in combined Federal financial assistance must meet the audit requirements set forth by OMB, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at 2 CFR parts 200 and 400. Borrowers must provide a copy of this audit to RHS in compliance with these financial reporting requirements.

(3) Non-profit borrowers that receive less than $1 million, and for-profit borrowers that receive less than $500,000 in combined Federal financial assistance will submit annual owner certified prescribed forms on the accrual method of accounting in accordance with the Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the American Institute

of Certified Public Accountants (AICPA). Borrowers may use a CPA to prepare this compilation report of the prescribed forms.

(b) *Performance standards.* All Borrowers must certify that the housing meets the performance standards below:

(1) Required accounts are properly maintained and tracked separately;

(2) Payments from operating accounts are disclosed and accurately represented on financial reports;

(3) The reserve amount is at the authorized level and there are no encumbrances;

(4) Tenant security deposit accounts are fully-funded and are maintained in separate accounts and meet state and local requirements;

(5) Amount of payment of owner return was consistent with the terms of the applicable loan agreement;

(6) The borrower has maintained proper insurance in accordance with the requirements of § 3560.105(b); and

(7) All financial records are adequate and suitable for examination.

(8) There have been no changes in project ownership other than those approved by the Agency and identified in the certification.

(9) Real estate taxes are paid in accordance with state and/or local requirements and are current.

(10) Replacement Reserve accounts have been used for only authorized purposes.

(c) *Other financial reports.* (1) Nonprofit and public borrower entities subject to OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards, must submit audits in accordance with 2 CFR parts 200 and 400.

(2) The Agency may require additional opinions of financial condition and compliance, such as audits, to assure the security of the asset, determine whether the housing project is being operated at a reasonable cost, or to detect fraud, waste, or abuse.

(3) Any audits independently obtained by the borrower also must be submitted to the Agency.

[69 FR 69106, Nov. 26, 2004, as amended at 82 FR 49286, Oct. 25, 2017; 89 FR 96859, Dec. 6, 2024]

§ 3560.309 Advancement (loan) of funds to a RRH project by the owner, member of the organization, or agent of the owner.

(a) Prior written approval by the Servicing Office is required. Such advances may be authorized when justified by unusual short-term conditions. When conditions are not short-term in nature, a servicing plan may be developed and advances may be approved in accordance with the provisions set out in § 3560.453 of this part. Justification will be based on the following:

(1) A review of the documented circumstances and the project operating budget before any funds are advanced (loaned). The financial position of the project must not be jeopardized.

(2) Funds are not immediately available from any of the following sources:

(i) Reserve funds;

(ii) Initial operating capital; and

(iii) An imminent rent increase.

(b) The funds will be applied to ordinary project operating and maintenance expenses.

(c) Interest may be charged or paid on the loan from project income; however, interest must be reasonable. The proposal may be denied if Rural Development financing can be provided to resolve the problem in a more cost-effective manner.

(d) No lien in connection with the loan will be filed against the property securing the Rural Development loan or against project income. The advance may show as an unsecured project liability on financial statements prepared for year-end reports until such time as it is authorized to be repaid.

(e) The payback of the advance (loan) may be permitted by the Servicing Official provided the terms and conditions were mutually agreed to by the borrower and Rural Development at the time of the advance and the financial position of the project will not be jeopardized. Payback should only be permitted on the advance when the Rural Development debt is current and the reserve requirements are being maintained at the authorized levels.

§§ 3560.310–3560.349 [Reserved]

§ 3560.350 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart H—Agency Monitoring

§ 3560.351 General.

This subpart contains policies for Agency monitoring of operations and management at multi-family housing (MFH) projects.

§ 3560.352 Agency monitoring scope, purpose, and borrower responsibilities.

(a) *Scope of Agency monitoring activities.* The Agency will review reports, records, and other materials related to the housing project, including borrower financial reports, housing project records, and other communications. The Agency also will review material related to a housing project submitted by a tenant or other source. To assess conditions such as a housing project's physical condition, record keeping procedures, and operations and management activities, including borrower compliance with Federal, state, and local laws and Agency requirements, the Agency will conduct periodic on-site monitoring reviews of a housing project.

(b) *Purpose of Agency monitoring activities.* Agency monitoring activities are designed to assess borrower and tenant compliance with Agency requirements, and to:

(1) Ensure housing projects are managed in accordance with the goals and objectives of the Agency's MFH programs and are maintained in accordance with Agency requirements for affordable, decent, safe, and sanitary housing;

(2) Preserve the value of the Agency-financed housing projects;

(3) Detect waste, fraud, and abuse in housing project operations or management and to ensure the cost of operations and management are necessary and reasonable;

(4) Verify compliance with Affirmative Fair Housing Marketing requirements, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, other applicable Federal laws, and Agency requirements related to occupancy and tenant eligibility.

(c) *Borrower responsibilities.* The borrower is responsible for cooperating fully and promptly with Agency monitoring activities. Agency monitoring activities do not diminish borrower operation and management responsibilities and do not relieve borrowers from any Agency requirements including, but not limited to, borrower requirements to comply with:

(1) The terms of all agreements with the Agency, including the loan or grant agreement, assurance agreement, loan resolution, promissory note, mortgage, interest credit agreement, rental assistance agreement, mitigation measures contained in the environmental review document, and workout agreement;

(2) The requirements contained in this part;

(3) The requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended; section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990; and

(4) Applicable Federal, state, and local laws.

§ 3560.353 Scheduling of on-site monitoring reviews.

Generally, the Agency will provide the borrower prior notice of an on-site monitoring review and will conduct the on-site monitoring review in the presence of the borrower. However, the

Agency may visit a housing project, without prior notice, to observe physical conditions, operations and management activities, or other borrower or tenant activities. In addition, the Agency may conduct on-site reviews without the presence of the borrower, the management agent, or other designated representative of the borrower.

§ 3560.354 Borrower response to monitoring review notifications.

The Agency will notify borrowers, in writing, whenever Agency monitoring activities result in deficiency findings or compliance violations. The monitoring review notification will describe the deficiencies findings or compliance violations and will specify a time period by which corrective action must be taken by the borrower. The notification will offer borrowers an opportunity to discuss the reported deficiency findings or compliance violations with the Agency and will explain enforcement actions that the Agency may take if corrective action is not taken within the time period specified in the monitoring review notification. When civil rights non-compliance is found, the State Civil Rights Coordinator or Manager (SCRC/M) will be notified. If voluntary compliance cannot be obtained, appropriate enforcement or remedial action will be taken.

§§ 3560.355–3560.399 [Reserved]

§ 3560.400 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart I—Servicing

§ 3560.401 General.

(a) *Purpose.* This subpart contains actions the Agency may take to service and collect loans or other debts owed by multi-family housing (MFH) borrowers. The loan servicing and other actions set forth are designed to protect Agency and tenant interests and assist borrowers in meeting program objectives.

(b) *General servicing policies.* Borrowers must repay loans or other amounts due to the Agency according to provisions specified in promissory notes, loan agreements and resolutions, mortgages, deeds-of-trust, assumption agreements, reamortization agreements, or other agreements executed between the borrower and the Agency.

(c) *Special servicing actions.* The Agency will not agree to any proposal for loan servicing or debt collection action other than actions consistent with this section, debt instruments, and other agreements. When payments due to the Agency from a borrower remain unpaid for more than 30 days after the due date, past due, after the Agency may initiate the special servicing actions described in subpart J of this part.

§ 3560.402 Loan payment processing.

(a) *Predetermined Amortization Schedule System (PASS) requirements.* All loans, except the loans specified in paragraph (c) of this section, must be closed and serviced using the PASS.

(b) *Required conversion to PASS.* Borrowers with Daily Interest Accrual System (DIAS) accounts must convert to PASS with any loan servicing action.

(c) *Exceptions.* Seasonal farm labor housing loans and on-farm labor housing loans may be closed on DIAS, monthly, or annual payment schedules.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11286, Mar. 1, 2022]

§ 3560.403 Account servicing.

(a) *Payment due dates.* Loan or other payments due to the Agency are due on

the first day of each month unless otherwise established in the debt instrument or other agreement executed with the Agency.

(b) *Payment application order.* Loan payments will be applied to the borrower's account in the following order of priority:

(1) Amortized audit receivables. (*i.e.*, amounts due to the Agency, over a period of time, as a result of a finding from an audit or other monitoring activity.)

(2) Unamortized audit receivables. (*i.e.*, amounts due to the Agency, in a lump sum payment, as a result of a finding from an audit or other monitoring activity.)

(3) Late fees. (*i.e.*, amounts due to the Agency as a result of late payments.)

(4) Amortized recoverable costs. (*i.e.*, amounts due to the Agency, over a period of time, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(5) Unamortized recoverable costs. (*i.e.*, amounts due to the Agency, in a lump sum payment, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(6) Overage. (*i.e.*, amounts due to the Agency as a result of a tenant's tenant contribution being higher than basic rent.)

(7) Interest. (*i.e.*, amounts due to the Agency as a result of scheduled interest on a loan and as a result of interest charged on unpaid delinquent principal amounts.)

(8) Principal. (*i.e.*, amounts due to the Agency as the loan principal.)

(9) Advance payments. (Any funds remaining after disbursement of a payment to all other payment priorities will be applied to the borrower's account as an advance regular payment unless a borrower specifically designates, in writing, another application.)

(c) *Late fees.* If payments on a borrower's account, under PASS, are more than $15 delinquent after the close of business on the 10th day after the payment due date, a late fee will be charged to the borrower's account.

(1) Late fees charged to a borrower's account will equal 6 percent of the total regular payments due as specified in any promissory notes, assumption agreements, or reamortization agreements related to the borrower's account.

(2) Late fees are a borrower expense and must not be paid from housing project funds.

(3) The Agency may waive late fees for circumstances beyond a borrower's control and when a waiver is determined by the Agency to be in the best financial interest of the Federal Government.

(d) *Interest on unpaid overdue principal.* On the first day of the month following a payment due date, the Agency will charge interest at the note rate on any unpaid principal payment due according to the loan's amortization schedule (*i.e.*, interest will be charged on delinquent principal). The interest charged on the unpaid principal payment due will be charged to the borrower in addition to the scheduled interest due on payments according to the loan's amortization schedule.

§ 3560.404 Final loan payments.

(a) *Payoff statements.* At the borrower's request, the Agency will provide a statement indicating the pay off amount necessary to pay the borrower's account in full.

(b) *Final payments.* A borrower's final loan payment must include repayment of all outstanding obligations to the Agency.

(1) Any supervised funds being held by the Agency will be applied to the borrower's account or, at the borrower's option, will be returned to the borrower following acceptance of final payment on all outstanding obligations.

(2) If a balance due remains on a borrower's account after Agency acceptance of a final payment, due to borrower error or fraud or Agency error, the Agency will initiate collection action in accordance with the unauthorized assistance collection procedures described in subpart O of this part.

(c) *Final payment loans.* Borrowers with loans for which the Agency approved an amortization period that exceeded the term of the loan may request a loan to finance the final payment in accordance with the requirements of § 3560.74.

(d) *Loan prepayment requests.* If prepayment of an Agency loan is requested, the applicable preservation requirements of subpart N of this part, including the execution of any appropriate restrictive-use agreements, must be met prior to the Agency's acceptance of a final loan payment under the prepayment request.

(e) *Payment forms.* Final payments may be made by cashier's check, certified check, money order, bank draft, or other withdrawal instruments approved by the Agency.

(1) If borrowers use forms of payment requiring special handling, the borrower is responsible for the cost of the special handling.

(2) When payment is provided in a form that is not the equivalent of cash, the Agency will consider the payment to be received at the time the payment has been converted to cash and funds have been transferred to the Agency.

(f) *Release of security instruments.* The Agency will release security instruments, subject to applicable restrictive-use agreements referenced in subpart N of this part, when full payment of all outstanding obligations to the Agency has been received, accepted, and the funds have been transferred to the Agency.

(1) If the Agency and the borrower agree to settle an account for less than the full amount owed, the Agency will release security instruments when the borrower has paid in full all agreed upon obligations.

(2) Recording costs for the release of the security instruments will be the responsibility of the borrower, except where state law requires the mortgagee to record or file the satisfaction.

(g) *Special circumstances—Refund of entire principal.* If the entire principal of the loan is refunded after the loan is closed, the borrower must pay interest from the date of the note to the date of receipt of the refund.

§ 3560.405 Borrower organizational structure or ownership interest changes.

(a) *General.* The requirements of this section apply to changes in a borrower entity's organizational structure or to a change in a borrower entity's controlling interest. If 100 percent of a borrower entity's ownership interest is transferred, within a 12-month period, the change will be considered a housing project transfer and the provisions of § 3560.406, which covers transfers or sales of housing projects, will apply.

(b) *Agency requirements.* Borrowers must notify the Agency prior to the implementation of any changes in a borrower entity's organizational structure. The Agency must give its consent prior to the implementation of changes in a borrower entity's controlling interest.

(1) Borrowers must submit written requests for Agency consent to the Agency at least 45 days prior to the anticipated effective date of the proposed organizational change. The request must document that the proposed changes will not adversely affect the program purposes or security interest of the Agency and will not adversely affect tenants.

(2) If the controlling interest change involves a transfer of interest to an entity not previously holding an ownership interest in the borrower entity, the request for consent must include a written certification, executed by the party receiving the ownership interest, certifying that the recipient of the ownership interest agrees to assume responsibilities and obligations required of a borrower as established in Agency program requirements including requirements in the promissory note, loan agreement, or other document related to Agency loans held by the borrower entity.

(3) The Agency will not take a consent request for a controlling interest change under consideration if the borrower's request fails to meet the requirements specified in paragraph (b)(2) of this section.

(4) Borrowers must submit a credit report in accordance with subpart R of this part.

(c) *Documentation of organizational structures and ownership interest.* Borrowers must annually document their organizational structure and ownership.

(1) Documentation must be submitted with the annual financial reports required by § 3560.308 and must reflect any changes made during the 12-month period preceding the submission of the annual financial reports.

(2) If no changes in a borrower entity's organizational structure or ownership were made during the 12-month period prior to submission of the annual financial reports, borrowers are not required to submit documentation, but must submit a statement certifying that no changes have been made in the documents on file with the Agency.

(3) Organizational structure and ownership documentation must include the following items:

(i) A current organization description reflecting all approved changes in the organizational structure of the borrower entity and listing the names, addresses, and tax identification numbers of all parties with an ownership interest in the borrower entity; and

(ii) A written statement by the borrower certifying that the changes in the borrower entity's organizational structure or ownership interests were completed in compliance with state and local laws and in accordance with organizational requirements of the borrower entity.

[69 FR 69106, Nov. 26, 2004, as amended at 89 FR 106980, Dec. 31, 2024]

§ 3560.406 MFH ownership transfers or sales.

(a) *General.* The provisions of this section apply to ownership transfers or sales (e.g., title transfers) involving an Agency financed housing project. The provisions cover situations where Agency loans are being assumed as a part of a housing project transfer or sale.

(b) *Agency consent requirements.* Agency consent must be obtained prior to an ownership transfer or sale and Agency consent will only be given when the transfer or sale is in the best interest of the Federal Government. Any ownership transfer or sale without the consent of the Agency will be considered a default and will be handled in accordance with subpart J of this part.

(1) Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the borrower that was caused by circumstances beyond the borrower's control.

(2) Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency when all persons in the borrower entity who are transferring their ownership interest or are involved in the selling of the property are not part of the transferee organization.

(c) *Consent request requirements.* Borrowers must submit written requests for Agency consent to an ownership transfer or sale of a housing project to the Agency at least 45 days prior to proposed ownership transfer or sale date. The consent request must document that the proposed transfer or sale meets the requirements of paragraph (d) of this section and must include the following items:

(1) A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.

(2) A statement certifying that the housing project's financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project's financial situation and the reasons for overdue payments or under funded accounts.

(3) A proposed housing project budget covering the partial year, if applicable, and first full year operation following the ownership transfer or housing project sale.

(4) A written statement, signed by the proposed transferee or buyer, certifying that the transferee or buyer will assume the borrower responsibilities and obligations specified in Agency

program requirements including requirements in a promissory note, loan agreement or other documents related to Agency loans held by the borrower entity.

(5) A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project.

(6) A credit report in accordance with subpart R of this part.

(d) *Requirements for ownership transfers or sales.* An ownership transfer or sale of a housing project with an assumption of Agency loans by the transferee or buyer must comply with the following conditions:

(1) The transferee or buyer must be an eligible borrower under the requirements established by subpart B of this part;

(2) The transferee or buyer must agree to set basic rents at the housing project covered by the assumed loans at levels that do no exceed conventional rents for comparable units in the area, except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150% of the comparable rent for conventional unit rent level; and

(3) The value of the housing project covered by the loans to be assumed, at the time of an ownership transfer or sale, must be sufficient to ensure that all Agency loans being assumed and all subsequent loans being offered as a part of the transfer or sale can be secured to a level that fully protects the Agency's interest. Loans from third-party sources that are not dependent on project revenue for payment will not be included in this determination.

(i) If the total value of the loans being offered as a part of an ownership transfer or sale is $100,000 or less, the security value of the housing project may be determined through either: An Agency review of monitoring reports conducted in accordance with the requirements in subpart H of this part or an appraisal paid for by the borrower and conducted in accordance with subpart P of this part.

(ii) If the total value of the loans being offered as a part of an ownership transfer or sale exceeds $100,000, the security value of the housing project must be determined through an appraisal obtained by the Agency and conducted in accordance with subpart P of this part.

(iii) The Agency may approve a loan write-down, in accordance with § 3560.455, prior to an ownership transfer or sale to reduce the amount of debt being assumed by the transferee or buyer.

(4) Prior to Agency approval of an ownership transfer or sale, the appropriate level of environmental review in accordance with 7 CFR part 1970 must be completed by the Agency on all property related to the ownership transfer or sale. If releases of or contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

(5) All immediate and long-term repair and rehabilitation needs must be identified by a capital needs assessment. The reserve requirements for the housing project will be reviewed by the Agency and adjusted, if necessary, to adequately cover the cost of addressing the property's capital needs. The Agency may approve the release of the current reserve amount to the transferor provided the transferee agrees to deposit the amount to cover the project's immediate needs into the reserve account at closing.

(6) The borrower and transferee must disclose to the Agency all terms, conditions, or other considerations related to the ownership transfer or sale. All side or other agreements must be disclosed and all sources and uses of funds related to the ownership transfer or sale must be disclosed.

(7) An agreement must be signed between the borrower and the transferee listing all repairs known by the borrower to be necessary to bring the housing project into compliance with Agency requirements for decent, safe,

and sanitary housing as listed in subpart C of this part.

(i) The agreement must include repairs required to correct compliance violations cited in a compliance violation notice issued by the Agency.

(ii) The agreement must specify whether each repair listed will be completed by the borrower prior to the ownership transfer or by the transferee in accordance with a workout agreement developed in accordance with the requirements of § 3560.453 and executed between the transferee or buyer and the Agency.

(8) A civil rights compliance review, as required by 7 CFR part 1901, subpart E, will be conducted by the Agency prior to the ownership transfer or sale.

(9) During or immediately after the transfer, a review of the property must be conducted to ensure that it complies with or will comply with section 504(c) of the Americans with Disabilities Act (ADA), which covers accessibility requirements, and the Title VI of the Fair Housing Act of 1968.

(10) A transferee must ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with the Agency.

(11) A transferee must comply with insurance and bonding requirements established in subpart C of this part at the time of the transfer.

(12) A transferee must agree to submit financial reports to the Agency according to subpart G of this part.

(13) A transferee must establish that there are no liens, judgments, or other claims against the housing project other than those by the Agency and those to which the Agency has previously agreed.

(14) A limited profit Rural Rental Housing transferee's initial investment and return on investment will remain the same as that originally provided to the transferor unless:

(i) The property is transferred to a non-profit entity and the return on investment is eliminated; or

(ii) The transferee contributes additional funds for repair or rehabilitation and the Agency agrees to recognize a higher initial investment.

(e) *Equity payments.* The Agency will withhold any equity payment due to the borrower, as part of an ownership transfer or sale, if any of the following conditions exist:

(1) The borrower's indebtedness to the Agency has not been paid in full or is not being assumed by the transferee. The Agency will require that all or part of an equity payment be applied against other Agency loans owed by the borrower if payments on the other loans are not current.

(2) Any non-Agency prior liens against a housing project are not paid in full.

(3) Any housing project financial accounts are not funded at required levels, less authorized withdrawals, or any payments due for operation and maintenance expenses, tax assessments, insurance premiums, tenant security deposits or other obligations incurred as a part of housing project operations are not paid in full.

(4) Any management deficiencies cited in a compliance violation notice issued by the Agency to the borrower have not been corrected or the housing project is not operating under an approved management plan or, if applicable, an approved management agreement.

(5) Any operation and maintenance deficiencies cited in compliance violation notices issued by the Agency have not been corrected or are not scheduled for correction in a workout agreement developed in accordance with the requirements of § 3560.453.

(6) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or other Federal, state, or local agencies for violations of Fair Housing or Equal Opportunity requirements.

(7) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or any other entity involved in the financing of the housing project for misappropriation of funds.

(f) *Equity payment funding sources.* Equity may be provided in cash or through a loan. If a full equity payment to the transferor is not paid at the time of the ownership transfer or sale or has not been paid through an Agency equity loan or third-party equity loan approved by the Agency to

the borrower, the transferee must certify that equity payments due to the borrower will be paid from sources other than housing project's funds and must identify the sources of such payments.

(g) *Restrictive-use requirement.* Transferees assuming Agency loans, including loans approved prior to December 21, 1979, will be required to execute a restrictive-use agreement that contains the language specified in § 3560.662. The restrictive-use agreement will require the housing project to be used for program purposes for a specified period of time beyond the date that the ownership transfer or sale is closed. When an equity loan is involved at the time of transfer, the restrictions will be for 30 years.

(h) *Subsequent loans.* The Agency may approve a subsequent loan or permit a loan from a third-party source in conjunction with an ownership transfer or sale of a housing project. The subsequent loan may be in the form of a junior or parity lien.

(1) Subsequent loans on a housing project proposed in conjunction with an ownership transfer or sale must be requested and processed in accordance with the Agency loan origination requirements in subpart B of this part.

(2) The Agency may amortize the subsequent loan over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(3) The Agency may extend the term of the existing loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(i) *Loan assumption interest rates.* The interest rate for Agency loans assumed in conjunction with an ownership transfer or sale will be determined as follows:

(1) The interest rate for all loans, except farm labor housing loans, will be set at the lower of:

(i) The note rate of the existing Agency loan;

(ii) The Agency note rate on the day the transfer is approved;

(iii) The Agency note rate on the day the transfer is closed; or

(iv) If the rents are increased due to a transfer, the transfer will be done under new rates and terms when the Agency determines that it is in the best interest of the government. Subsequent loan may be in the form of a senior, junior or parity lien or soft second.

(2) The interest rate on farm labor housing loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farm workers, and broadly-based nonprofit corporations for farm labor housing purposes may be at a one percent interest rate regardless of the rate specified in the note if the Agency determines that such a reduction is necessary to maintain affordable rental rates for tenants.

(j) *Loan assumption terms.* The amount of the loan balance that may be assumed through an ownership transfer or sale must not exceed the security value of the housing project determined according to § 3560.406(d)(3)(i).

(1) The Agency may reamortize a loan assumed through an ownership transfer or sale over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(2) The Agency may extend the term of the loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(3) When loans assumed through an ownership transfer or sale are amortized on an annual payment basis, the loans will be converted, at the time of the transfer or sale, to a monthly payment amortization and will be made subject to PASS. When on- or off-farm labor housing projects are involved in an ownership transfer or sale, the related loans may be transferred on a DIAS basis or converted to PASS if the Agency determines that such a conversion will not be detrimental to the operation of the farm labor housing.

(k) *Processing ownership transfers or sales.* (1) At the time of the transfer, the Agency will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow accounts.

(i) Any funds remaining in a rental assistance contract not dispersed by the transferor will be assigned to the

transferee unless the rental assistance is not needed for tenants or another form of rental subsidy is to be used.

(ii) Any rental assistance determined to be unnecessary will be reassigned to other housing projects in accordance with the provisions of subpart F of this part.

(2) The Agency will require that appropriate loan documents are executed by the transferee. The Agency may require such documents to be referenced in security instruments (e.g., mortgage or deed of trust).

(3) If all of a borrower's outstanding Agency debt is not assumed or paid off at the time of the transfer or sale, the Agency will not release a borrower from liability unless the Agency determines that the borrower is unable to pay the remaining debt from assets taken as security through the debt settlement procedure in accordance with § 3560.457.

(l) *Ownership transfers or sales under special rates, terms, and conditions.* Housing projects may be transferred or sold to entities that do not meet borrower eligibility requirements for the type of loans being assumed. However, such a transfer or sale will only be considered when it is determined by the Agency to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met. The following special rates, terms, and conditions will apply to such situations.

(1) The transferee makes a down payment of at least 10 percent of the remaining loan balance to be assumed.

(2) The transferee has the ability to pay the Agency debt.

(3) Monthly or annual installments will be amortized over the term of the loan and the interest rate will be at a rate of interest at least one percent higher than the interest rate offered to eligible borrowers as specified in paragraphs (i)(1) or (2) of this section.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016; 89 FR 106980, Dec. 31, 2024]

§ 3560.407 Sales or other disposition of security property.

(a) *General.* Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. Agency approvals of sales or other dispositions of security property are not subject to the requirements outlined in 7 CFR part 1970.

(b) *Request requirements.* Requests for Agency approval of transactions related to security property must document that the following conditions will be met.

(1) The borrower's ability to repay the Agency debt will not be impaired;

(2) The transaction will not interfere with the successful operation of the housing project or prevent the borrower from carrying out the purpose for which the loan was made.

(3) The monetary or other consideration offered in the transaction is equal to or greater than the market value of the security property being disposed of or the rights being granted, except that right-of-way easements may be granted or conveyed with minimal or no consideration being offered if:

(i) The value of the security property will not be reduced;

(ii) The suitability of the security property for the intended purpose will not be impaired; and

(iii) The easement is granted to allow the borrower to develop additional lots or units that will be integrated into the housing project or for enhancement of streets, utilities or other services provided by a public body.

(4) The property that will remain as security for Agency loans, after any transaction related to security property, will fully secure the borrower's debt to the Agency.

(5) Borrowers must report to the Agency the total of all proceeds derived from the sale or other disposition of property serving as security for Agency loans. The proceeds from the disposition of the security property will be used for purposes approved by the Agency.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016]

§ 3560.408 Lease of security property.

(a) *General.* Borrowers must obtain Agency approval prior to entering into a lease agreement related to any property serving as security for Agency loans. Agency approvals of lease agreements are considered loan servicing actions under 7 CFR part 1970, and as such do not require additional NEPA analysis and documentation.

(b) *Leases to public housing authorities.* Borrowers may not lease all or part of their housing facilities to a housing authority. Lease agreements in place prior to the effective date of this regulation may be continued provided that leases are in a form acceptable to the housing authority and are on terms that will enable the borrower to comply with Agency program requirements, to meet Agency program objectives, and make loan and other required payments to the Agency on an Agency approved schedule.

(c) *Lease of a portion of the security property.* The Agency may, subject to the applicable provisions governing loan purposes found in of § 3560.53, § 3560.553 and § 3560.603, approve the leasing of facilities related to a housing project (e.g., central kitchens, recreation facilities, laundry rooms, and community rooms) when the borrower will continue to operate the facilities for the purposes for which the loan was made. Agency approval is not required for leases with a term of less than 30 days. The Agency will only approve a lease with a term over 30 days if the following conditions are met:

(1) The lease is in the best interest of the borrower, the tenants, and the Federal Government.

(2) The amount of the consideration agreed to in the lease is adequate to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(3) All compensation and considerations, whether payments, a share of proceeds, or improvements to the property paid for by the lessee, must be disclosed to the Agency. No payments or compensation for entering into a lease shall flow to the borrower or any identity-of-interest related to the borrower.

(4) The lease provides at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and the Federal Government.

(5) Consent to the lease will not exceed 3 years at a time unless the Agency determines that a longer lease is advantageous to the borrower, the tenants, and the Federal Government.

(6) When another lienholder's mortgage requires that lienholder's consent to a lease, the borrower must obtain written consent from the lienholder before the Agency will consider approving the lease.

(d) *Mineral leases.* Mineral leases will be handled according to 7 CFR 3550.159 except that all references to County Supervisor will be construed to mean District Director when applied to the MFH Programs.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016]

§ 3560.409 Subordinations or junior liens against security property.

(a) *General.* Borrowers must obtain Agency consent prior to entering into any financial transaction that will require a subordination of the Agency security interest in the property, or lien subordination, (*i.e.*, granting of a prior interest to another lender.) Prior to Agency consent, environmental review requirements must be completed in accordance with 7 CFR part 1970. Borrowers must use an Agency approved lien subordination agreement.

(1) If a lien is placed against property serving as security for an Agency loan without prior Agency consent, the Agency will declare the borrower to be in default and will pursue liquidation of the borrower's loans in accordance with the procedures specified in § 3560.457, unless an agreement can be reached between the borrower and the Agency to work out removal of the lien or post approve the lien.

(2) Subordinations or junior liens need not encompass the entire site, (e.g., a subordination or junior lien requested to permit an interim lender to advance construction funds may only cover the portion of the site proposed for construction.)

(3) The subordination or junior lien must be for a specific amount.

(4) The subordination or junior lien must not adversely impact the Agency's ability to service the loan according to the requirements of this part.

(b) *Consent request requirements.* Borrowers proposing to have the Agency subordinate its interest to another lender or to give a creditor a junior lien against property serving as security for an Agency loan must submit a consent request to the Agency. The consent request must document the following:

(1) The action will enable the borrower to obtain financial resources for improvements or repairs on the security property that are consistent with the purposes of the Agency loan secured by the property.

(2) The action will not adversely impact the borrower's financial condition and the borrower's ability to repay the Agency loan being secured by the property.

(3) The action will not result in basic rents at the security property that exceed conventional rents for comparable units in the area.

(4) The terms and conditions of the credit to be secured by the subordination or junior lien are not expected to adversely affect the borrowers ability to meet the terms and conditions of the Agency loan secured by the property.

(5) The proposed use of the funds obtained through the granting of a subordination or junior lien will not adversely affect the borrower's ability to meet Agency program requirements or to operate and manage the housing project in a manner consistent with program objectives.

(6) The creditor receiving the ''subordination'' of interest in the property or the junior lien will agree that a foreclosure or acceptance of a deed-in-lieu of foreclosure will not be initiated without at least 30 days prior notice to the Agency.

(7) The subordination or junior lien is not being secured with any funding from housing project financial accounts.

(8) The ''subordination'' of interest or junior lien will not cause the debt from all sources to exceed the value of the security property.

(9) The transaction related to the placement of a ''subordination'' of interest or junior lien against the property serving as security for an Agency loan is in the best interest of the Federal Government.

(c) *Required conditions for subordinations and junior liens.* Subordinations of interest in or junior liens against property serving as security for an Agency loan may be approved by the Agency only if they improve a borrower's financial condition and allow for improvements or repairs that are consistent with the purposes of the Agency loan secured by the property.

(1) Farm Labor Housing loans on farm tracts may be subordinated for essential farm improvements and operations.

(2) Any proposed development must be planned and performed according to 7 CFR part 1924, subpart A, or in a manner directed by the other lienholder that meets the objectives of 7 CFR part 1924, subpart A.

(d) *Other liens against a property or other assets.* (1) Borrowers must not enter into any agreements to place a lien on a housing project or any equipment related to a housing project without prior Agency approval and unless the following conditions are met:

(i) The transaction will not adversely affect the Agency's security position;

(ii) The lien is not related to a nonprogram eligible action;

(iii) The items to be acquired by the funding related to the lien is needed for the operation of the property; and

(iv) The financing arrangements are otherwise sound.

(2) In cases where the above criteria are met, borrowers must complete and provide the Agency a copy of the financing statement, loan document, or contract, as applicable, as well as a security agreement acceptable to the Agency.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016]

§ 3560.410 Consolidations.

(a) *General.* With Agency approval, loans, loan agreements, or loan resolutions may be consolidated to reduce the administrative burden (*i.e.*, record keeping, budgeting), to improve the cost effectiveness and efficiencies of

housing project operations, and to effectively utilize facilities common to housing projects.

(b) *Loan consolidations.* Loan consolidations will only be considered when:

(1) Multiple loans to the one borrower entity are being transferred to a different borrower entity in accordance with §3560.406, or

(2) One borrower entity has an initial loan and one or more subsequent loans for the same housing project and all the loans were closed on the same date and with the same rates and terms.

(c) *Loan agreement or loan resolution consolidations.* Loan agreements or loan resolutions may be consolidated, even if the loans related to the agreement or resolution are not consolidated, to allow borrowers to comply with reporting, accounting, and other Agency requirements as a single housing project.

(1) The loan agreements or loan resolutions may only be consolidated when they are related to loans made for the same purposes, to the same borrower, and operating under the same type of interest credit, if applicable.

(2) All of a borrower's loan accounts must be current after the loan agreement or loan resolution consolidation is processed, unless otherwise approved by the Agency.

§§ 3560.411–3560.449 [Reserved]

§ 3560.450 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

§ 3560.451 General.

This subpart contains special servicing, enforcement, liquidation, and other actions that the borrower may request or the Agency may implement when compliance violations, monetary defaults, or non-monetary defaults cannot be resolved through regular servicing.

(a) *Agency obligations.* The Agency is under no obligation to offer or agree to any special servicing actions.

(b) *Relationship to workout agreements.* Special servicing actions may be implemented either as a part of a workout agreement, developed in accordance with §3560.453, or as an action approved by the Agency separate from a workout agreement unless indicated otherwise in this subpart.

§ 3560.452 Monetary and non-monetary defaults.

(a) *General.* Borrowers are in default when they have received a compliance violation notice, issued in accordance with §3560.354, and have failed to correct the compliance violation identified in the compliance violation notice within the time period specified in the notice. Compliance violations include, but are not limited to, violations of promissory note provisions, loan or grant agreement provisions, regulatory, or other Agency requirements, including requirements imposed on a borrower through a workout agreement developed in accordance with §3560.453.

(b) *Monetary defaults.* A monetary default exists when any amount due to the Agency or a third party (such as real estate taxes and insurance) under a promissory note, loan or grant agreement, workout agreement, or other agreement remains due more than 30 days after the due date.

(c) *Nonmonetary defaults.* A nonmonetary default exists when a borrower fails to correct a compliance violation, other than a monetary amount past due, within the time period specified in a compliance violation notice issued in accordance with §3560.354. Nonmonetary defaults include, but are not limited to, failure to:

(1) Operate and manage a housing project in accordance with the Agency approved management plan or Agency requirements;

(2) Maintain the physical condition of a housing project in a decent, safe, and sanitary manner and in accordance with Agency requirements;

(3) Keep general operating expense, reserve, and other financial accounts related to a housing project at required funding levels;

(4) Occupy rental units with eligible tenants, unless granted an exception by the Agency;

(5) Charge correct rents or to correctly calculate net tenant contributions, utility allowances, or rental assistance payments or to properly administer the Agency rental assistance assigned to the housing project;

(6) Submit required annual financial reports to the Agency within time periods specified in § 3560.308;

(7) Submit management plans, leases, occupancy rules, and other required materials to the Agency in accordance with Agency requirements; and,

(8) Comply with applicable Federal laws including laws related to civil rights, fair housing, disabilities, and environmental conditions.

(d) *Default notice.* When borrowers are in default, the Agency will notify borrowers, in writing, that they are in default. The default notice will identify the compliance violation that led to the default, will specify actions necessary to cure the default, and will establish a date by which the default must be cured to preclude Agency initiation of enforcement actions, liquidation, or other actions.

(e) *Agency action.* If a borrower fails to cure a default within the time period specified in the default notice, the Agency may initiate the enforcement actions described in § 3560.461 or liquidation as described in § 3560.456. Also, Agency compliance violation notices and related default notices may be referred to Federal, state, and local agencies with jurisdictions related to the violations for handling, in accordance with their requirements.

§ 3560.453 Workout agreements.

(a) *General.* (1) Prevention or resolution of compliance violations or default cures are a borrower's responsibility.

(2) A borrower may develop and submit to the Agency for approval a workout agreement that proposes actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

(3) A borrower developed workout agreement may propose, but is not limited to, the following actions:

(i) A combination of one or more of the special servicing actions outlined in §§ 3560.454 and 3560.455;

(ii) A change in operations and management at a housing project; or

(iii) A commitment of additional financial resources to the housing project with the amount and source of the additional resources to be committed to the housing project specifically identified.

(b) *Workout agreement approval.* (1) The Agency is under no obligation to approve a workout agreement as submitted by a borrower or to act with forbearance when a housing project is in monetary or non-monetary default.

(2) Borrower developed workout agreements may not be implemented until the borrower receives written approval from the Agency.

(3) The Agency will only approve a workout agreement if the Agency determines that the actions proposed are likely to prevent or correct compliance violations or cure a default and approval is in the best interest of the Federal Government and tenants.

(4) The Agency will only approve a workout agreement if the proposed actions are consistent with the borrower's management plan. If proposed actions are not consistent with the borrower's management plan, applicable revisions to the borrower's management plan must be made before approval of the workout agreement is given.

(c) *Workout agreement required content.* (1) Workout agreements submitted to the Agency for approval must be in writing and signed by the borrower. Workout agreements must describe proposed actions in sufficient detail to demonstrate the likelihood of the actions to prevent or correct compliance violations or cure defaults.

(2) At a minimum, workout agreements must include the following.

(i) The name and address of the housing project, project number, borrower's tax identification number, and other information necessary to identify the housing project.

(ii) A description of the potential or actual compliance violation or default situation, including an explanation of related causes, such as cash flow concerns, budget revisions, deferred maintenance, vacancies, or violations of statutes.

(iii) A definition and description of the housing project's market area, including information on housing availability, rents, and vacancy rates in the market area.

(iv) A description of the proposed actions to prevent or correct compliance violations or to cure defaults along with a date specific schedule indicating when interim and final actions will be taken to correct the compliance violation or cure the default.

(v) A description of financial and other resources necessary to prevent or correct the compliance violation or cure the default including an identification of the sources for such resources.

(d) *Workout agreement budgets.* Budget revisions submitted as a part of a workout agreement for a housing project experiencing cash flow problems must prioritize cash disbursements in the following order:

(1) Prior lienholder, if any;

(2) Critical operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements; and

(5) Other authorized expenditures.

(e) *Workout agreement terms and cancellation.* (1) Workout agreements shall be in effect for no longer than a 2-year time period, beginning on the date of Agency approval. If an approved workout agreement calls for actions that extend beyond a 2-year period, borrowers must submit an updated and, if necessary, revised workout agreement to the Agency for approval. The updated workout agreement must be submitted to the Agency, 30 days prior to the expiration of the workout agreement in effect.

(2) The Agency may cancel a workout agreement at any time if the borrower fails to comply with the terms of the agreement. The Agency will provide notice to the borrower upon cancellation of the workout agreement.

§ 3560.454 Special servicing actions related to housing operations.

(a) *Changing rents or revising budgets.* The Agency may approve a borrower request for a rent change, rent incentives, or a revised budget, at any time during a housing project's fiscal year.

(b) *Occupancy waivers.* If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by allowing the borrower to accept as tenants persons with incomes above the income eligibility standards specified in § 3560.152(a), the Agency, in writing, may grant the borrower an occupancy waiver to allow such persons as tenants. Occupancy waivers will be in effect only during the time period specified by the Agency when the waiver is granted. In addition, borrowers must rent to all eligible applicants on the housing projects waiting list prior to accepting persons with incomes above the Agency standards as tenants.

(c) *Additional rental assistance (RA).* If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by increasing the amount of RA allocated to the housing project, the Agency, subject to available funds, may offer the housing project RA as a means of preventing or correcting a compliance violation or curing a default.

(d) *Special note rents.* When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may approve a rent less than the note rent to attract and keep tenants whose incomes, according to the formula in § 3560.203, would require them to pay the note rent. The reduced rent is called a Special Note Rent (SNR) and, as noted in § 3560.210, approval of an SNR may affect approvals of loan proposals submitted to the Agency for the market area where the SNR is in effect.

(1) An SNR rent may only be requested as a part of a proposed workout agreement and must include documentation of market conditions, the housing project's vacancy rates, evidence of marketing efforts, and other concerns necessitating the request for an SNR.

(2) Borrowers must forego the annual return to owner for each housing project's fiscal year that an SNR is in effect for all or part of a fiscal year at a housing project.

(3) SNR's may be increased, decreased, or terminated any time during a housing project's fiscal year when market conditions, vacancy rates, or other concerns that necessitated the SNR warrant a change.

(4) In addition to any state lease law requirements that might be related to the implementation of an SNR, the borrower must notify each tenant of any change in rents or utility allowances that result from approval of an SNR, in accordance with § 3560.205(c) and must submit the appropriate budget changes to the Agency for approval.

(e) *Termination of management agreement.* If the Agency determines that a compliance violation or loan default was caused, in full or in part, by actions or inactions of the housing project's management agent, the Agency will require the borrower to terminate the management agreement with that agent, or in the case of a borrower managed housing project, to enter an agreement with a third-party non-identity of interest management agent, unless the borrower and the Agency agree on a written plan to prevent reoccurrence of the violation. Housing project funds may not be used to pay a management fee to a management agent after the Agency has directed the borrower to terminate a management agreement with that agent, except during an Agency approved transition period.

§ 3560.455 Special servicing actions related to loan accounts.

(a) *General.* To prevent or correct a compliance violation or to prevent or cure a default in a situation that cannot be resolved through regular servicing, the Agency may approve a deferral of loan payments or a loan restructuring. Nothing herein precludes the Agency from initiating appropriate legal action to correct a compliance violation if the Agency determines such action is more in the Government's interest than entering into a special servicing agreement as provided for in this section. Procedures for debt collection are discussed in § 3560.460. As part of a workout agreement, the Agency may agree to accept less than full monthly payment installments due on an Agency loan for a specified period of time, not to exceed the effective period of the workout agreement.

(b) *Loan reamortizations.* A loan reamortization is a restructuring of loan terms and conditions over a period of time that does not exceed the remaining useful life of the housing project.

(1) Loan reamortizations will only be approved when they are in the best interest of the Federal Government and tenants and when the following conditions are met.

(i) The Agency determines that the borrower will be unable to meet their obligations without a reduction in monthly payment installments; and

(ii) The Agency is satisfied that the security, including the potential income for debt service, will be adequate to protect the Agency's interest over the term of the reamortization and that the reamortization will not adversely affect the Federal Government's lien priority.

(2) If the Agency approves a reamortization of a loan under this section, it will be at the existing note rate, or the current interest rate at the time of reamortization closing or approval, whichever is less.

(3) Loan reamortization may be used to:

(i) Restructure loan repayments to prevent or correct a compliance violation or cure a default caused by circumstances beyond the borrower's control in situations where the borrower is otherwise in compliance with Agency requirements;

(ii) Repay principal, outstanding interest, overage, and advances made by the Agency for recoverable cost items when less than full payments were authorized under the provisions of an Agency approved workout agreement;

(iii) Restructure a borrower's loan payments in conjunction with an incentive package developed in accordance with §3560.656 to prevent prepayment of the loan;

(iv) Restructure an existing loan in conjunction with a subsequent loan for rehabilitation; or

(v) Restructure remaining debt when a portion of the property serving as loan security is sold and there is a need to reestablish the financial stability of the housing project.

(c) *Loan writedowns.* A loan writedown is a reduction of a borrower's debt approved by the Agency.

(1) Loan writedowns will only be approved when they are in the best interest of the Federal Government and when the following conditions exist:

(i) Sound management of the housing project is evident or sound management practices are proposed for correction in accordance with an Agency approved workout agreement; and

(ii) The housing project's financial stability is being affected by conditions beyond the borrower's control, such as market weaknesses, unforeseen site problems, or natural disasters.

(2) Prior to Agency approval for a loan writedown, the borrower must obtain an appraisal of the housing project that concludes the ''as-is' market value,'' subject to restricted rents, conducted in accordance with subpart P of this part. The Agency will not approve a loan write-down unless the appraisal indicates the Federal Government's interests are secured at the proposed writedown level.

(3) Any writedown will be conditioned on a finding that the borrower does not have the ability to pay a higher loan payment, even if the loan is reamortized.

(4) Loan writedowns may be used to allow for a loan transfer and assumption for less than the total amount of outstanding debt.

§3560.456 Liquidation.

Prior to any servicing action which might lead to the acquisition of real property by the Agency, the Agency must complete a due diligence report to assess any potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products. The borrower must cooperate with the Agency in the development of this report.

(a) *Before acceleration.* Before accelerating a project loan, the Agency will consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process. If it is found that this is the borrower's motivation, the Agency will consider alternatives to acceleration, such as suing for specific performance under loan and management documents.

(b) *Acceleration.* When a borrower is in monetary or non-monetary default, the Agency will accelerate the loan unless the Agency decides other enforcement measures are more appropriate.

(1) If the borrower does not pay the full account balance and meet the other terms of the acceleration notice within the time period set forth in the acceleration notice, the Agency will foreclose or acquire the security property through deed in lieu of foreclosure.

(2) The Agency will suspend interest credit and rental assistance.

(3) The Agency will not accept partial payment of an accelerated loan unless required by state law.

(c) *Voluntary liquidation.* After acceleration, borrowers may voluntarily liquidate through either of the following mechanisms:

(1) Deed in lieu of foreclosure. RHS may accept a deed in lieu of foreclosure to convey title to the security property only after the debt has been accelerated and when it is in the Government's best interest.

(2) Offer by third party. If a junior lienholder or cosigner makes an offer in the amount of at least the net recovery value, RHS may assign the note and mortgage after all appeal rights have expired.

(d) *Foreclosure.* (1) The Agency will initiate foreclosure when a borrower is in monetary or non-monetary default and foreclosure is in the best interest of the Federal Government.

(2) When a junior lienholder foreclosure does not result in payment in full of the Agency debt but the property is sold subject to the Agency lien, the Agency will liquidate the account.

(e) *Acquisition of chattel properties.* (1) The Agency will accept voluntary conveyance of chattel property only when the borrower can convey ownership free of other liens and the Agency has agreed to release the borrower from further liability on the account.

(2) If the Agency decides to accept an offer of voluntary conveyance of chattel property, the borrower must provide an itemized listing of each chattel property item being conveyed and provide title to vehicles or other equipment, where applicable.

§ 3560.457 Negotiated debt settlement.

(a) *Borrower proposals to settle debt.* A borrower who cannot pay the full amount of loan payments may propose an offer to settle an outstanding debt for less than the full amount of that debt. The Agency may approve a negotiated debt settlement only in cases where a default is evident and doing so is in the best interest of the Federal Government and tenants.

(b) *Required information.* Borrowers requesting debt settlement must submit complete and accurate information from which a full determination of financial condition can be made. Debt settlement offers will not be approved by the Agency unless the financial information submitted by the borrower indicates that the borrower will be able to make the debt settlement payments as proposed.

(c) *Effective date of approval.* Debt settlement offers will not be accepted until the borrower receives written approval from the Agency.

(d) *Appraisal requirement.* No debt settlement offer will be accepted for less than the net recovery value of the security as determined by a licensed appraiser or other qualified official, and concurred in by the Agency's qualified appraisal review official or other qualified official.

(e) *Disposition of security prior to offer.* Borrowers are not required to dispose of security prior to making a debt settlement offer. However, if a borrower has disposed of security prior to making a debt settlement offer, the proceeds from the disposed security must be applied to the borrower's account prior to any negotiations on the debt settlement offer.

(f) *Final release condition.* Upon full payment of the approved debt settlement, the Agency will release the borrower from liability.

§ 3560.458 Special property circumstances.

(a) *Abandonment.* When the Agency determines that a borrower has abandoned security for a loan under this part, the Agency will take the steps necessary to protect the Federal Government's interest in the security. Costs associated with managing abandoned property are the responsibility of the borrower and will be charged to the borrower's account until liquidation is completed.

(b) *Other security.* The Agency will service security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest according to acceptable practices in the respective states.

(c) *Taking of additional security to protect Agency interests.* The Agency may require borrowers to provide additional security in the form of real estate, cash reserves, letters of credit, or other security when needed to improve the chances that the Agency will not suffer a loss, and when:

(1) The account is in default; or

(2) The property has not been properly managed or maintained.

(d) *Due diligence.* When the Agency has completed an environmental site assessment in accordance with 7 CFR part 1970, and decides not to acquire security property through liquidation action or chooses to abandon its security interest in real property, whether due in whole or in part, to releases of or the presence of contamination from hazardous substances, hazardous wastes, or petroleum products, the Agency will provide the appropriate environmental authorities with a copy of its environmental site assessment.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 11049, Mar. 2, 2016]

§ 3560.459 Special borrower circumstances.

(a) *Deceased borrower, bankruptcy, insolvency, and divorce actions.* The Agency will address borrower accounts affected by special circumstances such as

death, bankruptcy, insolvency, and divorce on a case-by-case basis. The Agency will make servicing decisions in such cases on the basis of best interest to the Federal Government and tenants. The Agency will bring a legal action to establish the legal capacity of the borrower to administer the project if found necessary to protect the government's interests. In order for the Agency to make servicing decisions in such cases, the borrower or the borrower's representative will provide to the Agency:

(1) On the part of the heirs or executor of the borrower's estate, evidence of legal action due to a will or court actions that establish who is to become the owner;

(2) The financial status of the borrower and any member pledging additional security for the debt;

(3) The status of the security property; and

(4) The impact of the identified actions on the operation of the project.

(b) *Membership liability agreements.* If a borrower's note is endorsed by individuals other than the borrower or a borrower has security agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or has individual liability agreements, which are usually assigned to and held by the Agency as additional security for the loan, the security and liability agreements must be adequate to protect the Agency's interest.

(c) *Security issues in participation loans.* When a multi-family housing (MFH) project is receiving financing or a subsidy from sources other than the Agency, the Agency will service the account in accordance with the participation agreements made with the Agency and the other funding sources under § 3560.65.

§ 3560.460 Double damages.

(a) *Action to recover assets or income.* (1) The Agency may request to the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of the provisions of a loan made by the Agency under this section or in violation of any applicable statute or regulation.

(2) For the purposes of this section, a use of assets or income in violation of the applicable loan, statute, or regulation includes any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the project or for which the documentation has not been maintained in accordance with the requirements of the Agency and in reasonable condition for proper audit.

(3) For the purposes of this section, the term ''person'' means:

(i) Any individual or entity that borrows funds in accordance with programs authorized by this section;

(ii) Any individual or entity holding 25 percent or more interest in any entity that the Agency funds in accordance with programs authorized by this section; and

(iii) Any officer, director, or partner of an entity that borrows funds in accordance with programs authorized by this section.

(b) *Amount recoverable.* (1) In any judgment favorable to the United States entered under this section, the Attorney General may recover double the value of the assets and income of the project that the court determines to have been used in violation of the provisions of a loan made by the Agency under this section or any applicable statute or regulation, plus all costs related to the actions, including reasonable attorney and auditing fees.

(2) Notwithstanding any other provisions of law, the Agency may use amounts recovered under this section for activities authorized under this section and such funds must remain available for such use until expended.

(c) *Time limitation.* Notwithstanding any other provisions of law, an action under this section may be commenced at any time during the six-year period beginning on the date that the Agency discovered or should have discovered the violation of the provisions of this section or any related statutes or regulations.

(d) *Continued availability of other remedies.* The remedy provided in this section is in addition to and not in substitution of any other remedies available to the Agency or the United States.

§ 3560.461 Enforcement provisions.

(a) *Equity skimming*—(1) *Criminal penalty.* Whoever, as an owner, agent, employee, or manager, or is otherwise in custody, control, or possession of property that is security for a loan made under this title, willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title or the regulations adopted pursuant to this title, must be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(2) *Civil sanctions.* An entity or individual who as an owner, operator, employee, or manager, or who acts as an agency for a property that is security for a loan made under this title where any part of the rents, assets, proceeds, income, or other funds derived from such property are used for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title of the regulations adopted pursuant to this title, must be subject to a fine of not more than $25,000 per violation. The sanctions provided in this paragraph may be imposed in addition to any other civil sanctions or civil monetary penalties authorized by law.

(b) *Civil monetary penalties*—(1) *When civil monetary penalties may be imposed.* The Agency may, after notice and opportunity for a hearing, impose a civil monetary penalty in accordance with this section against any individual or entity, including its owners, officers, general partners, limited partners, or employees, who knowingly and materially violate, or participate in the violation of, the provisions of this title, the regulation issued by the Agency pursuant to this title, or agreements made in accordance to this title by:

(i) Submitting information to the Agency that is false.

(ii) Providing the Agency with false certifications.

(iii) Failing to submit information requested by the Agency in a timely manner.

(iv) Failing to maintain the property subject to loans made under this title in good repair and condition, as determined by the Agency.

(v) Failing to provide management for a project that received a loan made under this title that is acceptable to the Agency.

(vi) Failing to comply with the provisions of applicable civil rights statutes and regulations.

(2) *Amount.* Civil penalties shall be assessed in accordance with 7 CFR part 3, subpart I. In determining the amount of a civil monetary penalty under this section, the Agency must take into consideration:

(i) The gravity of the offense;

(ii) Any history of prior offenses by the violator (including offenses occurring prior to the enactment of this section);

(iii) Any injury to tenants;

(iv) Any injury to the public;

(v) Any benefits received by the violator as a result of the violation;

(vi) Deterrence of future violations; and

(vii) Such other factors as the Agency may establish by regulation.

(3) *Payment of penalties.* No payment of a penalty assessed under this section may be made from funds provided under this title or from funds of a project which serve as security for a loan made under this title.

(4) Hearings under this part shall be conducted in accordance with the procedures applicable to hearings in accordance with 7 CFR part 1, subpart H.

(c) *Conditions for renewal extension.* The Agency may require that expiring loan or assistance agreements entered into under this title must not be renewed or extended unless the owner executes an agreement to comply with additional conditions prescribed by the Agency, or executes a new loan or assistance agreement in the form prescribed by the Agency.

[69 FR 69106, Nov. 26, 2004, as amended at 81 FR 57442, Aug. 23, 2016]

§ 3560.462 Money laundering.

The Agency will act in accordance with U.S. Code Title 18, part I, chapter 95, section 1956(c)(7)(D).

§ 3560.463 Obstruction of Federal audits.

The Agency will act in accordance with U.S. Code Title 18, part I, chapter 73, section 1516(a).

§§ 3560.464–3560.499 [Reserved]

§ 3560.500 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart K—Management and Disposition of Real Estate Owned (REO) Properties

§ 3560.501 General.

This subpart contains Agency procedures and other policies related to the management and disposition of multifamily housing (MFH) projects in the Agency's inventory (Real Estate Owned (REO) property). Housing projects will not be accepted into the Agency's inventory unless one of the following has occurred:

(a) The borrower has abandoned the housing project and the Agency has performed the required steps to take the housing project into custody.

(b) The housing project title has been transferred to the Agency as a result of foreclosure, voluntary conveyance, redemption, or other action.

§ 3560.502 Tenant notifications and assistance.

Each tenant in an REO property designated to be sold as a non-program property will be notified by the Agency, in writing, of the housing projects' non-program designation and will be given an opportunity to obtain a Letter Of Priority Entitlement (LOPE) as specified in § 3560.159(c).

§ 3560.503 Disposition of REO property.

(a) Preference will be given to offers from bidders who are determined eligible by the Agency to purchase REO property designated to be sold as program property. It is the Agency's priority that property previously operated as program property prior to becoming REO inventory property be sold as program property. However, REO property may be sold under whatever Agency program is most appropriate for the property and the community needs regardless of the program under which the property was originally financed or whether the property was being used to secure loans under more than one Agency program.

(b) When the Agency determines that the REO property to be sold is not decent, safe, and sanitary and/or does not meet cost effective energy conservation standards, it will disclose the basis for this determination to prospective purchasers. The deed by which such an REO property is conveyed will contain a covenant restricting it from residential use until it is decent, safe, and sanitary, and meets the Agency's cost effective conservation standards. The Agency will also notify any potential purchaser of any known lead based paint hazards.

§ 3560.504 Sales price and bidding process.

(a) The loan documents related to REO property sold for program purposes must contain the restrictive-use language specified in § 3560.662(a).

(b) Entities bidding on REO property designated to be sold as program property must submit a loan application package that meets the requirements specified in subpart B of this part.

(1) Bidders on REO property designated to be sold as program property

must meet the eligibility requirements established under § 3560.55.

(2) Bidders determined by the Agency to be ineligible to purchase REO property designated to be sold as program property will be notified in writing. The bidding process will continue regardless of pending appeals.

(3) All offers from bidders determined to be eligible to purchase REO property designated to be sold as program property will be considered in the bidding process and must provide evidence of financial stability and credit worthiness.

(c) The Agency will determine the successful bidder on REO property designated to be sold as program property by conducting a drawing of sealed bids.

(1) The Agency may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government. The Agency will publicly solicit requests for sealed bids and publicize auctions. If the highest bid is lower than the minimum acceptable bid established by the Agency, or if no acceptable bids are received, the Agency may negotiate a sale without further public notice.

(2) Bidders who desire to withdraw their bids must do so prior to the drawing date.

(d) Property designated to be sold as non-program property may be sold to entities that do not meet the Agency's eligible borrower requirements specified in § 3560.55, and must be sold for cash or on terms approved by the Agency. Cash sales will be given first preference and will be drawn before any sales on terms.

§ 3560.505 Agency loans to finance purchases of REO properties.

(a) Agency loans to finance the purchase of REO property designated to be sold as program property must meet the same requirements as specified in subparts A and B of this part. In addition, the following provisions apply.

(1) At the borrower's option, the interest rate will be the prevailing rate at the time of loan approval or the prevailing rate at loan closing.

(2) Purchasers may pay closing costs from their own funds or, if allowable under subparts B, L, or M of this part, as applicable, may finance such costs as part of the Agency loan.

(b) Agency loans to finance the purchase of REO property designated to be sold as non-program property must meet the following terms.

(1) A down payment of not less than 10 percent of the purchase price is required at closing.

(2) The interest rate will equal the lesser of the prevailing interest rate at the time of loan approval or loan closing for MFH loans plus one-half percent.

(3) The note amount will be amortized over a period not to exceed 10 years. If the Agency determines that more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full due no later than 10 years from the date of closing (balloon payment). In no case will the term be longer than the useful life of the property.

(4) Agency loans to finance the purchase of non-program REO property are subject to the availability of funds.

(c) Loan limits and allowable uses of loan funds specified in subparts B, L, and M of this part, as applicable, are applicable to any Agency-financed (credit) sale of REO property.

(d) Title clearance and loan closing for an Agency financed sale and any subsequent loan to be closed simultaneously with the sale must meet the requirements in subpart B of this part for an initial loan, with the following exceptions:

(1) A ''Quit Claim'' or other non-warranty deed will be used; and

(2) The buyer must pay attorney's fees, insurance costs, recording fees and other customary fees unless they are included in a subsequent loan and the subsequent loan is for purposes other than closing costs and fees.

(e) After approval of an Agency-financed sale of occupied REO property designated to be sold as program property, but prior to closing, the purchaser must prepare a budget for housing operations in accordance with subpart B of this part. If a rent increase is necessary, procedures specified in subparts E and F of this part for calculating rents, net tenant contributions,

and rental assistance will be followed by the borrower.

§ 3560.506 Conversion of single family type REO property to MFH use.

Single family type REO property may be sold for conversion to MFH program use under the following conditions:

(a) The Agency will allow nonprofit organizations, public bodies, or for-profit entities to purchase single family type REO property for conversion to MFH program use. When the Agency finances the sale of single family-type REO property for conversion to rural rental housing program use (*i.e.*, MFH including group homes and homes for the elderly or disabled, farm labor housing, or rural cooperative housing), the sale price will be the lesser of the Federal Government's investment or an amount based on the ''as-is'' market value of the housing project as determined by an appraisal conducted in accordance with subpart P of this part.

(b) The Agency will only accept written offers to purchase two or more single family type REO properties for conversion to rural rental housing from nonprofit organizations, public bodies, or for-profit entities with a good record of providing housing under the Agency's MFH programs. The single family type properties are not required to be contiguous, however, they must be located in close enough proximity so that management capabilities are not diminished because of distance.

§§ 3560.507–3560.549 [Reserved]

§ 3560.550 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart L—Off-Farm Labor Housing

§ 3560.551 General.

This subpart establishes the requirements for making loans and grants for off-farm labor housing and for ongoing operations of this housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to the requirements in this subpart.

§ 3560.552 Program objectives.

(a) In addition to the objectives stated in § 3560.52, off-farm labor housing loan and grant funds will be used to increase:

(1) The supply of affordable housing for farm labor; and

(2) The ability of communities to attract farm labor by providing housing which is affordable, decent, safe and sanitary.

(b) Under section 516(i) of the Housing Act of 1949 (42 U.S.C. 1486(i)), the Agency may award technical assistance grants to encourage the development of farm labor housing.

§ 3560.553 Loan and grant purposes.

(a) In addition to the purposes stated in § 3560.53, off-farm labor housing loan and grant funds may be used to provide facilities for seasonal or temporary residential use with appropriate furnishings and equipment. A temporary residence is a dwelling which is used for occupancy, usually for a short period of time, but is not the legal domicile for the occupant.

(b) The Agency may award technical assistance grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations to obtain loans and grants for the construction of farm labor housing.

(c) Technical assistance services may not be used to reimburse a nonprofit or public body applicant for technical services provided by a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the

development and packaging of its loan/grant docket and project. In addition, technical assistance will not be funded by the Agency when an identity of interest exists between the technical assistance provider and the loan or grant applicant.

§ 3560.554 Use of funds restrictions.

Off-farm labor housing loan and grant funds may not be used for any purpose prohibited by § 3560.54 except § 3560.54(a)(1). Off-farm labor housing may be used to serve migrant farmworkers.

§ 3560.555 Eligibility requirements for off-farm labor housing loans and grants.

(a) *Eligibility for loans.* Applicants for off-farm labor housing loans must be:

(1) A broad-based nonprofit organization, a nonprofit organization of farmworkers, a federally recognized Indian tribe, a community organization, or an agency or political subdivision of State or local government, and must meet the requirements of § 3560.55, excluding § 3560.55(a)(6). A broad-based nonprofit organization is a nonprofit organization that has a membership that reflects a variety of interests in the area where the housing will be located; or

(2) A limited partnership with a nonprofit general partner which meets the requirements of § 3560.55(d).

(b) *Eligibility for grants.* To be eligible for off-farm labor housing grants, applicants must:

(1) Meet the requirements in § 3560.555(a)(1); and

(2) Be able to contribute at least one-tenth of the total farm labor housing development cost from its own or other resources. The applicant's contribution must be available at the time of grant closing. An off-farm labor housing loan financed by RHS may be used to meet this requirement.

(c) *Limitation.* Limited partnerships eligible under paragraph (a)(2) of this section are not eligible for farm labor housing grants.

§ 3560.556 Application requirements and processing.

Off-farm loans and grants will be available under a Notice of Funding Availability (NOFA) that will be published in the FEDERAL REGISTER each fiscal year.

§ 3560.557 [Reserved]

§ 3560.558 Site requirements.

The requirements established in § 3560.58 apply to all applications for off-farm labor housing loans and grants except that off-farm labor housing are not limited to rural areas.

§ 3560.559 Design and construction requirements.

(a) *General.* The requirements established in § 3560.60 apply to all applications for off-farm labor housing loans and grants except that seasonal off-farm labor housing that will be occupied for eight months or less per year by migrant farmworkers while they are away from their residence, may be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A.

(b) *Additional requirements.* In addition to the requirements established in § 3560.60, it is encouraged that the design of off-farm labor housing incorporate outdoor shower, boot washing station, and/or hose bibb facilities as necessary to protect the resident and the asset from excess dirt and chemical exposure.

(c) *Davis-Bacon wage requirements.* Construction financed with the assistance of a Section 516 grant will be subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)(7)), and the implementing regulations published by the Department of Labor at 29 CFR parts 1, 3, and 5.

§ 3560.560 Security.

The security requirements established in § 3560.61 will apply to all applications for off-farm labor housing loans.

§ 3560.561 Technical, legal, insurance and other services.

The requirements established under § 3560.62 apply to all applications for off-farm labor housing loans and grants.

§ 3560.562 Loan and grant limits.

(a) *Determining the security value.* The requirements established under

§ 3560.63(a) apply to off-farm labor housing loans.

(b) *Maximum amount of loan.* The requirements established in § 3560.63(c)(1) and (2), regarding borrower equity contribution apply to all applications for off-farm labor housing loans. (For applicants eligible under § 3560.555(a)(2), the amount of Agency financing for the housing will not exceed 95 percent of the total development cost or 95 percent of the security value available for the Agency loan, whichever is lower.) In determining the amount of the loan, the Agency will also review the capacity of the applicant to amortize such loan, considering any rental assistance provided for use in the housing, and any rents anticipated to be paid by farmworkers expected to occupy the housing.

(c) *Maximum amount of grant.* The amount of any off-farm labor housing grant must not exceed the lesser of:

(1) Ninety percent of the total development cost, or

(2) That portion of the total development cost which exceeds the sum of any amount provided by the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan.

§ 3560.563 Initial operating capital.

The requirements for § 3560.64 apply to all applications for off-farm labor housing loans and grants.

§ 3560.564 Reserve accounts.

The requirements for § 3560.65 apply to all applications for off-farm labor housing loans and grants.

§ 3560.565 Participation with other funding or financing sources.

The requirements established in § 3560.66 apply to all applications for off-farm labor housing loans and grants, except that the 25 percent requirements stated in paragraph § 3560.66(b)(1) may consist of loan and/or grant funds.

§ 3560.566 Loan and grant rates and terms.

(a) *Amortization period.* The loan will be amortized over a period not to exceed 33 years. The amortization schedule will take into account the depreciation of the security and ensure that the loan will be adequately secured.

(b) *Interest rate.* The effective interest rate will be 1 percent.

(c) *Term of grant agreement.* The grant agreement will remain in effect for as long as there is a need for the housing, as determined by the Agency.

(d) *Grant period of performance.* The grant period of performance is five (5) years, which starts on the date the grant agreement is executed by both the Agency and the grantee and ends five (5) years from the date the grant agreement was executed by both the Agency and the grantee.

[69 FR 69106, Nov. 26, 2004, as amended at 89 FR 85037, Oct. 25, 2024]

§ 3560.567 Establishing the profit base on initial investment.

The requirements established under § 3560.68 apply to applicants eligible under § 3560.555(a)(2) and operating as a limited partnership with a nonprofit general partner.

§ 3560.568 Supplemental requirements for seasonal off-farm labor housing.

For off-farm labor housing operating on a seasonal basis, the management plan must establish specific opening and closing dates. During the off-season, off-farm labor housing may be used as defined in subpart A of this part under short-term lease provisions. Where rents are charged on a per-unit basis and family income qualifies the household for rental assistance, rental assistance may be used.

§ 3560.569 Supplemental requirements for manufactured housing.

The requirements established in § 3560.70 apply to all applications for off-farm labor housing loans and grants.

§ 3560.570 Construction financing.

The requirements established in § 3560.71 apply to all applications involving off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) Equity contributions being made by a borrower or grantee must be contributed and disbursed prior to any disbursement of interim loan funds and

any loan or grant funds from the Agency.

(b) If the Agency is providing both loan and grant funds, loan funds must be fully released and expended prior to the release of grant funds by the Agency.

(c) If construction is financed with a Labor Housing grant, it is subject to the provisions of the Davis-Bacon Act (published in the Department of Labor regulations 29 CFR parts 1, 2, and 5).

§ 3560.571 Loan and grant closing.

The requirements established in § 3560.72 apply to all applications for off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) A nonprofit organization will have its Board of Directors adopt an Agency-approved loan and/or grant resolution, which is required as part of the loan docket before loan and/or grant approval. All other loan applicants will execute an Agency-approved loan agreement.

(b) For grants, an Agency approved grant agreement, must be executed by the applicant on the date of grant closing.

(c) The obligations incurred by the applicant, as a condition of accepting the grant, will be in accordance with the off-farm labor housing grant agreement.

(d) Off-farm labor housing loans used to build or acquire new units made pursuant to a contract entered into on or after the effective date of this regulation, will be subject to the restrictive-use provision stated in § 3560.72(a)(2)(ii). All other off-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation. Such restrictions must be included in the mortgage and deed of trust.

§ 3560.572 Subsequent loans.

The requirements established in § 3560.73 will apply to all applications for subsequent off-farm labor housing loans.

§ 3560.573 Rental assistance.

(a) Rental assistance may be provided to income eligible tenants living in off-farm labor housing in accordance with subpart F of this part. The requirements established in § 3560.252 apply to all tenants receiving rental assistance.

(b) For dormitory style facilities operating on a per bed basis, rental assistance will be made available to the housing on a per unit basis, but may be pro-rated to tenants on a per bed basis. However, total rent charged for a unit must not exceed conventional rent for comparable units in the area or a similar area and per bed rents must be comparable to per bed rents in the market.

§ 3560.574 Operating assistance.

Operating assistance may be used in lieu of tenant-specific rental assistance in off-farm labor housing projects financed under section 514 or section 516(i) of the Housing Act of 1949 (U.S.C. 1486(i)) that serve migrant farmworkers. Owners of eligible projects may choose tenant-specific rental assistance as described in § 3560.573 or operating assistance, or a combination of both, however, any tenant or unit assisted under this section may not receive rental assistance under § 3560.572. The objective of this program is to provide assistance toward the cost of operating the project so that rents may be set at rates that are affordable to very low and low-income migrant farmworkers.

(a) *Project eligibility requirements.* To be eligible for the operating assistance program, projects must be:

(1) Off-farm labor housing projects financed under section 514 or section 516 with units that are for migrant farmworkers. Housing units for year-round farmworker households are ineligible; and

(2) Eligible for the Agency's rental assistance program as defined in § 3560.573.

(b) *Operating assistance limits.* The amount of operating assistance requested by the owner must be based on the project's actual income and expenses and must be approved by the Agency. In the case of a mixed project, the amount of operating assistance must be based on the portion of actual income and expenses that are attributable to the units that are for migrant farmworkers. In no instance may

the annual amount of operating assistance exceed 90 percent of the annual operating costs that are attributable to the migrant units.

(c) *Owner responsibilities*—(1) *Requesting for operating assistance program.* Owners of off-farm labor housing projects with units for migrant farmworkers may request operating assistance by submitting a request to the Agency, which must include a budget. The budget must include:

(i) Estimated operating costs for the migrant units, including authorized expenditures such as reserve deposits;

(ii) Proposed rental rates for the migrant units to generate sufficient funds for operating costs of those units, taking into consideration all other sources of project income; and

(iii) Estimated rental income from tenants, based on a tenant contribution of 30 percent of the average adjusted monthly income of migrant farmworker households in the area.

(2) *Requesting operating assistance payments.* Each month, the owner will submit a request for operating assistance to the Agency.

(3) *Verifying tenant income eligibility.* Owners are responsible for verifying tenant income eligibility. Only very low or low-income households are eligible for the operating assistance rents. Households with incomes above the low-income limits must pay the full rent.

(4) *Reporting requirements.* (i) Owners will complete and submit to the Agency tenant certifications to document tenant income and eligibility.

(ii) Owners will complete and submit monthly to the Agency a project worksheet for operating assistance.

(iii) Owners must submit an annual planning budget to the Agency prior to the project's fiscal year.

§ 3560.575 Rental structure and changes.

Off-farm labor housing is subject to the tenant contribution and rental unit rent requirements for Plan II housing established under subpart E of this part, except where seasonal housing will be occupied for less than a 3-month period. In such instances the best available and practical income verification methods may be used with prior approval of the Agency.

§ 3560.576 Occupancy restrictions.

(a) *Restrictions on conditions of occupancy.* (1) No borrower or grantee will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

(2) Tenant selection should be in accordance with the loan agreement, subpart D of this part and § 3560.577.

(3) No borrower or grantee will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, sex, age, disability, familial status, or national origin.

(b) *Eligible households.* To be eligible for occupancy in off-farm labor housing, households must meet the following requirements.

(1) *Occupational.* An eligible household must include a domestic tenant or co-tenant farm laborer, a retired domestic farm laborer, or a disabled domestic farm laborer.

(2) *Income.* The household must meet the definition of income eligible as established in § 3560.152 and the tenant or co-tenant must receive a substantial portion of income from farm labor employment. To determine if a substantial portion of income is from farm labor employment, the following measures will be used.

(i) For housing rented to farm laborers and owned by public bodies, public or private nonprofit organizations, and limited partnerships when charging rent.

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions as published by the Agency for their particular region of the country. For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the Standard Federal regions, as published by the Agency.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm or other farming enterprise as a domestic farmworker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than 1 year, a yearly average must amount to at least 110 days per year.

(ii) For housing owned by a farmer, family-farm partnership, family-farm corporation, or an association of farmers which was initially provided on a non-rental basis, a substantial portion of income is earned when housing is provided by the owner as part of employment compensation for farm labor.

(iii) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the 12 months preceding such disaster will be used to determine substantial portion of income under paragraph (b)(2) of this section.

(iv) The tenant who qualifies as a domestic farm laborer residing in a property with a nonrestrictive farm labor clause in the mortgage covenants must not have adjusted income which exceeds the moderate income limit for the appropriate household size and appropriate geographical area.

(3) *Occupancy*. The household must remain in compliance with the borrower's occupancy policy as established in § 3560.155.

(c) *Tenant eligibility requirements for operating assistance rents*. To be eligible for operating assistance rents, tenants must meet the rental assistance eligibility requirements described in § 3560.573 and in § 3560.252.

(d) *Ineligible tenants*. Tenants who, at any time, fail to meet all the requirements in paragraph (b) of this section will be deemed ineligible for occupancy in off-farm labor housing. Ineligible tenants in off-farm labor housing will be addressed in accordance with the requirements of § 3560.158.

(e) *Non-farm laborer tenants*. When there is a diminished need for housing for persons or families in the above categories, units in off-farm labor housing complexes may be made available to persons or families eligible for occupancy under § 3560.152. Eligible tenants under this section may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (b) of this section. As the basis for Agency approval or disapproval of the borrower's determination of diminished need, the borrower must submit a current analysis of need and demand to the Agency, identical to the market analysis that is required of loan applicants in the loan origination process. The borrower's determination and the MFH Leadership Designee's recommendation should be forwarded to the National Office for concurrence. The procedures specified in § 3560.158 shall be followed when tenants are required to vacate housing to allow for occupancy by persons eligible under paragraph (b) of this section.

[69 FR 69106, Nov. 26, 2004, as amended at 87 FR 11286, Mar. 1, 2022]

§ 3560.577 Tenant priorities for labor housing.

Tenant occupancy in off-farm labor housing is based on eligible farm labor certified through the income certification process required by § 3560.152 and is prioritized in the following order.

(a) First priority is to be given to eligible active farm laborer households with first priority going to very low-income households, next priority to low-income households, and last to moderate-income households.

(b) Second priority is given to retired domestic farm laborer households and disabled domestic farm laborer households who were active in the local farm labor market area at the time of retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

(c) Third priority is to be given to retired domestic farm laborer households and disabled domestic farm laborer households who were not active in the local farm labor market at the time of retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

§ 3560.578 Financial management of labor housing.

The requirements established in subpart G of this part will apply to all off-farm labor housing.

§ 3560.579 Servicing off-farm labor housing.

The requirements established in subparts I and J of this part will apply to all off-farm labor housing. Servicing according to subparts I and J of this part shall apply throughout the term of the loan or grant, whichever is longer.

§§ 3560.580–3560.599 [Reserved]

§ 3560.600 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart M—On-Farm Labor Housing

§ 3560.601 General.

This subpart contains the requirements for making loans for on-farm labor housing and for ongoing operation and management of on-farm labor housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to requirements given in this subpart.

§ 3560.602 Program objectives.

In addition to the objectives stated in § 3560.52, on-farm labor housing funds will be used to increase:

(a) The supply of affordable housing for farm labor; and

(b) The ability of the farmer to provide affordable, decent, safe and sanitary housing for farm workers.

§ 3560.603 Loan purposes.

On-farm labor housing loans may be made only for the purposes established in § 3560.553. Grants are not available for on-farm labor housing.

§ 3560.604 Restrictions on use of funds.

On-farm labor housing loans may not be used for any purpose prohibited by § 3560.54 except § 3560.54(a)(1). On-farm labor housing may be used to serve migrant workers. In addition, on-farm labor housing loan funds may not be used to provide housing for members of the immediate family of the applicant when the applicant is an individual farm owner, family farm corporation, family farm partnership, or a member of an association of farmers. Immediate family includes mother, father, brothers, sisters, sons, and daughters of the applicant and spouse.

§ 3560.605 Eligibility requirements.

(a) To be eligible for an on-farm labor housing loan, the applicant must meet the requirements of § 3560.55(a) with the exception of § 3560.55(a)(1), (5), and (6) and the following requirements.

(1) The applicant must be a farm owner, family farm partnership, family farm corporation, or an association of farmers engaged in agricultural or aquacultural farming operations whose farming operations demonstrate a need for on-farm labor housing and who will own the housing and operate it on a nonprofit basis.

(2) The applicant must agree to use the labor housing to engage in the farming operations of the individual farm owner applicant, or in the farming operations of its members if it is a family farm corporation or partnership, or an association of farmers.

(3) The applicant must, as determined by the Agency, be unable to provide the necessary housing from the applicant's own resources and be unable to obtain credit from any other source upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant is an association of farmers or family farm corporation or partnership, the

individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farm workers at rental rates they can afford to pay. The individual resources of family farm corporation or partnership members with less than a 10 percent corporate or partnership interest should not be considered when determining if the applicant can obtain credit elsewhere.

(b) The Agency may make an exception to the requirement that an individual farm owner, family farm corporation, family farm partnership or an association of farmers be unable to obtain the necessary credit elsewhere when all of the following conditions exist:

(1) There is a housing need in the area for domestic farmworkers who are migrants and the applicant will provide such housing; and

(2) There are no qualified state or political subdivisions or public or private nonprofit organizations available, or likely to become available within 12 months of the application, that are willing and able to provide the housing.

(c) When an applicant is determined eligible under paragraph (b) of this section, the interest rate for such loans will be determined in accordance with 7 CFR part 1810, subpart A.

(d) On-farm labor housing that consists of buildings with less than three units is not subject to the requirement that five percent of the units be constructed as fully accessible units, as described in § 3560.60(d).

§ 3560.606 Application requirements and processing.

(a) On-farm labor housing loan applications will be processed according to 7 CFR part 1940, subpart L. Applicants must submit an application in an Agency-approved format that adequately documents the need for the housing and the eligibility of the applicant.

(b) The applicant must certify that the farm workers for which the housing is intended are or will be involved in the applicant's agricultural or aquacultural farming operations.

(c) The applicant must certify that housing operations will be conducted in a non-profit manner such that income from the housing does not exceed eligible expenses associated with the housing. Eligible expenditures for the housing include, but are not limited to housing repairs and upkeep, payment of installments on the loan, taxes, insurance and reserves and other essential uses needed for success of the operations.

§ 3560.607 [Reserved]

§ 3560.608 Site and construction requirements.

(a) *General.* Cost and development standards for on-farm labor housing will be consistent with the requirements, standards, and cost limits specified in subpart B of this part, if the housing is a multi-family housing type structure, or consistent with section 502 of the Housing Act of 1949, if the housing is a single family type structure.

(b) *Permanent units.* On-farm labor housing occupied for 8 months or more of the year will be required to meet the following requirements.

(1) Housing may be multi-family or single family in type and may be located on the farm away from farm service buildings, or in the nearby community. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. All sites and housing shall be planned and constructed in accordance with 7 CFR part 1924, subparts A and C.

(2) Sites must be accessible from a public road, when feasible.

(c) *Seasonal units.* On-farm labor housing occupied for less than 8 months of the year will be considered seasonal housing. Such housing must meet the following requirements.

(1) Housing designed for seasonal occupancy may be either single family or multi-family.

(2) Seasonal housing may be constructed in accordance with exhibit I of 7 CFR part 1924, subpart A. If constructed in accordance with exhibit I, the housing must be suitable to allow for conversion to full-year occupancy if

the need for migrant farmworkers in the area declines.

(d) *Accessibility*. On-farm labor housing that consists of buildings with less than three units, need not meet the requirement that five percent of the units be constructed as fully accessible units, as described in §3560.60(d). This does not, however, eliminate any other accessibility requirements.

§ 3560.609 [Reserved]

§ 3560.610 Security.

(a) Security instruments must meet the requirements established under §3560.560.

(b) When feasible, the on-farm labor housing will be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must include a lien on the tract of land where the on-farm labor housing is located and the security must have adequate value to protect the Federal government's interest. The Agency will seek a first or parity lien position on Agency-financed property in all instances, however, the Agency may accept a junior lien position if the Federal government's interests are adequately secured.

(c) The Agency will determine the value of the security for the loan in accordance with 7 CFR part 1922, subpart B if the farm is used as security or in accordance with section 502 of the Housing Act of 1949, if only the on-farm labor housing and related land is used for security.

(d) If necessary to provide adequate security for the loan, the Agency may require that any household furnishings purchased with loan funds also be secured.

(e) Personal liability and recourse will be required of all borrowers, including the individual members, stockholders or partners of an association of farmers, family farm corporations or partnerships, respectively.

§ 3560.611 Technical, legal, insurance and other services.

When technical, legal, insurance, or services are required for development of on-farm labor housing, applicants must comply with the applicable requirements of §3560.62. Regarding insurance coverage, the requirements of §3560.62(d) apply to on-farm labor housing.

§ 3560.612 Loan limits.

The maximum loan amount will be 100 percent of the allowable total development costs of on-farm labor housing and related facilities subject to §§3560.603, 3560.604 and 3560.608.

§ 3560.613 [Reserved]

§ 3560.614 Reserve accounts.

When on-farm labor housing operations include 12 or more units, the Agency will require such properties to comply with the reserve account requirements in §3560.65.

§ 3560.615 Participation with other funding sources.

The Agency encourages the use of other funding sources in conjunction with on-farm labor housing loans. Use of such financing in conjunction with an on-farm labor housing loan is subject to the approval of the Agency and must comply with the requirements of §3560.66.

§ 3560.616 Rates and terms.

(a) The interest rate for on-farm labor housing loans will be 1 percent.

(b) The term of the on-farm labor housing loan will not exceed 33 years.

(c) Loan amortization for on-farm labor housing may be on a monthly or an annual basis.

§ 3560.617 [Reserved]

§ 3560.618 Supplemental requirements for on-farm labor housing.

The management plan for on-farm labor housing operated on a seasonal basis must have specific opening and closing dates. During the off-season, on-farm labor housing may be used under short-term lease provisions.

§ 3560.619 Supplemental requirements for manufactured housing.

On-farm labor housing loan funds used for manufactured housing must comply with §3560.70. Manufactured housing located on-farm may consist of individual units.

§ 3560.620 Construction financing.

The requirements established in § 3560.71 apply to all applications involving on-farm labor housing loans.

§ 3560.621 Loan closing.

Applicants for on-farm labor housing loans must execute an Agency-approved loan agreement. In addition, if determined appropriate by the Agency, on-farm labor housing loans made on or after the effective date of this regulation may be subject to the restrictive-use provisions as stated in § 3560.72(a)(2)(ii). All other on-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation.

§ 3560.622 Subsequent loans.

The requirements established in § 3560.572 apply to all applications for on-farm labor housing subsequent loans.

§ 3560.623 Housing management and operations.

Borrowers with on-farm labor housing loans must:

(a) Develop and submit to the Agency a management plan in a format specified by the Agency. At a minimum, the management plan will detail the borrower's operational and occupancy policies, how the borrower will deal with resident complaints, and how repairs will be completed; and

(b) Maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.

§ 3560.624 Occupancy restrictions.

(a) The immediate relatives of the borrowers are ineligible occupants for on-farm labor housing.

(b) Occupants must meet the definition of a domestic farm laborer, as defined in § 3560.11.

(a) Occupancy of on-farm labor housing is restricted to employees of the borrower unless otherwise approved by the Agency.

(d) With prior written permission of the Agency, on-farm labor housing may be occupied by ineligible tenants on a short-term basis. The permission of the Agency must also be for a limited duration.

§ 3560.625 Maintaining the physical asset.

On-farm labor housing must meet state and local building and occupancy codes.

§ 3560.626 Affirmative Fair Housing Marketing Plan.

On-farm labor housing must meet the requirements of § 3560.104.

§ 3560.627 Response to resident complaints.

The management plan submitted in accordance with § 3560.623 (a) will include a provision for dealing with resident complaints.

§ 3560.628 Establishing and modifying rental charges.

If it becomes necessary to establish or modify a shelter cost, the borrower must obtain Agency approval as specified in subpart E of this part.

§ 3560.629 Security deposits.

Borrowers that require security deposits to be paid by the tenants will be required to comply with the requirements of § 3560.204.

§ 3560.630 Financial management.

Financial information must be submitted in an Agency-approved format and will show operation of the housing in a non-profit manner.

§ 3560.631 Agency monitoring.

A compliance review and physical inspection will be conducted by the Agency at least once every 3 years. The purpose of this review will be to inspect:

(a) Tenant eligibility documentation;

(b) Financial information on the operation and management of the labor housing, including relevant borrower financial materials;

(c) Payment of taxes, insurance and hazard insurance;

(d) Compliance with the security deposit requirements;

(e) Compliance with the operating plan;

(f) Compliance with the loan agreement;

(g) Compliance with Agency requirements for affordable, decent, safe, and sanitary housing; and

(h) Compliance with civil rights requirements.

§§ 3560.632–3560.649 [Reserved]

§ 3560.650 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart N—Housing Preservation

§ 3560.651 General.

(a) This subpart contains the Agency's housing preservation requirements as related to prepayment requests and restrictive-use provisions (RUPs). The requirements of this subpart support the Agency's commitment to the preservation of decent, safe, sanitary, and affordable multi-family housing (MFH) for very low-, low-, and moderate-income households.

(b) The Agency will coordinate, direct, and monitor the Agency's MFH preservation activities from the National Office level.

§ 3560.652 Prepayment and restrictive-use categories.

(a) Loans with prepayment prohibitions include:

(1) Initial section 515 loans made on or after December 15, 1989, and

(2) Subsequent loans made on or after December 15, 1989, for additional rental units.

(b) Loans without prepayment prohibitions but with restrictive-use provisions include:

(1) All loans made after December 21, 1979, but prior to December 15, 1989;

(2) Subsequent loans made on or after December 15, 1989, for purposes other than additional rental units; or

(3) Loans subsequently restricted by servicing actions including transfers.

(c) Loans without prepayment prohibitions or restrictive-use provisions include all loans made on or before December 21, 1979 or loans that had restrictive-use provisions that have expired. Such loans are eligible to receive incentives subject to the provisions of this subpart.

(d) Loans may be prepaid if another loan or grant from the Agency imposes the same or more stringent restrictive-use provisions on the housing project covered by the loan being prepaid.

§ 3560.653 Prepayment requests.

(a) Borrowers seeking to prepay an Agency loan must submit a written prepayment request to the Agency at least 180 days in advance of the anticipated prepayment date and must obtain Agency approval before the Agency will accept prepayment.

(b) Prior to submitting a prepayment request, borrowers must take whatever actions are necessary to provide the following items:

(1) A clear description of the loan to be prepaid, the housing project covered by the loan being prepaid, and the requested date of prepayment.

(2) A statement documenting the borrower's ability to prepay under the terms specified.

(3) A certification that the borrower will comply with any federal, state, or local laws or regulations which may relate to the prepayment request and a statement of actions needed to assure such compliance.

(4) A copy of lease language to be used during the period between the submission date and the final resolution of the prepayment request notifying tenant applicants that the owner of the housing project has submitted a prepayment request to the Agency and explaining the potential effect of the request on the lease.

(5) Borrowers are required to submit a signed release of information form along with the prepayment request. The Agency will notify nonprofit organizations and public bodies involved in

providing affordable housing or financial assistance to tenants of the receipt of a borrower's request to prepay their loan(s). Additionally, the Agency is to notify nonprofit organizations and public bodies whenever a borrower, who has requested prepayment, is required or elects to offer their property for sale to a nonprofit or public body.

(6) A certification that the borrower has notified all governmental entities involved in providing affordable housing or financial assistance to tenants in the project and that the borrower has provided a statement specifying how long financial assistance from such parties will be provided to tenants after prepayment.

(7) A statement affirming that units in the property applying for prepayment will continue to be available for rent by eligible residents during the prepayment process.

(c) The Agency will review complete requests to determine if:

(1) The loan is eligible for prepayment under § 3560.652(b);

(2) The borrower has the ability to prepay; and

(3) The borrower has complied or has the ability to comply with applicable Federal, state, and local laws related to the prepayment request.

(d) If a prepayment request lacks full and complete information on any item, the Agency will return the prepayment request to the borrower with a letter citing the deficiencies in the prepayment request. The Agency will offer borrowers an opportunity, within 30 days following the date of the return, to address the reasons given by the Agency for the return of the prepayment request and will allow the borrower to submit a revised prepayment request.

(e) If the Agency determines that the prepayment request appropriately satisfies all the conditions listed in paragraph (d) of this section, the Agency will process the prepayment request and make a reasonable effort to enter into a new restrictive-use agreement with the borrower in accordance with § 3560.662 or § 3560.655. If the Agency determines that a loan is ineligible for prepayment or the borrower does not have the ability to prepay, the Agency will return the prepayment request to the borrower with a written explanation of the Agency's determinations.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.654 Tenant notification requirements.

(a) Within 30 calendar days of receiving a complete prepayment request, the Agency will send a prepayment request notice to each tenant in the housing project. Borrowers must post the Agency's prepayment request notice in public areas throughout the housing project from the date of the notice until the final resolution of the prepayment request. The prepayment request notice will establish a date and place where tenants may meet with the Agency to discuss the prepayment request and will advise tenants that:

(1) They may review all information submitted with the prepayment request except financial information regarding the borrower entity, which the Agency will withhold from tenant review unless given written permission for the release of the information from the borrower; and,

(2) They have 30 days from the date of the prepayment request notice to give the Agency comments on the prepayment request.

(b) Borrowers may provide a prepayment request notice of their own directly to tenants and may establish a date and place where tenants may meet with the borrower to discuss the prepayment request. The Agency and other providers of housing assistance for very-low, low, and moderate-income households may attend a borrower's prepayment request meeting with tenants.

(c) If the Agency agrees to accept prepayment on a loan, the Agency will send a prepayment acceptance notice to each tenant in the housing project at least 60 days prior to the prepayment date. Borrowers must post copies of the Agency's prepayment acceptance notice in public areas throughout the housing project until prepayment is made. If the prepayment acceptance was based on a borrower's agreement to comply with restrictive-use provisions, the notice will describe the restrictive-use provisions that will apply

to the housing project after prepayment and the tenant's rights to enforcement of the provisions.

(d) If the borrower withdraws the prepayment request, the Agency will provide a prepayment request cancellation notice to each tenant in the housing project. Borrowers must post copies of the prepayment request cancellation notice in the public areas throughout the housing project for a period of 60 days following the date of the prepayment request cancellation notice.

(e) If the borrower agrees to accept incentives and restrictive-use provisions, the Agency will notify each tenant, in writing, of the agreement and provide a description of the restrictive-use provision.

(f) If a borrower agrees to sell a housing project involved in a prepayment request to a nonprofit organization or public body, the Agency will notify each tenant, in writing, of the proposed sale to a nonprofit organization or public body and will explain the timeframes involved with the proposed sale, any potential impact on tenants, and the actions tenants may take to alleviate any adverse impact. Borrowers must post copies of the Agency's proposed sale notice in public areas throughout the housing project until the housing project is sold or the offer to sell is withdrawn.

(g) If a tenant applicant signs a lease in a housing project for which a prepayment request has been submitted, the borrower must provide the tenant with copies of all notifications provided to tenants by the Agency or the borrower prior to the tenant's occupancy in the housing project.

(h) If a borrower is unable to sell a housing project involved in a prepayment request to a nonprofit organization or public body within 180 days as specified in § 3560.659, the Agency will send a notice to each tenant in the housing project explaining the potential impact of the borrower's inability to sell the housing project on tenants and the actions tenants may take to alleviate any adverse impact. Borrowers must post the Agency's notice in public areas throughout the housing project for a period of 60 days following the date of the notice.

§ 3560.655 Agency requested extension.

Before accepting an offer to prepay from a borrower with a restricted loan, the Agency must first make a reasonable effort to enter into a new restrictive-use agreement with the borrower. Under this agreement, the borrower would make a binding commitment to extend the low-income use of the housing and related facilities for 20 years for loans with interest credit, beginning on the date on which the new agreement is executed. If the borrower is unwilling to enter into a new restrictive-use provisions and restrictive-use agreement, the Agency should proceed to take the actions described in § 3560.658.

§ 3560.656 Incentives offers.

(a) The Agency may offer a borrower, who submits a prepayment request meeting the conditions of § 3560.653(d), incentives to agree to the restrictive-use period in § 3560.662 if the following conditions are met:

(1) The market value of the housing project is determined by the Agency, based on an appraisal conducted in accordance with subpart P of this part.

(2) There are no restrictive-use agreements or prepayment prohibitions in effect.

(b) Specific incentives offered will be based on the Agency's assessment of:

(1) The value of the housing project as determined by the Agency based on an ''as-is'' market value appraisal conducted in accordance with subpart P of this part;

(2) An incentive amount that will provide a fair return to the borrower;

(3) An incentive amount that will not cause basic rents at the housing project to exceed conventional rents for comparable units; except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150% of the comparable rent for conventional unit rent level; and

(4) An incentive amount that will be the least costly alternative for the

Federal Government while being consistent with the Agency's commitment to the preservation of housing for very-low, low, and moderate income households in rural areas.

(c) The Agency may offer the following incentives:

(1) The Agency may increase the borrower's annual return on equity by one of the following two methods. The actual withdrawal of the return remains subject to the procedures and conditions for withdrawal specified in subpart G of this part.

(i) The Agency may recognize the borrower's current equity in the housing project. The equity will be determined using an Agency accepted appraisal based on the housing project's value as unsubsidized conventional housing.

(ii) When a current appraisal indicates an equity loan can not be made, the Agency may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 15-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Agency accepted appraisal of the housing project prior to receiving the prepayment request.

(2) The Agency may agree to convert projects without interest credit or with Plan I interest credit to Plan II interest credit or increase the interest credit subsidy for loans with Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

(3) The Agency may offer additional rental assistance, or an increase in assistance provided under existing contracts under §§ 521(a)(2), 521(a)(5) of the Housing Act of 1949 (42 U.S.C. 1490a(a)(2)) or section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f).

(4) The Agency may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Agency loans held by the borrower and must be made in conformance with the following requirements:

(i) The equity loan must not exceed the difference between the current unpaid loan balance and 90 percent of the housing project's value as determined by an ''as-is'' market value appraisal conducted in accordance with subpart P of this part.

(ii) Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.

(iii) If an incentive offer for an equity loan is accepted, the equity loan may be processed and closed with the borrower or any eligible transferee.

(iv) Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.

(v) Equity loans may not be offered unless the Agency determines that other incentives are not adequate to provide a fair return on the investment of the borrower to prevent prepayment of the loan or to prevent displacement of project tenants.

(5) The Agency will offer rental assistance to protect tenants from rent overburden caused by any rent increase as a result of a borrower's acceptance of an incentive offer or tenants who are currently overburdened.

(6) In housing projects with project-based section 8 assistance, the Agency may permit the borrower to receive rents in excess of the amounts determined necessary by the Agency to defray the cost of long-term repair or maintenance of such a project.

(d) The Agency must determine that the combination of assistance provided is necessary to provide a fair return on the investment of the borrower and is the least costly alternative for the Federal Government.

(e) At the time a specific incentive offer is developed, the Agency must take into consideration the costs of any deferred maintenance, items in the housing project's operating budget, and any expected long-term repair or replacement costs based on a capital needs assessment developed in accordance with § 3560.103(c). Deferred maintenance may include specific items identified in previous Agency inspections where the borrower has had the opportunity and resources available to take corrective actions and did not.

(1) Deferred maintenance does not include routine repair and replacement that results from normal wear and tear of the physical asset. The amount required for the reserve account to be

considered fully funded will be adjusted accordingly. To determine if basic rents exceed conventional rents for comparable units in the area, monthly contributions necessary to obtain the adjusted fully funded reserve account will be included in the calculation of basic rents.

(2) Deferred maintenance including any deficiencies identified in project compliance with section 504 of the Rehabilitation Act of 1973 must be addressed as part of the development of the incentive and must be completed as part of an acceptance agreement of any incentive.

(f) Existing loans must be consolidated, provided consolidation retains the Agency's lien position, and reamortized in accordance with subparts I and J of this part, provided it maintains feasibility of the housing for the tenants or reduces the debt service or the level of monthly rental assistance.

(g) The borrower must accept or reject the incentive offer within 30 days. If no answer to the offer is received within 30 days, the Agency may consider the incentive offer to be rejected.

(1) If the borrower accepts the incentive offer, procedures outlined in § 3560.657 must be followed.

(2) If the borrower rejects the incentive offer, the borrower must comply with requirements listed in § 3560.658.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008; 87 FR 11286, Mar. 1, 2022]

§ 3560.657 Processing and closing incentive offers.

(a) *Borrower responsibilities.* If a borrower accepts the Agency's offer of incentives, the borrower must complete the following actions:

(1) Subject to the Agency's approval, the borrower must legally restrict the use of the project in accordance with and for the number of years stated in § 3560.662.

(2) If the incentive offer accepted includes an equity loan, the borrower must complete an application for the equity loan, and the borrower must continue to qualify as an eligible borrower or transferee in accordance with subpart B of this part.

(3) If the incentive offer accepted includes rent increases, the borrower must follow the rent increase requirements established in subpart E of this part.

(b) *Waiting lists.* If funds for components of incentive offers are limited, the Agency will establish a waiting list of accepted incentive offers for funding in the date order that the complete prepayment request was received.

(c) *Unfunded incentive offers.* If the borrower accepts the incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower may choose one of the following actions:

(1) The borrower may offer to sell the housing project in accordance with § 3650.659. In this case the borrower will be removed from the list of borrowers awaiting incentives.

(2) The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. The Agency will not negotiate the incentive offer; but, at a borrower's request, may adjust the incentive amount to reflect an updated appraisal, loan balance, and terms of third party financing.

(3) The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives and either continue operating the housing project for program purposes and in accordance with Agency requirements or continue processing their prepayment process in accordance with § 3560.658. If the borrower chooses to withdraw their request, the borrower may resubmit an updated prepayment request, at any time, and repeat the prepayment process in accordance with this subpart.

(4) The borrower may elect to obtain a third-party equity loan provided rents will not exceed comparable rents in the market area.

§ 3560.658 Borrower rejection of the incentive offer.

(a) If a borrower rejects the incentive package offered by the Agency or an Agency request to extended restrictive-use provisions, made in accordance with § 3560.662, the loan will only be prepaid if the borrower elects to agree to the following:

(1) The borrower agrees to sign restrictive-use provisions to extend restrictive-use by 10 years from the date of prepayment, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If housing opportunities for minorities would be lost as a result of prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(b) If the borrower does not elect or agree to enter an agreement in accordance with paragraph (a) of this section, then the Agency will assess the impact of prepayment on two factors: housing opportunities for minorities and the supply of decent, safe, sanitary, and affordable housing in the market area. The Agency will review relevant information to determine the availability of comparable affordable housing for existing tenants in the market area and if minorities in the project, on the waiting list or in the market area will be disproportionately adversely affected by the loss of the affordable rental housing units.

(1) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Agency, and at the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If the Agency determines that prepayment will have an adverse impact on minorities, then the borrower must offer to sell to a qualified nonprofit organization or public body in accordance with the provisions of paragraph (a) of this section.

(3) If the Agency determines that the prepayment will not have an adverse effect on housing opportunities for minorities but there is not an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area, the loan may be prepaid only if the borrower agrees to sign restrictive-use provisions, as determined by the Agency, to protect tenants at the time of prepayment.

(4) If the Agency determines that there is no adverse impact on minorities and there is an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area the prepayment will be accepted with no further restriction.

(c) If the borrower agrees to the restrictive-use provisions, as determined by the Agency, the applicable language must be included in the release documents and the borrower must execute a restrictive-use agreement acceptable to the Agency and a deed restriction.

(d) If the borrower will not agree to applicable restrictive-use provisions, as determined by the Agency, the borrower must offer to sell to a nonprofit or public body in accordance with § 3560.659 or withdraw their prepayment request.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.659 Sale or transfer to nonprofit organizations and public bodies.

(a) *Sales price.* For the purposes of establishing a sales price when a borrower is required or elects to sell a housing project to a nonprofit organization or public body, two independent appraisals will be ordered, one by the Agency and one by the borrower. Both appraisals will conclude market value and be in accordance with subpart P of this part. If the borrower's assessment of the Agency's appraised market value indicates that no further appraisal is needed, the borrower may agree to accept the Agency's appraisal.

(1) The expense of the borrower's appraisal shall be borne by the borrower. The appraiser selected may not have an identity of interest with the borrower.

(2) If the two appraisers fail to agree on the market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding on the Agency and the borrower. The Agency and the borrower shall jointly fund the cost of the appraisal.

(b) *Marketing to nonprofit organizations and public bodies.* If a borrower must offer the property for sale to a nonprofit organization or public body under this paragraph, the borrower must take the following actions to inform appropriate entities of the sale:

(1) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

(2) The Agency will assist the borrower in initially notifying nonprofit organizations and public bodies.

(3) The borrower must provide the nonprofit organizations and public bodies contacted with sufficient information regarding the housing project and its operations for interested purchasers to make an informed decision. The information provided must include the minimum value of the housing project based on the market value determined in accordance with paragraph (a) of this section.

(4) If an interested purchaser requests additional information concerning the housing project, the borrower must promptly provide the requested materials.

(c) *Preference for local nonprofit and public bodies.* Local nonprofit organizations and public bodies have priority over regional and national nonprofit organizations and public bodies. The Agency may determine that no local nonprofit organizations or public bodies are available to purchase the housing project. After this determination, the borrower may accept an offer from a regional or national nonprofit organization or public body.

(d) *Eligible nonprofit organizations.* To be eligible to purchase properties under the conditions of this subpart, nonprofit organizations may not have among its officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid. In addition to local nonprofit organizations, eligible nonprofit organizations include regional or national nonprofit organizations or public bodies provided no part of the net earnings of which accrue to the benefit of any member, founder, contributor or individual.

(e) *Requirements for nonprofit organizations and public bodies.* To purchase and operate a housing project, a nonprofit organization or public body must meet the following requirements:

(1) The purchaser must agree to maintain the housing project for very low- and low-income families or persons for the remaining useful life of the housing and related facilities. However, currently eligible moderate-income tenants will not be required to move.

(2) The purchaser must agree that no subsequent transfer of the housing project will be permitted for the remaining useful life of the housing project unless the Agency determines that the transfer will further the provision of housing for low-income households, or there is no longer a need for the housing project. Language to be included in the deed, conveyance instrument, loan resolution, and assumption agreement (as applicable) is provided in § 3560.662.

(3) The purchaser must demonstrate financial feasibility of the housing project including anticipated funding.

(4) The purchaser must certify to the Agency that no identity-of-interest relationships in accordance with § 3560.102(g). The purchaser must not have any identity of interest with the seller or any borrower that has previously prepaid or requested prepayment of an Agency MFH loan.

(5) The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with subpart B of this part.

(6) The purchaser must make a ;good faith offer taking into consideration the value of the housing project as determined in accordance with paragraph (a) of this section.

(f) *Selection priorities.* If more than one qualified nonprofit organization or public body submits an offer to purchase the project at the same time, priority will be given to local nonprofit organizations and public bodies over regional and national nonprofit organizations or public bodies. When selecting between offers equally meeting all other criteria, the borrower will first consider the success of the nonprofit organization's or public body's previous experience in developing and maintaining subsidized housing, with preference given to the most successful. If the offers continue to be equal,

the borrower will then consider the number of years experience that the nonprofit organization or public body has had in developing and maintaining subsidized housing, with preference given to the greater number of years.

(g) *Loans made by the Agency or other sources to nonprofit organizations and public bodies.* Agency loans to nonprofit organizations or public bodies may be made for the purposes described in this paragraph. Agency loans will be processed in accordance with subpart B of this part. Loans from other sources will be approved by the Agency in accordance with subpart I of this part.

(1) Agency loans to nonprofit organizations or public bodies for the purchase of a housing project will be based on the appraised value determined in accordance with paragraph (a) of this section.

(2) With proper justification, an Agency loan may be made to help the nonprofit organization or public body meet the housing project's first year operating expenses if there are insufficient funds in the housing project's general operating and expense account to meet such expenses. An Agency loan, for the purpose of covering first year operating expenses, may not exceed 2 percent of the housing project's appraised value determined in accordance with paragraph (c) of this section.

(h) *Advances for nonprofit organizations and public bodies.* The Agency may make advances, in accordance with section 502(c)(5)(c)(i), not in excess of limits established by Congress to nonprofit organizations or public bodies that are purchasing housing under this subpart. Grant funds may be used to cover any direct costs other than the purchase price, incurred by nonprofit organizations or public bodies in purchasing and assuming responsibility for the housing project.

(i) *Waiting list.* If funds for sales to nonprofit organizations and public bodies are limited, the Agency will add the funding requests to the waiting list for incentives and follow the process established in § 3560.657(b) and (c).

(j) *Withdrawal from sales process.* A borrower may withdraw the prepayment request at any time prior to the sale of the property. The borrower will be responsible for any damages associated with breaking a sales contract established with a nonprofit organization or public body.

(k) *When no offer to purchase is received.* Prepayment with no further restriction may be accepted by the Agency when the borrower agrees to offer the housing project for sale to a nonprofit organization or public body in accordance with § 3560.659 and no good faith offer is received within 180 days from the date that the housing project was advertised for sale to a nonprofit organization or public body, or a good faith offer was received within 180 days from the advertisement date but the offeror was unable to fulfill the terms of the offer within 24 months of the offer date, provided the owner cooperated with the potential purchaser.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.660 Acceptance of prepayments.

(a) When the Agency agrees to accept prepayment, the Agency will notify borrowers, in writing, of the conditions under which the Agency will accept prepayment including the specific restrictive-use provisions to which the borrower has agreed and the date by which the borrower must make the prepayment.

(1) Prepayment must be made 180 days from the date of the Agency's prepayment acceptance notice to the borrower.

(2) If the borrower's prepayment is not received within 180 days of the prepayment acceptance notice and the Agency has not agreed to an alternative date based on a written request from the borrower, the Agency may cancel the prepayment acceptance agreement.

(b) Tenants will be notified of the prepayment acceptance agreement in accordance with § 3560.654(c). If a prepayment is anticipated to result in increased net tenant contributions, displacements or involuntary relocations, the tenants, who are affected by such a circumstance, may request a Letter Of Priority Entitlement (LOPE) in accordance with § 3560.159(c). Tenants must request a LOPE within one year of the prepayment acceptance notice date.

(c) Owners will provide certification stating that they will meet state and local laws prior to prepayment acceptance.

§ 3560.661 Sale or transfers.

(a) If a sale or transfer is to take place in conjunction with the Agency incentive offer, the sale or transfer must comply with the processing provisions of subpart I of this part.

(b) If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to find another transferee.

(c) In cases where the existing owner is in program non-compliance or default, the Agency may make an offer of incentives contingent on the successful transfer of the housing to an acceptable purchaser. The Agency may offer a smaller incentive or no incentive if the borrower does not agree to transfer the project to an acceptable purchaser, or if the transfer does not take place.

§ 3560.662 Restrictive-use provisions and agreements.

All restrictions require Agency approval and must be in accordance with the following restrictions:

(a) The undersigned, and any successors in interest, agree to use the property (described herein) in compliance with 42 U.S.C. 1484 or 1485, whichever is applicable, and applicable regulations and the subsequent amendments, for the purpose of housing:

(1) Very low-, or low-income households when required by § 3560.658(a)(2), or

(2) Very low-, low-, or moderate-income households.

(b) The period of the restriction will be inserted in accordance with the following:

(1) 10 years if required by § 3560.658(a)(1);

(2) The last existing tenant (that occupied the property on the date of prepayment) voluntarily vacates if required by § 3560.658(b)(3);

(3) 30 years if required by § 3560.406(g);

(4) Remaining period of existing restrictive-use provisions and any agreed extension if required by § 3560.655 or § 3560.658 (b)(1);

(5) The remaining useful life of the housing and related facilities if required by § 3560.658(a)(2); and

(6) 20 years in all other cases.

(c) When required by § 3560.658(a)(1) or (a)(2), the undersigned agrees that at the end of the expiration of the period described in paragraph (b) of this section, the property will be offered for sale to a qualified nonprofit organization or public body, in accordance with previously cited statutes and regulations.

(d) The Agency and eligible tenants or applicants may enforce these restrictions.

(e) The undersigned also agrees to:

(1) To set rents, other charges, and conditions of occupancy in a manner to meet these restrictions;

(2) To post an Agency approved notice of this restriction for the tenants of the property;

(3) To adhere to applicable local, state, and Federal laws; and

(4) To obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(f) The undersigned will be released from these obligations before the termination period in paragraph (b) of this section only when the Agency determines that there is no longer a need for the housing or that financial assistance provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.663 Post-payment responsibilities for loans subject to continued restrictive-use provisions.

(a) If a borrower prepays a loan and the housing project remains subject to restrictive-use provisions, the requirements of this section apply after prepayment.

(b) Owners of prepaid housing projects will be responsible for ensuring that the restrictive-use provisions agreed to as a condition of prepayment are observed.

(c) Owners must maintain appropriate documentation to demonstrate compliance with the restrictive-use

provisions and must make the documentation and the housing project site available for Federal Government inspection upon request.

(1) Owners must document rent increases in accordance with subpart G of this part.

(2) Owners must document tenant eligibility in accordance with § 3560.152.

(3) In an Agency approved format, owners must provide the agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions establishing that the restrictive-use provisions are being met.

(d) Owners must observe Agency policies on tenant grievances as described in § 3560.160. The Agency may enforce restrictive-use provisions through administrative and legal actions. Tenants may enforce the restrictive-use provisions by contacting the Agency or through legal action. The Agency will release the restrictive-use provisions when the Agency conditions have been met.

§§ 3560.664–3560.699 [Reserved]

§ 3560.700 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart O—Unauthorized Assistance

§ 3560.701 General.

(a) This subpart contains the policies for recapturing unauthorized assistance when the Agency determines that a borrower or tenant was ineligible for, or improperly used, assistance received from the Agency.

(b) The Agency may seek repayment of any unauthorized assistance provided to a borrower or tenant, plus the cost of collection, regardless of whether the unauthorized assistance was due to errors by the Agency, the borrower, or the tenant.

§ 3560.702 Unauthorized assistance sources and situations.

(a) Unauthorized assistance can be received by a borrower or tenant in the form of loans, grants, interest credit, rental assistance, or other assistance provided by the Agency including assistance received as a result of an incorrect interest rate being applied to an Agency loan. Agency officials may pursue identification and recapture of unauthorized assistance through any legal remedies available.

(b) Unauthorized assistance may result from situations such as:

(1) Assistance being provided to an ineligible borrower or tenant;

(2) Assistance to an eligible borrower or tenant being used for an unauthorized purpose;

(3) Assistance being obtained as a result of inaccurate, incomplete, or fraudulent information provided by a borrower or tenant; or

(4) Assistance being obtained as a result of errors by the Agency, borrower, or tenant.

§ 3560.703 Identification of unauthorized assistance.

(a) The Agency will use all available means to identify unauthorized assistance, including Agency monitoring activities, OIG reports, GAO reports, and reports from any source, if the information provided can be substantiated by the Agency.

(b) Borrowers have the primary responsibility for identifying repayment of unauthorized assistance received by tenants.

§ 3560.704 Unauthorized assistance determination notice.

(a) The Agency will notify borrowers, in writing, when a determination has been made that unauthorized assistance was received by the borrower.

Borrowers will notify tenants, in writing, when a determination is made that unauthorized assistance was received by the tenant and will simultaneously send the Agency of copy of the written notice to the tenant.

(b) The unauthorized assistance determination notice is a preliminary notice, not a demand letter. The unauthorized assistance determination notice will:

(1) Specify the reasons the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid and specify the party responsible for repayment of the unauthorized assistance (*i.e.*, the tenant or borrower) according to the provision of § 3560.708;

(3) Establish a place and time when the person receiving the unauthorized assistance determination notice may meet with the Agency or, in the case of tenants, may meet with the borrower, to discuss issues related to the unauthorized assistance notice such as the establishment of a repayment schedule; and

(4) Advise the borrower or tenant that they may present facts, figures, written records, or other information within a specified period of time which might alter the determination that the assistance received was unauthorized.

(c) Upon request, the Agency or borrower, in the case of tenants, will grant additional time for discussions related to an unauthorized assistance determination notice. Borrowers must notify the Agency of schedule revisions when additional time is granted to a tenant in unauthorized assistance claims.

§ 3560.705 Recapture of unauthorized assistance.

(a) The Agency will seek repayment of all unauthorized assistance received by a borrower or tenant, plus the cost of collection, to the fullest extent permitted by law. Agency efforts to collect unauthorized assistance may include offsets, the use of private or public collection agents, and any other remedies available. Agency findings related to unauthorized assistance determinations will be referred to credit reporting bureaus and other federal, state, or local agencies with jurisdictions related to the unauthorized assistance findings for suspension, debarment, civil or criminal action to the fullest extent permitted by law.

(b) If a borrower or tenant agrees to repay unauthorized assistance, the amount due will be the amount stated in the unauthorized assistance determination notice unless another amount has been approved by the Agency.

(c) Repayment may be made either with a lump sum payment or through payments made over a period of time. If a borrower or tenant agrees to repay unauthorized assistance, the borrower or tenant proposed repayment schedule must be approved by Agency prior to implementation. Agency approval of a repayment schedule will take into consideration the best interest of the borrower, the tenant, and the Federal Government.

(d) Borrowers must retain copies of all correspondence and a record of all conversations between the borrower and a tenant regarding unauthorized assistance received by a tenant.

(e) When a tenant, who has received unauthorized assistance due to tenant error or fraud as determined by the Agency, moves out of a housing project, the borrower is no longer responsible for recapturing the unauthorized assistance provided that the borrower notifies the Agency of the tenant's move and transfers all records related to the tenant's unauthorized assistance to the Agency within 30 days of the tenant's move. The Agency will pursue collection of the unauthorized assistance from the tenant.

(f) If a borrower refuses to enter into an unauthorized assistance repayment schedule with the Agency, the Agency will initiate liquidation procedures, in accordance with § 3560.456, or other enforcement actions, such as suspension, debarment, civil, or criminal penalties, in accordance with § 3560.461. If a tenant refuses to enter into an unauthorized assistance repayment schedule, the Agency will initiate recovery actions against the tenant.

(g) Borrowers may not use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance due to borrower fraud.

§ 3560.706 Offsets.

Offsets and any other available remedies may be used by the Agency to recapture unauthorized assistance. Guidance concerning use of offsets can be found at 7 CFR 3550.210.

§ 3560.707 Program participation and corrective actions.

(a) With Agency approval, a borrower or tenant, who has received unauthorized assistance, may continue to participate in the project if they have the legal and financial capabilities to do so. Approval considerations for such forbearance and repayment are in § 3560.705.

(b) A borrower or tenant who was responsible for the circumstances causing the unauthorized assistance must take appropriate action to correct the problem within 90 days of the unauthorized assistance determination notice date, unless an alternative date is agreed to by the Agency.

(c) When the interest rate shown in a debt instrument resulted in the receipt of unauthorized assistance, the debt instrument will be modified to the correct interest rate. All payments made by the borrower at the incorrect interest rate will be reapplied at the correct interest rate, and remaining payments due on the loan will be recalculated on the basis of the correct interest rate, plus any amounts due to the Agency as a result of the use of an incorrect interest rate, unless the Agency agrees to a separate repayment process.

§ 3560.708 Unauthorized assistance received by tenants.

(a) Tenant actions that require tenant repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Knowingly or mistakenly misrepresenting income, assets, adjustments to income, or household status to the borrower as required under subpart D of this part; or

(2) Failure to properly report changes in income, assets, adjustments to income, or household status to the borrower as required in subpart D of this part.

(b) Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that is not allowable under the provisions of subparts D, E, or F of this part, as applicable; or

(2) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of this part.

(c) When it is determined that a tenant has received unauthorized assistance, the borrower shall notify the tenant and the Agency through the procedure specified in § 3560.704.

(d) Borrowers may not charge tenants to pay amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error.

(e) Borrowers must notify the Agency of all collections from tenants as repayments for unauthorized assistance and must remit or credit the amounts collected to applicable housing project accounts.

(f) When rental assistance was improperly assigned to a tenant, for any reason, the rental assistance benefit must be canceled and reassigned.

(1) Before a borrower notifies a tenant of rental assistance cancellation, the borrower must request Agency approval. If the Agency determines that the unauthorized rental assistance was received by the tenant due to borrower fraud or error, the borrower must give the tenant 30 days notice, in writing, that the unit was assigned in error and that the rental assistance benefit will be canceled effective on date that the next monthly rental payment is due after the end of the 30-day notice period.

(2) Tenants also must be notified, in writing, that they may cancel their lease without penalty at the time the rental assistance is canceled. Tenants must be offered an opportunity to meet with a borrower to discuss the rental assistance cancellation.

§ 3560.709 Demand letter.

(a) If a borrower fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule, the Agency will send the borrower a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination; and

(2) The actions to be taken by the Agency if repayment is not made by a specified date.

(b) If a tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, the borrower will send the tenant a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination;

(2) The actions to be taken if repayment is not made by a specified date, including termination of tenancy; and

(3) The appeal rights of the tenant as specified in §3560.160.

(c) A demand letter may be sent to a borrower or tenant, in lieu of an unauthorized assistance determination notice, when the evidence documenting the unauthorized assistance determination is deemed to be conclusive by the Agency or borrower sending the letter.

§§ 3560.710–3560.749 [Reserved]

§ 3560.750 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart P—Appraisals

§ 3560.751 General.

This subpart sets forth appraisal policies for Agency-financed multifamily housing (MFH) projects consisting of five or more rental units. Agency-financed housing projects with fewer than five rental units may be appraised in accordance with the Agency's single family housing appraisal policies established under 7 CFR 3550.62.

§ 3560.752 Appraisal use, request, review, and release.

(a) *Appraisal uses.* The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan or determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making must be current, unless the Agency and the applicant, or borrower, mutually agree to the use of an appraisal that is not current. A current appraisal is an appraisal with a report date that is not more than one year old.

(b) *Appraisal requests.* Appraisal requests must be in writing and must specify the client and other intended users, the intended use, the purpose, and the scope of work of the appraisal, including the type and definition of the value(s) to be developed.

(1) *Type of Value.* The appraisal request must indicate whether the ''market value'', the ''market value, subject to restricted rents'', or any other type of value of the housing project and related facilities is to be concluded.

(i) A request for ''market value, subject to restricted rents'' means the appraisal will take into consideration any rent limits, rent subsidies, expense abatements, or restrictive-use conditions that will affect the property as a result of an agreement with the Agency or any other financing source. Each type of financing involved, including, but not limited to, interest credit subsidy, low-interest loans from other sources, tax-exempt bond financing, tax credits, and grants, must be valued separately in the appraisal.

(ii) A request for ''market value'' means the appraisal will take into consideration the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified

date and the passing of title from seller to buyer under conditions whereby:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised and acting in what they consider their best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(2) *''As-is'' Value'' or ''Prospective Value''*. The appraisal request must indicate whether the '''as-is' value'' or ''prospective value'' of the housing is to be concluded.

(i) '''As-is' value'' means the value of the housing and related facilities as of the effective date of the appraisal. It relates to what physically exists and is legally permissible at the time of the appraisal and excludes all hypothetical conditions.

(ii) ''Prospective value'' means the forecasted value of the housing and related facilities as of a specified future date. For Agency appraisals, this date will typically be the projected completion date of proposed new construction or rehabilitation.

(3) *Section 8 project-based assistance*. Depending on the intended use of the appraisal, the Agency will specify whether or not section 8 project-based assistance will be considered in the valuation of the housing. The remaining term of the section 8 contract and the probability of subsequent renewal terms being authorized will be taken into consideration when making this determination.

(4) *Low-Income Housing Tax Credit (LIHTC) and other financing sources*. Depending on the intended use of the appraisal, the Agency will specify whether or not tax credits and other financing sources involved in the housing will be considered in the valuation of the housing.

(c) *Appraisal review*. All MFH appraisals that were not written by an Agency appraiser will be reviewed by an Agency appraiser, who will write and file a technical review report that complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and Agency requirements.

(d) *Release of appraisals*. MFH appraisals procured by the Agency will be released to owners/applicants, from their own files, upon their request.

§ 3560.753 Agency appraisal standards and requirements.

(a) *General*. The Agency recognizes USPAP as the basic standards for appraisals. Appraisals used by the Agency must comply with USPAP and this subpart.

(b) *Appraisers*. MFH appraisals prepared for the Agency will be written by Agency appraisers or independent fee appraisers who are state certified general appraisers, certified in the state where the property is located. Technical review reports will be written by Agency state certified general appraisers.

(c) *Appraisal report*. The appraisal report format may be a form appraisal or a narrative appraisal. The Agency will specify the appraisal format that is most appropriate for the scope of work involved when the appraisal is requested.

(1) *Form appraisal reports*. The Agency will accept appraisal report forms that meet generally accepted industry standards, comply with USPAP, and have been approved by the Agency.

(2) *Narrative appraisal reports*. Narrative appraisal reports must, at a minimum, contain the following items:

(i) Transmittal letter;

(ii) Factual information about the property;

(iii) Regional and neighborhood data;

(iv) Description of the subject property;

(v) Description of existing and planned improvements;

(vi) A highest and best use analysis;

(vii) A statement regarding any environmental issues, such as potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products;

(viii) A cost approach analysis (if applicable);

(ix) A sales comparison approach analysis (if applicable);

(x) An income approach analysis (if applicable);

(xi) A reconciliation of the value indications derived from the included approaches to value; and

(xii) A signed and dated certification of value.

(3) At the time an appraisal is requested, the Agency will specify either a complete or a limited appraisal and one of the following types of appraisal reports, based upon the complexity of the appraisal assignment.

(i) A self-contained report that comprehensively describes all information significant to the solution of the appraisal problem;

(ii) A summary report that summarizes all information significant to the solution of the appraisal problem; or

(iii) A restricted use report, intended for Agency use only, that briefly states all information significant to the solution of the appraisal problem.

(d) *Highest and best use statement and analysis.* The highest and best use is to be concluded for the subject site as though it was vacant, and for the subject property as improved, if improvements have been made. If the highest and best use of a subject property is for something other than MFH, the appraisal report must provide this information to the Agency for consideration in the loan process. In addition to being reasonably probable and appropriately supported, the highest and best use of both the land as though vacant and the property as improved must meet four implicit criteria. The highest and best use must be:

(1) Physically possible;

(2) Legally permissible;

(3) Financially feasible; and

(4) Maximally productive.

(e) *Valuation methods and variances.* The final opinion of value presented in an appraisal report must have considered a cost approach, a sales comparison approach, and an income approach. If one of these standard approaches is not used, the reconciliation narrative will provide a full and complete explanation of the reasons the approach was excluded. The reconciliation will fully discuss and reconcile variances in the value indications concluded by each approach.

(f) *Real estate history.* Appraisals must contain a 5-year ownership and sales history for the housing project being appraised.

(g) *Reserve accounts.* Funds in the housing project's reserve account will not be considered in the valuation of the housing project.

(h) *Escrow accounts.* Short-term prepaid escrow accounts for general operating expenses, such as taxes and insurance, shall not be considered in the valuation of the housing project.

(i) *Rental rates comparison.* The appraisal report must document whether the housing project's basic rents are less than, equal to, or greater than market rents for comparable conventional, or non-subsidized, units in the area where the housing is located.

(j) *Description of housing and property rights.* The appraisal report must identify and describe both the real estate, which is the land and improvements, and the real property, or property rights, being appraised.

(k) *Exclusion of rental units from valuation.* The Agency will provide appraisers with instructions and supporting information on any rental units that do not produce rental income at the time of the appraisal.

(l) *Non-contiguous sites.* When a housing project has real property located on non-contiguous sites, a separate appraisal must be developed for each site.

§§ 3560.754–3560.799 [Reserved]

§ 3560.800 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart Q [Reserved]

Subpart R—Credit Report Requirements

SOURCE: 89 FR 106980, Dec. 31, 2024, unless otherwise noted.

§ 3560.851 General.

This subpart contains the Agency's credit reporting requirements for all Multifamily (MFH) programs.

§ 3560.852 Requirements.

When required to submit a credit report under any provision of this part, such submission must include a current comprehensive credit report for both the entity and the individual principals, partners, members, and the individual sub-entities or natural persons who are responsible for controlling the ownership and operations of the applicant entity, including but not limited to, principals, partners, or members. The Agency will also accept combination comprehensive credit reports which provides a comprehensive view of the applicant's credit profile by combining data from all three major credit bureaus (Experian, Equifax, and TransUnion).

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

SOURCE: 63 FR 39458, July 22, 1998, unless otherwise noted.

Subpart A—General Provisions

§ 3565.1 Purpose.

The purpose of the Guaranteed Rural Rental Housing Program (GRRHP) is to increase the supply of affordable rural rental housing, through the use of loan guarantees that encourage partnerships between the Rural Housing Service, private lenders and public agencies.

§ 3565.2 Applicability and authority.

The regulation prescribes the policies, authorizations, and procedures for the guarantee of multifamily loans under section 538 of the Housing Act of 1949.

§ 3565.3 Definitions.

Administrator. The Administrator of the Rural Housing Service, or his or her designee.

Agency. The Rural Housing Service, or a successor agency.

Allowable claim amount. The total losses incurred by the lender, as calculated pursuant to subpart J of this part.

Applicable Federal Rate (AFR). The interest rate set by the federal government for federal financing programs pursuant to section 42 of the Internal Revenue Code.

Approved lender. An eligible lender who has been authorized by the Agency to originate and service guaranteed multifamily loans under the program.

Assignment. The delivery by a lender to the Agency of the note and any other security instruments securing the guaranteed loan; and any and all liens, interest, or claims the lender may have against the borrower.

Assistance. Financial assistance in the form of a loan guarantee or interest credit received from the Agency.

Borrower. The individuals or entities responsible for repaying the loans.

Claim. The presentation to the Agency of a demand for payment for losses incurred on a loan guaranteed under the program.

Conditional commitment. The written commitment by the Agency to guarantee a loan subject to the stated terms and conditions.

Construction and permanent loan. A loan which provides advances during the construction period and remains in place as a permanent loan at the completion of construction.

Construction contingency reserve. A cash reserve of at least two percent of the construction contract, inclusive of the contractor's fee and all hard and soft costs that must be set up and fully funded by the closing of the construction loan. This reserve will be held by the lender, and funds will only be disbursed for change order requests approved by the Agency and the lender. Unused funds from the construction contingency reserve will be held in the operating and maintenance reserve and cannot be released to the borrower until the project reaches an occupancy of 90% for 90 consecutive days. In addition the reserve accounts established in the conditional commitment must be fully funded prior to the release of the construction contingency reserve. These requirements remain in effect regardless of whether the lender has established a lease-up reserve in lieu of the occupancy requirement.

Correspondent relationship. A contractual relationship between an approved lender and a non-approved lender or mortgage broker in which the correspondent performs certain origination, underwriting or servicing functions for the approved lender.

Default. Failure by a borrower to meet any obligation or term of a loan, grant, or regulatory agreement, or any program requirement.

Delinquency. Failure to make a timely payment under the terms of the promissory note or regulatory agreement.

Department of Housing and Urban Development (HUD). A federal agency which may be a partner in some of the Agency guarantees.

Due diligence. The process of evaluating real estate in the context of a real estate transaction for the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the regulatory status or security value of the property.

Eligible borrower. A borrower who meets the requirements of subpart D of this part.

Eligible lender. A lender who meets the requirements of subpart C of this part or any successor regulation.

Eligible loan. A loan that meets the requirements of subpart E of this part or any successor regulation.

Eligible rural area. An eligible rural area is an area which meets the requirements of part 3550 of this chapter or any successor regulation.

Fannie Mae. A Federally chartered, publicly owned enterprise created by Congress to purchase, sell or otherwise facilitate the purchase or sale of mortgages in the secondary mortgage market.

Federal Home Loan Bank System. A system of member savings and loans, banks and other lenders whose primary business is the making of housing loans.

Final claim payment. The amount due to the lender (or the Agency) after disposition of the collateral is complete and the proceeds from liquidation, as well as any other claim payments, are applied against the allowable claim amount.

Foreclosure. The process by which the ownership interest of a borrower in a mortgaged property is extinguished and the security is liquidated with the proceeds applied to the loan.

Freddie Mac. A Federally chartered, publicly owned enterprise created to purchase, sell or otherwise facilitate the purchase or sale of mortgages in the secondary mortgage market.

Ginnie Mae. Ginnie Mae is a reference to the Government National Mortgage Association.

Government National Mortgage Association. The Government National Mortgage Association (Ginnie Mae) is a government corporation within the Department of Housing and Urban Development. Ginnie Mae guarantees privately issued securities backed by mortgages or loans which are insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), or the Rural Housing Service (RHS) and certain

other loans or mortgages guaranteed or insured by the Government.

GRRHP. Guaranteed Rural Rental Housing Program.

Guarantee fees. The fees paid by the lender to the Agency for the loan guarantee.

(1) An initial guarantee fee is due at the time the guarantee is issued.

(2) An annual guarantee fee is due at the beginning of each year that the guarantee remains in effect.

Guaranteed loan. Any loan for which the Agency provides a loan guarantee.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part or all of the guaranteed note to an assignee, the assignee becomes a Holder only when the Agency receives notice and the transaction is completed through use of an assignment guarantee agreement form approved by the Agency.

Housing Finance Agency (HFA). A state or local government instrumentality authorized to issue housing bonds or otherwise provide financing for housing. Identity of interest. With respect to a project, an actual or apparent financial interest of any type, that exists or will exist among the borrower, contractor, lender, syndicator, management agent, suppliers of materials or services, including professional services, or vendors (including servicing and property disposal), in any combination of relationships which may result in an actual or perceived conflict of interest

Income eligibility. A determination that the income of a tenant at initial occupancy does not exceed 115 percent of the area median income as such area median income is defined by HUD or a successor agency.

Indian tribe. Any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation, as defined by or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 *et seq.*); or any entity established by the governing body of an Indian tribe, as described in this definition, for the purpose of financing economic development.

Interest credit. A subsidy available to eligible borrowers that reduces the effective interest rate of the loan to the Applicable Long Term Monthly AFR.

Land lease. A written agreement between a landowner and a borrower for the possession and use of real property for a specified period of time.

Lease. A contract containing the rights and obligations of a tenant or cooperative member and a borrower, including the amount of the monthly occupancy charge and other terms under which the tenant will occupy the housing.

Lease-up period. The period of time that begins when the first unit in the project receives a certificate of occupancy until the time that occupancy of 90% of the units for a minimum of 90 consecutive days is achieved.

Lease-up reserve. A cash deposit which is available to a property to help pay operating costs and debt service at the initiation of operations while units are being leased to their initial occupants.

Lender. A bank or other financial institution, including a housing finance agency, that originates or services the guaranteed loan.

Lender agreement. The written agreement between the Agency and the lender containing the requirements the lender must meet on a continuing basis to participate in the program.

Loan. A mechanism by which a lender funds the acquisition and development of a multifamily project. A loan in this context is secured by a mortgage executed by the lender and borrower.

Loan guarantee. A pledge to pay part of the loss incurred by a lender in the event of default by the borrower.

Loan guarantee agreement. The written agreement between the Agency and the lender containing the terms and conditions of the guarantee with respect to an individual loan.

Loan participation. A loan made by more than one lender wherein each

lender funds an individual portion of the loan.

Loan-to-cost ratio. The amount of the loan divided by the total cost to develop the project.

Loan-to-value ratio. The amount of the loan divided by the appraised market value of the project.

Maximum guarantee payment. The maximum payment by the Agency under the guarantee agreement computed by applying the guarantee percentage times the allowable claim amount, but not to exceed original principal amount.

Mortgage. A written instrument evidencing or creating a lien against real property for the purpose of providing collateral to secure the repayment of a loan. For program purposes, this may include a deed of trust or any similar document.

Multifamily project. A project designed with five or more living units.

Negligent servicing or origination. Negligent servicing or origination is a failure to perform those services which a reasonably prudent lender would perform in servicing or originating its own portfolio and includes not only the failure to act but also the failure to act in a timely manner.

Non-monetary default. A default that does not involve the payment of money.

Note. Any note, bond, assumption agreement, or other evidence of indebtedness pertaining to a guaranteed loan.

Office of Inspector General (OIG). The agency of USDA established under the Inspector General Act.

Operating and maintenance reserve. A cash reserve required of all projects of at least two percent of the loan amount held by the lender that is used for the up-keep of the project.

Payment effective date. For the month payment is due, the day of the month on which payment will be effectively applied to the account by the lender, regardless of the date payment is received.

Permanent loan. A permanent loan is defined as a mortgage loan usually covering development costs, interim loans, construction loans, financing expenses, marketing, administrative, legal, and other Agency approved costs. This loan differs from the construction loan in that financing goes into place after the project is completely constructed and open for occupancy. It is a long-term obligation, generally for a period of no less than 25 years and no more than 40 years.

Prepayment. The payment of the outstanding balance on a loan prior to the note's maturity date.

Project. The total number of rental housing units and related facilities subject to a guaranteed loan that are operated under one management plan and one Regulatory Agreement.

Program requirements. Any requirements contained in any loan document, guarantee agreement, statute, regulation, handbook, or administrative notice.

Promissory note. See ''Note''.

Qualified alien. For the purposes of this part, qualified alien refers to any person lawfully admitted into the country who meets the criteria of 42 U.S.C. 1436a.

Real estate owned. Denotes real estate that has been acquired by the lender or the Agency (often known as ''inventory property'').

Recourse. The lender's right to seek satisfaction from the borrower's personal financial resources or other resources for monetary default.

Regulatory agreement. The agreement that establishes the relationship among the Agency, the lender, and the borrower; and contains the borrower's responsibilities with respect to all aspects of the management and operation of the project.

RHS. The Rural Housing Service within the Rural Development mission area, or a successor agency, which administers section 538 guarantees.

Rural area. A geographic area as defined in section 520 of the Housing Act of 1949.

Rural Development. A mission area within USDA which includes RHS, Rural Utilities Service, and Rural Business-Cooperative Service.

Servicing. The broad scope of activities undertaken to manage the performance of a loan throughout its term and to assure compliance with the program requirements.

Single asset ownership. A borrower who owns only one project.

Surplus cash. The borrower's remaining funds at the project's fiscal year end, after making all required payments, excluding required reserves and escrows.

Tenant. The individual that holds the right to occupy a unit in accordance with the terms of a lease executed with the project owner.

U.S. citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marinas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

[63 FR 39458, July 22, 1998, as amended at 67 FR 16970, Apr. 9, 2002; 70 FR 2930, Jan. 19, 2005; 76 FR 3, Jan. 3, 2011; 84 FR 55035, Oct. 15, 2019]

§ 3565.4 Availability of assistance.

The Agency's authority to enter into commitments, guarantee loans, or provide interest credits is limited to the extent that appropriations are available to cover the cost of the assistance. The Agency will notify the public of the availability of assistance, changes in application requirements, or changes in the fee structure.

[84 FR 55035, Oct. 15, 2019]

§ 3565.5 Ranking and selection criteria.

(a) *Threshold criteria*. Applications for loan guarantee submitted by lenders must include a loan request for a project that meets all of the following threshold criteria:

(1) The project must involve an owner and a development team with qualifications and experience sufficient to carry out development, management, and ownership responsibilities, and the owner and development team must not be under investigation or suspension from any government programs;

(2) The project must involve the financing of a property located in an eligible rural area;

(3) Demonstrate a readiness, for the project to proceed, including submission of a complete application for a loan guarantee and evidence of financing;

(4) Demonstrate market and financial feasibility; and

(5) Include evidence that the credit risk is reasonable, taking into account conventional lending practices, and factors related to concentration of risk in a given market and with a given borrower.

(b) *Priority projects*. Priority will be given to projects in rural areas in which borrowers can best utilize and where loan guarantees are needed the most, as determined by the Agency based on information the Secretary considers appropriate. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce the priority criteria in an announcement in the FEDERAL REGISTER.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32371, June 16, 1999; 84 FR 55036, Oct. 15, 2019; 89 FR 19499, Mar. 19, 2024]

§ 3565.6 Inclusion of tax-exempt debt.

Tax-exempt financing can be used a source of capital for the guaranteed loan.

[64 FR 32371, June 16, 1999]

§ 3565.7 Environmental review requirements.

The Agency will take into account potential environmental impacts of proposed projects by working with applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

[81 FR 11050, Mar. 2, 2016]

§ 3565.8 Civil rights compliance.

(a) All actions taken by the Agency, or on behalf of the Agency, by a lender will be conducted without regard to

race, color, religion, national origin, sex, marital status, age, income from public assistance or having exercised their right under the Consumer Credit Protection Act, and in accordance with the Equal Credit Opportunity Act (ECOA).

(b) Any action related to the sale, rental or advertising of dwellings; in the provision of brokerage services; or in making available residential real estate transactions involving Agency assistance, must be in accordance with the Fair Housing Act, which prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status or handicap. It is unlawful for a lender or borrower participating in the program to:

(1) Refuse to make accommodations in rules, policies, practices, or services if such accommodations are necessary to provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; and

(2) Refuse to allow an individual with a disability to make reasonable modifications to a unit at his or her expense, if such modifications may be necessary to afford the individual full enjoyment of the unit.

(c) Any resident or prospective resident seeking occupancy or use of a unit, property or related facility for which a loan guarantee has been provided, and who believes that he or she is being discriminated against may file a complaint with the lender, the Agency or the Department of Housing and Urban Development. A written complaint should be sent to the Secretary of Agriculture or of the Department of Housing and Urban Development in Washington, DC.

(d) Lenders and borrowers that fail to comply with the requirements of title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), are liable for those sanctions authorized by law.

(e) For guaranteed loans with ''interest credit,'' the following additional civil rights laws will apply and be enforced by the agency delivering this guarantee program: title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Age Discrimination Act of 1975, and title IX of the Education Amendments of 1972.

(f) In accordance with title VI, borrowers will be subjected to compliance reviews for projects that receive interest credit.

[64 FR 32371, June 16, 1999]

§ 3565.9 Compliance with federal requirements.

The Agency and the lender are responsible for ensuring that the application is in compliance with all applicable federal requirements, including the following specific statutory requirements:

(a) *Intergovernmental review.* 7 CFR part 3015, subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities'', or successor regulation, including the Agency supplemental administrative instruction, RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B, or successor regulation.

(c) *Clean Air Act and Water Pollution Control Act Requirements.* For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act; Executive Order 11738; and EPA regulations at part 32, of title 40.

(d) *Historic preservation requirements.* The provisions of 7 CFR part 1901, subpart F or successor regulation.

(e) *Lead-based paint requirements.* The provisions of 7 CFR part 1924, subpart A, or successor regulation.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 76 FR 80731, Dec. 27, 2011]

§ 3565.10 Conflict of interest.

(a) *Objective.* It is the objective within the Rural Development mission area to maintain the highest standards of honesty, integrity, and impartiality by employees.

(b) *Rural Development requirement.* To reduce the potential for employee conflict of interest, all Rural Development activities will be conducted in accordance with 7 CFR part 1900, subpart D, or successor regulation by Rural Development employees who:

(1) Are not themselves a beneficiary;

(2) Are not family members or known relatives of any beneficiary; and

(3) Do not have any business or personal relationship with any beneficiary or any employee of a beneficiary.

(c) *Rural Development employee responsibility.* Rural Development employees must disclose any known relationship or association with a lender or borrower or their agents, regardless of whether the relationship or association is known to others. Rural Development employees or members of their families may not purchase a Real Estate Owned property, security property from a borrower, or security property at a foreclosure sale.

(d) *Loan closing agent responsibility.* Loan closing agents (or members of their families) who have been involved with a particular property are precluded from purchasing such properties.

(e) *Lender and borrower responsibility.* Lenders, borrowers, and their agents must identify any known relationship or association with a Rural Development employee.

§§ 3565.11–3565.12 [Reserved]

§ 3565.13 Exception authority.

An Agency official may request and the Administrator or designee may make an exception to any requirement or provision, or address any omission of this part, if the Administrator determines that application of the requirement or provision, or failure to take action, would adversely affect the government's interest or the program objectives, and provided that such an exception is not inconsistent with any applicable law or statutory requirement.

[64 FR 32372, June 16, 1999]

§ 3565.14 Review and appeals.

Whenever RHS makes a decision that is adverse to a lender or a borrower, RHS will provide written notice of such adverse decision and of the right to a USDA National Appeals Division hearing in accordance with 7 CFR part 11 or successor regulations. The lender or borrower may request an informal review with the decision maker and the use of available alternative dispute resolution or mediation programs as a means of resolution of the adverse decision. Any adverse decision, whether appealable or non-appealable may also be reviewed by the next level RHS supervisor. Adverse decisions affecting project tenants or applicants for tenancy will be handled in accordance with 7 CFR part 1944, subpart L or successor regulations.

§ 3565.15 Oversight and monitoring.

The lender, borrower, and all parties involved in any manner with any guarantee under this program must cooperate fully with all oversight and monitoring efforts of the Agency, Office of Inspector General, the U.S. General Accounting Office, and the U.S. Department of Justice or their representatives including making available any records concerning this transaction. This includes the annual eligibility audit and any other oversight or monitoring activities. If the Agency implements a requirement for an electronic transfer of information, the lender and borrower must cooperate fully.

§ 3565.16 [Reserved]

§ 3565.17 Demonstration programs.

To test ways to expand the availability or enhance the effectiveness of the guarantee program, or for similar purposes, the Agency may, from time to time, propose demonstration programs that use loan guarantees or interest credit. Toward this end, the Agency may enter into special partnerships with lenders, financial intermediaries, or others to carry out one or more elements of a demonstration program. Demonstration programs will be publicized by notices in the FEDERAL REGISTER.

§§ 3565.18–3565.49 [Reserved]

§ 3565.50 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to

respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart B—Guarantee Requirements

§ 3565.51 Eligible loans and advances.

Upon approval of an application from an eligible or approved lender, the Agency will commit to providing a guarantee for a permanent loan or a construction and permanent loan, subject to the availability of funds.

[76 FR 3, Jan. 3, 2011]

§ 3565.52 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee.

(a) *Rights and liabilities.* A guarantee under this part is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender had knowledge at the time the lender acquired the guarantee or assigned the loan, or in which a lender participates or condones. The guarantee will be unenforceable by the lender to the extent any loss is occasioned by a violation of usury laws, negligent servicing or origination by the lender, including a failure to acquire required security, or as a result of a use of loan funds for purposes other than those authorized by the Agency. The acts in the previous sentence constitute grounds for the refusal to make full payment under the guarantee to the lender, and will not be taken until the Agency gives the lender notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the Statute, Regulations, Loan Note Guarantee, or Lender's Agreement; the lender has not cured the acts or omissions within 90 calendar days after such notice; and the acts or omissions can reasonably be expected to have a material adverse effect on the credit quality of the guaranteed mortgage or the physical condition of the property securing the guaranteed mortgage. If such acts or omissions cannot be cured within a 90 calendar day period, the 90 calendar day cure period automatically shall be extended so long as curative activities are commenced during the 90 calendar day period. At no time shall the curative period extend more than 270 calendar days from the expiration of the original 90 calendar day cure period. When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

(b) *Liability of the Holder.* The Holder shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, and its rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender, unless the Holder has knowledge of fraud, misrepresentation or misuse of funds when it becomes the Holder or condones or participates in such actions.

(c) *Types of guarantees.* The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. The Agency will not guarantee construction loans only. The Agency offers the following types of guarantees:

(1) *Option One.* The Agency may guarantee permanent loans subject to the conditions specified in § 3565.303(d). The maximum guarantee for a permanent loan will be 90 percent [unless the Agency establishes a different percent and announces this different percent

through a Notice in the FEDERAL REGISTER] of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in § 3565.452.

(2) *Option Two*. The Agency may provide a guarantee which will cover construction loan advances (advances) during construction. The maximum guarantee of construction advances related to a construction and permanent loan will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the FEDERAL REGISTER] of the amount of principal and accrued interest up to default for amounts which exceed the original advance if for eligible uses of loan proceeds or 90 percent of the original principal amount and accrued interest up to default of the loan. The Agency's guarantee will cover losses to the extent aforementioned once all sureties/insurances and/or performance and payment bonds have fully performed their contractual obligations. A construction contingency reserve is required. This guarantee will be enforceable during the construction period but will cease to be enforceable once construction is completed unless and until the requirements for the continuation of the guarantee contained in the Conditional Commitment and this part are completed and approved by the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s). The Agency will provide written confirmation to the lender when all of the requirements for continuation of the guarantee to cover the permanent loan have been satisfied. Any losses sustained while the guarantee is unenforceable (after the end of the construction period and, if applicable, before the continuation of the guarantee) are not covered by the guarantee. For purposes of this guarantee, the construction period will end on the earlier of:

(i) Twenty-four months from the closing of the construction loan, if the certificates of occupancy for all units in the project have not been issued by then, or

(ii) The date of the issuance of the last certificate of occupancy, if the certificates of occupancy for all units in the project are issued on or before 24 months from the closing of the construction loan.

(3) *Option Three*. The Agency may provide a single, continuous guarantee for construction and permanent loans. Only projects that have low loan-to-cost ratios, which will be defined by the Agency in a Notice published periodically in the FEDERAL REGISTER, are eligible for this type of guarantee. A construction contingency reserve is required. The Agency may require that a lease-up reserve, in an amount established by the Agency and announced through a Notice in the FEDERAL REGISTER, be set-aside prior to closing the construction loan. This lease-up reserve is an additional amount, over and above the required initial operating and maintenance contribution. The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the FEDERAL REGISTER] of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default.

(d) *Maximum loss payment*. The maximum loss payment to a lender or holder is as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and up to 90 days of accrued interest as evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest and accrued interest up to 90 days due thereon.

(e) *Funding of reserves*. For each Option under paragraph (c) of this section, the lender must require an operating and maintenance reserve and provide the Agency adequate evidence of the funding of all required reserves.

(1) For Option 1 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(2) For Option 2 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(3) For Option 3 under paragraph (c) of this section, the operating and maintenance reserve must be fully funded before the issuance of the guarantee. The lease-up reserve must be funded 30 days before the first Certificate of Occupancy is anticipated.

[70 FR 2930, Jan. 19, 2005, as amended at 76 FR 3, Jan. 3, 2011]

§ 3565.53 Guarantee fees.

As a condition of receiving a loan guarantee, the Agency will charge the following guarantee fees to the lender. Changes to the initial and annual guarantee fees will be established by the Agency and will be published in a notice in the FEDERAL REGISTER.

(a) *Initial guarantee fee.* The Agency will establish and charge an initial guarantee fee of up to one percent of the guarantee amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) *Annual guarantee fee.* An annual guarantee fee will be charged, as established by the Agency, each year or portion of a year that the guarantee is in effect. This fee is due no later than February 28, of each calendar year.

(c) *Surcharge for guarantees on construction advances.* The Agency may, at its sole discretion, charge an additional fee on the portion of the loan advanced during construction. If applicable, this fee will be charged in advance at the start of construction.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 73 FR 11812, Mar. 5, 2008; 84 FR 55036, Oct. 15, 2019; 85 FR 77986, Dec. 3, 2020]

§ 3565.54 Transferability of the guarantee.

A lender must receive the Agency's approval prior to any sale or transfer of the loan guarantee.

§ 3565.55 Participation loans.

Loans involving multiple lenders are eligible for a guarantee when one of the lenders is an approved lender and agrees to act as the lead lender with responsibility for the loan under the loan guarantee agreement.

§ 3565.56 Suspension or termination of loan guarantee agreement.

A guarantee agreement will terminate when one of the following actions occurs: (In accordance with subpart H of this part, use restrictions on the property will remain if the following actions take place prior to the term of the loan and RHS determines the restrictions apply.)

(a) *Voluntary termination.* A lender and borrower voluntarily request the termination of the loan guarantee.

(b) *Agency withdrawal of guarantee.* The Agency withdraws the loan guarantee in the event of fraud, misrepresentation, abuse, negligence, or failure to meet the program requirements.

(c) *Mortgage pay-off.* The loan is paid.

(d) *Settlement of claim.* Final settlement of the claim.

§ 3565.57 Modification, extension, reinstatement of loan guarantee.

To protect its interest or further the objectives of the program, the Agency may, at its sole discretion, modify, extend, or reinstate a loan guarantee. In making this decision the Agency will consider potential losses under the program, impact on the tenants and the public reaction that may be received regarding the action. Further, the Agency may authorize a guarantee on a new loan that is originated as a part of a workout agreement.

§§ 3565.58–3565.99 [Reserved]

§ 3565.100 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart C—Lender Requirements

§ 3565.101 Responsibility of lenders.

A participating lender must originate and service a guaranteed loan in accordance with the regulation and program requirements throughout the life of a loan or guarantee, whichever is less. When it is in the best interests of the Agency, the Agency may permit the transfer of servicing from the originating lender to a servicer.

§ 3565.102 Lender eligibility.

An eligible lender must be a licensed business entity or HFA in good standing in the state or states where it conducts business; be approved by the Agency; and meet at least one of the criteria contained below. Lenders who are not eligible may participate in the program if they maintain a correspondent relationship with a lender who is eligible. An eligible lender must:

(a) Meet the qualifications of, and be approved by, the Secretary of HUD to make multifamily housing loans that are to be insured under the National Housing Act;

(b) Meet the qualifications and be approved by Fannie Mae, Freddie Mac or Ginnie Mae to make multifamily housing loans that are to be sold to or securitized by such corporations;

(c) Be a state or local HFA, or a member of the Federal Home Loan Bank system, with a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner;

(d) Be a lender who meets the requirements for Agency approval contained in this subpart and has a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner; or

(e) Be a lender who meets the following requirements in addition to the other requirements of this subpart and of subpart I of this part:

(1) Have qualified staff to perform multifamily housing servicing and asset management;

(2) Have facilities and systems that support servicing and asset management functions; and

(3) Have documented procedures for carrying out servicing and asset management responsibilities.

[63 FR 39458, July 22, 1998, as amended at 70 FR 2931, Jan. 19, 2005]

§ 3565.103 Approval requirements.

The Agency will establish and maintain a ''list of approved lenders''. To be an approved lender, eligible lenders must meet the following requirements and maintain them on a continuing basis at a level consistent with the nature and size of their portfolio of guaranteed loans.

(a) *Commitment.* A lender must have a commitment for a guaranteed loan or an agreement to purchase a guaranteed loan.

(b) *Audited statement.* A lender must provide the Agency with an annual audited financial statement conducted in accordance with generally accepted government auditing standards.

(c) *Previous participation.* A lender may not be delinquent on a federal debt or have an outstanding finding of deficiency in a federal housing program.

(d) *Ongoing requirements.* A lender must meet the following requirements at initial application and on a continuing basis thereafter:

(1) Overall financial strength, including capital, liquidity, and loan loss reserves, to have an acceptable level of financial soundness as determined by a lender rating service (such as Sheshunoff, Inc.); or to be an approved Fannie Mae, Freddie Mac, Ginnie Mae or HUD Federal Housing Administration multifamily lender; or, if a state housing finance agency, to have a top tier rating by a rating agency (such as Standard and Poor's Corporation);

(2) Bonding and insurance to cover business related losses, including directors and officers insurance, business income loss insurance, and bonding to secure cash management operations;

(3) A minimum of two years experience in originating and servicing multifamily loans;

(4) A positive record of past performance when participating in RHS or other federal loan programs;

(5) Adequate staffing and training to perform the program obligations; the head underwriter must have 3 years of experience and all staff must receive annual multifamily training;

(6) Demonstrated overall financial stability of the business over the past five years;

(7) Evidence of reasonable and prudent business practices for management of the program; and

(8) No negative information on Dunn & Bradstreet or similar type report.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 70 FR 2931, Jan. 19, 2005; 76 FR 4, Jan. 3, 2011]

§ 3565.104 Application requirements.

Eligible lenders must submit a lender approval application, in a format prescribed by the Agency. The lender approval application submission must occur at the time the lender submits its first application for a loan guarantee, or its first application to purchase a guaranteed loan. The application must include documentation of lender compliance with § 3565.103. A non-refundable application fee will be charged for each review of a lender's application.

[63 FR 39458, July 22, 1998, as amended at 84 FR 55036, Oct. 15, 2019]

§ 3565.105 Lender compliance.

A lender will remain an approved lender unless terminated by the Agency. To maintain approval, the lender must comply with the following requirements.

(a) Maintain eligibility in accordance with §§ 3565.102 and 3565.103;

(b) Comply with all applicable statutes, regulations, and procedures;

(c) Inform the Agency of any material change in the lender's staffing, policies and procedures, or corporate structure;

(d) Cooperate fully with all program or Agency monitoring and auditing policies and procedures, including the Agency's annual audit of approved lenders; and

(e) Maintain active participation in the multifamily guaranteed loan program by initiating a new loan guarantee or holding a loan guaranteed under this program.

§ 3565.106 Construction lender requirements.

A lender making a construction loan, as part of a construction and permanent loan, must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of this subpart.

[63 FR 39458, July 22, 1998, as amended at 76 FR 4, Jan. 3, 2011]

§ 3565.107 [Reserved]

§ 3565.108 Responsibility for actions of agents and mortgage brokers.

An approved lender is responsible for the actions of its agents and mortgage brokers.

§ 3565.109 Minimum loan prohibition.

A lender must not establish a minimum loan amount for loans under this program.

§ 3565.110 Insolvency of lender.

The Agency may require a lender to transfer a guaranteed loan or loans to another approved lender prior to a determination of insolvency by the lender. If the lender fails to transfer a loan when required, the guarantee will be considered null and void.

§ 3565.111 Lobbying activities.

An approved lender must comply with RD Instruction 1940-Q (available in any Rural Development Office) regarding lobbying activities.

§§ 3565.112–3565.149 [Reserved]

§ 3565.150 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control

number. The valid OMB control number for this information collection is 0575–0174.

Subpart D—Borrower Eligibility Requirements

§ 3565.151 Eligible borrowers.

Guaranteed loans must be made to an eligible borrower whose intention is to provide and maintain rural rental housing. The ownership entity must be a valid entity in good standing under the laws of the jurisdiction in which it is organized. Eligible borrowers shall include individuals, corporations, state or local public agencies or an instrumentality thereof, partnerships, limited liability companies, trusts, Indian tribes, or any organization deemed eligible by the Agency. Eligible borrowers must be U.S. citizens or permanent legal residents; a U.S. owned corporation, or a limited liability company, or partnership in which the principals are U.S. citizens or permanent legal residents.

§ 3565.152 Control of land.

At time of application, the lender must have evidence of site control by the borrower (option to purchase, lease, deed or other evidence acceptable to the Agency). At the time of loan closing, the lender's closing docket must provide documentary evidence that the borrower owns or has a long-term lease on the land on which the housing is or will be located. The form of ownership or the leasehold agreement must meet Agency requirements. Notwithstanding any investment in the site, the site may not be accepted based on the Agency's environmental assessment.

§ 3565.153 Experience and capacity of borrower.

At the time of application, the lender must certify that the borrower:

(a) Has the ability and experience to construct or rehabilitate multifamily housing that meets the requirements established by the Agency, the lender and the loan agreement;

(b) Has the legal and financial capacity to meet all of the obligations of the loan; and

(c) Has the ability and experience to meet the property management requirements established by the Agency, the lender, and the loan agreement.

§ 3565.154 Previous participation in state and federal programs.

Loans to borrowers who are delinquent on a federal debt may not be guaranteed. Furthermore, borrowers or principals thereof who have defaulted on state or local government loans will not be eligible for a guarantee unless the Agency determines that the default was beyond the borrower's control, and that the identifiable reasons for the default no longer exist. At the time of application, the lender must obtain from the borrower a certification that the borrower is not under any state or federal order suspending or debarring participation in state or federal loan programs and that the borrower is not delinquent on any non-tax obligation to the United States.

§ 3565.155 Identity of interest.

At the time of application, the lender must certify that it has disclosed any and all identity of interest relationships and preexisting conditions with respect to its relationships and that of the borrower, or that no identity of interest relationships exists. Identity of interest relationships include any financial or other relationship that exists or will exist between a lender, borrower, management agent, supplier, or any agent of any of these entities, that could influence, give the appearance of influencing or have the potential to influence the actions of the parties in carrying out their responsibilities under the program. Disclosure will be in a form and manner established by the Agency.

§ 3565.156 Certification of compliance with federal, state, and local laws and with Agency requirements.

At the time of application, the lender must obtain from the borrower a certification of compliance with all applicable federal, state, and local laws, and with Agency requirements regarding discrimination and equal opportunity in housing, including title VIII of the Civil Rights Act of 1968, and the Fair Housing Amendments Act of 1988. The

borrower must also certify that it is not the subject of any federal, state, or local sanction or punitive action.

§§ 3565.157–3565.199 [Reserved]

§ 3565.200 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart E—Loan Requirements

§ 3565.201 General.

To be eligible for a guarantee, a loan must comply with the provisions of this subpart and be originated by an approved lender.

§ 3565.202 Tenant eligibility.

(a) *Limits on income of tenants.* The housing units subject to a guaranteed loan must be available for occupancy only by low or moderate-income families or individuals whose incomes at the time of initial occupancy do not exceed 115 percent of the area median income. After initial occupancy, a tenant's income may exceed these limits.

(b) *Citizenship status.* A tenant must be a United States citizen or a noncitizen who is a qualified alien as defined in § 3565.3.

§ 3565.203 Restrictions on rents.

The rent for any individual housing unit, including any tenant-paid utilities, must not exceed an amount equal to 30 percent of 115 percent of area median income, adjusted for family size. In addition, on an annual basis, the average rent for a project, taking into account all individual unit rents, must not exceed 30 percent of 100 percent of area median income, adjusted for family size.

§ 3565.204 Maximum loan amount.

(a) *Section 207(c) limits and exceptions.* For that part of the property that is attributable to dwelling use, the principal obligation of each guaranteed loan must not exceed the applicable maximum per-unit limitations under section 207(c) of the National Housing Act.

(b) *Loan-to-value limits.* (1) In the case of a borrower that is a nonprofit organization or an agency or body of any State, local or tribal government, each guaranteed loan must involve a principal obligation that does not exceed the lesser of 97 percent of:

(i) The development costs of the housing and related facilities, or

(ii) The lender's determination of value not to exceed the appraised value of the housing and facilities.

(2) In the case of a borrower that is a for-profit entity or other entity not referred to in paragraph (b)(1) of this section, each guaranteed loan must involve a principal obligation that does not exceed the lesser of 90 percent of:

(i) The development costs of the housing and related facilities, or

(ii) The lender's determination of value not to exceed the appraised value of the housing and facilities.

(3) To protect the interest of the Agency or to further the objectives of the program, the Agency may establish lower loan-to-value limits or further restrict the statutory maximum limits based upon its evaluation of the credit quality of the loan.

(c) *Necessary assistance review.* (1) A lender requesting a loan guarantee must review all loans to determine the appropriate amount of assistance necessary to complete and maintain the project. The lender shall recommend to the Agency an adjustment in the loan amount if appropriate as a result of this review.

(2) Where the project financing combines a guaranteed loan with Low-Income Housing Tax Credits or other Federal assistance, the project must conform to the policies regarding necessary assistance in 7 CFR 3560.63 (d) or successor provision.

[63 FR 39458, July 22, 1998, as amended at 69 FR 69176, Nov. 26, 2004]

§ 3565.205 Eligible uses of loan proceeds.

Eligible uses of loan proceeds must conform with standards and conditions for housing and facilities contained in 7 CFR part 1924, subpart A or successor provision, except that the Agency, at

its sole discretion, may approve, in advance, a higher level of amenities, construction, and fees for projects proposed for a guaranteed loan provided the costs and features are reasonable and customary for similar housing in the market area.

(a) *Use of loan proceeds.* The proceeds of a guaranteed loan may be used for the following purposes relating to the project.

(1) New construction costs of the project;

(2) Moderate or substantial rehabilitation of buildings and acquisition costs when related to the rehabilitation of a building as described in paragraph (b) of this section;

(3) Acquisition of existing buildings, when approved by the Agency, for projects that serve a special housing need;

(4) Acquisition and improvement of land on which housing will be located;

(5) Development of on-site and off-site improvements essential to the use of the property;

(6) Development of related facilities such as community space, recreation, storage or maintenance structures, except that any high cost recreational facility, such as swimming pools and exercise clubs or similar facilities, must be specifically approved in advance by the Agency;

(7) Construction of on-site management or maintenance offices and living quarters for operating personnel for the property being financed;

(8) Purchase and installation of appliances and certain approved decorating items, such as window blinds, shades, or wallpaper;

(9) Development of the surrounding grounds, including parking, signs, landscaping and fencing;

(10) Costs associated with commercial space provided that:

(i) The project is designed primarily for residential use;

(ii) The commercial use consists of essential tenant service type facilities, such as laundry rooms, that are not otherwise conveniently available;

(iii) The commercial space does not exceed 10 percent of the gross floor area of the residential units and common areas, unless a higher level is specifically approved in writing by the Agency; and

(iv) The commercial activity is compatible with the use of the project and that the income is not more than 10 percent of the total annual operating income of the project.

(11) Costs for feasibility determination, loan application fees, appraisals, environmental documentation, professional fees or other fees determined by the Agency to be necessary to the development of the project;

(12) Technical assistance to and by non-profit entities to assist in the formation, development, and packaging of a project, or formation or incorporation of a borrower entity;

(13) Education programs for a board of directors, both before and after incorporation of a cooperative that will serve as the borrower;

(14) Construction interest accrued on the construction loan;

(15) Relocation assistance in the case of rehabilitation projects;

(16) Developers' fees; and

(17) Repaying applicant debts in the following cases:

(i) When the Agency authorizes in writing in advance the use of loan funds to pay debts for work, materials, land purchase, or other fees and charges before the loan is closed; or

(ii) When the Agency concurs in writing with a determination by the lender that costs for work, fees and charges incurred prior to loan application are integral to development of the guarantee application and project.

(b) *Rehabilitation requirements.* Rehabilitation work must be classified as either moderate or substantial as defined in exhibit K of 7 CFR part 1924, subpart A or a successor document. In all cases, the building or project must be structurally sound, and improvements must be necessary to meet the requirements of decent, safe, and sanitary living units. Applications must include a structural analysis, along with plans and specifications describing the type and amount of planned rehabilitation. The project as rehabilitated must meet the applicable development standards contained in 7 CFR part 1924, subpart A, as well as any applicable

historic preservation and environmental review requirements in accordance with 7 CFR part 1970.

[63 FR 39458, July 22, 1998, as amended at 81 FR 11050, Mar. 2, 2016]

§ 3565.206 Ineligible uses of loan proceeds.

Loan proceeds must not be used for the following:

(a) Specialized equipment for training and therapy;

(b) Housing in military impact areas;

(c) Housing that serves primarily temporary and transient residents;

(d) Nursing homes, special care facilities and institutional type homes that require licensing as a medical care facility;

(e) Operating capital for central dining facilities or for any items not affixed to the real estate, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.;

(f) Payment of fees, salaries and commissions or compensation to borrowers (except developers' fees); or

(g) Refinancing of an outstanding debt, except in the case of an existing guaranteed loan where the Agency determines that the refinancing is in the government's interest or furthers the objectives of the program. The term and amount of any loan for refinancing must not exceed the maximum loan amount or term limits.

§ 3565.207 Form of lien.

The loan originated by the lender for a guarantee must be secured by a first lien against the property.

§ 3565.208 Maximum loan term.

(a) *Statutory term limit.* The lender may set the term of the loan, but in no instance may the term of a guaranteed loan exceed the lesser of 40 years or the remaining economic life of the project.

(b) *Prepayment of loans.* A guaranteed loan may be prepaid in whole or in part at the determination of the lender, and upon the lender's written notice to the Agency at least 30 days prior to the expected date of prepayment. The Agency will not pay any lockout or prepayment penalty assessed by the lender. The lender must certify the following in the notice of prepayment:

(1) The lease documents used by the borrower or its agent prohibit the abrogation of tenant leases in the event of prepayment; and

(2) The borrower has notified tenants of the request to prepay the loan, including notice of the prohibition against abrogation of the lease and the policy and procedure for handling complaints regarding compliance with the long-term use restriction as contained in subpart H of this part.

§ 3565.209 Loan amortization.

Each guaranteed loan shall be made for a period of not less than 25 nor greater than 40 years from the date the loan was made and may provide for amortization of the loan over a period of not to exceed 40 years with a final payment of the balance due at the end of the loan term.

[67 FR 16970, Apr. 9, 2002]

§ 3565.210 Maximum interest rate.

The interest rate for a guaranteed loan must not exceed the maximum allowable rate specified by the Agency. This interest rate must be fixed over the term of the loan.

[84 FR 55036, Oct. 15, 2019]

§ 3565.211 Interest credit.

(a) *Limitation.* For at least 20 percent of the loans made during each fiscal year, the Agency will provide assistance in the form of interest credit, to the extent necessary to reduce the agreed-upon rate of interest to the AFR as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 7805, § 1.42–1T.

(b) *Selection criteria.* The Agency will select projects to receive interest credits using any of such criteria as the Agency may establish for priority projects as contained in subpart A of this part.

§ 3565.212 Multiple guaranteed loans.

The Agency may guarantee more than one loan on any project if all guaranteed loans, in the aggregate, comply with these regulations, including without limitation:

(a) In the aggregate, loans do not exceed the maximum guaranteed loan

amount and loan-to-value limits, as contained in § 3565.204;

(b) In the aggregate, loans are all to be secured equally by a first lien as the Agency may, at its sole discretion, determine necessary to ensure repayment of the loans; and

(c) If different lenders originate the loans, each lender has executed an intercreditor agreement in form and substance acceptable to the Agency.

[63 FR 39458, July 22, 1998, as amended at 70 FR 2931, Jan. 19, 2005]

§ 3565.213 Geographic distribution.

The Agency may refuse to guarantee a loan in an area where there is undue risk due to a concentration in the market of properties subject to a Agency guaranteed loan. The Agency will consider the credit quality of the loan and overall market conditions in making a determination of undue risk. If any of the Agency guaranteed loans in the market are experiencing vacancy rates in excess of 15% and the vacancy is due to market conditions, the Agency will invoke this provision and not guarantee the loan.

§ 3565.214 [Reserved]

§ 3565.215 Special conditions.

(a) *Use of third party funds.* As a condition of receiving a guaranteed loan, the Agency, or the lender if designated by the Agency, must review the terms and conditions of any secondary financing or funding of projects, including loans, capital grants or rental assistance.

(b) *Recourse.* If required by the lender, loans guaranteed under this program may be made on a recourse or nonrecourse basis, or with any personal or special borrower guarantees on collateralization.

§§ 3565.216–3565.249 [Reserved]

§ 3565.250 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart F—Property Requirements

§ 3565.251 Eligible property.

To be eligible for a guaranteed loan, a property must be used primarily for residential dwelling purposes and must meet the following requirements or the requirements of this subpart:

(a) *Property location.* All the property must be located in a rural area.

(b) *Minimum size of development.* The property must consist of at least five rental dwelling units.

(c) *Non-contiguous sites.* For a loan secured by two or more non-contiguous parcels of land, all sites must meet each of the following requirements:

(1) Located in one market area;

(2) Managed under one management plan with one loan agreement or resolution for all of the sites; and

(3) Consist of single asset ownership.

(d) *Compliance with statutes.* All properties must comply with the applicable requirements in section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, the Americans with Disabilities Act, and other applicable statutes.

§ 3565.252 Housing types.

The property may include new construction or rehabilitation of existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A. The Agency will guarantee proposals for new construction or acquisition with moderate or substantial rehabilitation of at least $6,500 per dwelling unit. The portion of guaranteed funds available for acquisition with rehabilitation may be limited.

[84 FR 55036, Oct. 15, 2019]

§ 3565.253 Form of ownership.

The property must be owned in fee simple or be subject to a ground lease or other legal right in land acceptable to the Agency.

§ 3565.254 Property standards.

(a) *Housing quality and site and neighborhood standards.* The property must

meet the site and neighborhood requirements established by the state or locality, and those standards contained under 7 CFR part 1924, subparts A and C or any successor regulations.

(b) *Third party assessments.* As part of the application for a guaranteed loan, the lender must provide documentation of qualified third parties' assessments of the property's physical condition and any environmental conditions or hazards which may have a bearing on the market value of the property. These assessments must include:

(1) An acceptable property appraisal.

(2) A Phase I Environmental Site Assessment (American Society of Testing and Materials).

(3) A Standard Flood Hazard Determination.

(4) In the case of the purchase of an existing structure, rehabilitation or refinancing, a physical needs assessment.

§ 3565.255 Environmental review requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed actions on protected environmental resources. Measures to avoid or mitigate adverse impacts to protected resources may require a change in site or project design. A site will not be approved by the Agency until the Agency has completed the environmental review process in accordance with 7 CFR part 1970.

[81 FR 11050, Mar. 2, 2016]

§ 3565.256 Architectural services.

Architectural services must be provided for the project in accordance with 7 CFR part 1924, subpart A or successor regulation, including plan certifications.

§ 3565.257 Procurement actions.

All construction procurement actions, whether by sealed bid or by negotiation, must be conducted in a manner that provides maximum open and free competition.

§§ 3565.258–3565.299 [Reserved]

§ 3565.300 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart G—Processing Requirements

§ 3565.301 Loan standards.

An approved lender must originate and underwrite the loan and appraise the subject property in accordance with prudent lending practices and Agency criteria addressing the following factors:

(a) Borrower qualifications and creditworthiness;

(b) Property, vacancy, market vacancy or collection loss;

(c) Rental concessions and rent levels;

(d) Tenant demand and housing supply;

(e) Property operating and maintenance expense;

(f) Property requirements as contained in subpart F of this part;

(g) Debt coverage ratio;

(h) Operating and long-term capital requirements;

(i) Loan-to-value ratio;

(j) Return on borrower equity; and

(k) Estimated long-term marketability of the project.

§ 3565.302 Allowable fees.

(a) *Lender fees.* The lender is authorized to charge reasonable and necessary fees in connection with a borrower's application for a guaranteed loan.

(b) *Agency fees.* The Agency will charge one or more types of fees deemed appropriate as reimbursement for reasonable and necessary costs incurred in connection with applications received from lenders. Agency fees may include, but are not limited to, the following:

(1) *Site assessment and market analysis or preliminary feasibility fee.* A fee for review of an application for a determination of preliminary feasibility.

(2) *Application fee.* A fee submitted in conjunction with the application for a loan guarantee.

(3) *Inspection fee.* A fee for inspection of the property in conjunction with a loan guarantee.

(4) *Transfer fee.* A fee in connection with a request for approval of a transfer of physical assets or a change in the composition of the ownership entity.

(5) *Extension or reopening fees.* A fee to extend the guarantee commitment or to reopen an application when a commitment has expired.

[63 FR 39458, July 22, 1998, as amended at 84 FR 55036, Oct. 15, 2019]

§ 3565.303 Issuance of loan guarantee.

(a) *Preliminary feasibility review.* During the initial processing of a loan, the lender may request a preliminary feasibility review by the Agency when required loan documentation is submitted.

(b) *Conditional commitment to guarantee a loan.* The Agency will issue a conditional commitment to guarantee a loan. This commitment will be good for such time frame as the Agency deems appropriate based on project requirements. The commitment to guarantee a loan, will specify any conditions necessary to obtain a determination by the Agency that all program requirements have been met. A conditional commitment can be issued, subject to the availability of funds, *after*:

(1) Completion of environmental review requirements in accordance with 7 CFR part 1970; and

(2) Selection of the proposed project for funding by the Agency in accordance with ranking and selection criteria.

(c) *Guarantee during construction.* When requesting a guarantee on construction loan advances under § 3565.52(c)(2) and (c)(3), Options 2 and 3, the Agency will only issue a guarantee to an approved lender that the Agency determines is eligible under § 3565.106 of this part.

(1) This guarantee will be subject to the limits contained in subpart B of this part and in the loan closing documentation.

(2) In all cases, the lender must obtain one of the following protections:

(i) Surety bonding or performance and payment bonding acceptable to the Agency;

(ii) An irrevocable letter of credit acceptable to the Agency; or

(iii) A pledge to the lender of collateral that is acceptable to the Agency.

(3) The lender must verify amounts expended prior to each payment for completed work and certify that an independent inspector has inspected the property and found it to be in conformance with Agency standards. The lender must provide verification that all subcontractors have been paid and no liens have been filed against the property.

(d) *Permanent loan guarantee.* The guarantee of a permanent loan provided under § 3565.52(c)(1) or (c)(2) will be issued once the following items have been submitted to and approved by the Agency:

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies, in writing, the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) A new appraisal based upon completion of construction. Upon a lender's written request, the Agency may exempt a project from this requirement if requested by the lender and the project meets the following criteria:

(i) *Original appraisal*—the original appraisal that meets the Agency's appraisal requirements with a valuation date no older than 36 months;

(ii) *Valuation*—the appraisal's lowest valuation, regardless of valuation approach and rent restrictions considered, is greater than the section 538 guaranteed loan amount; and

(iii) *Guaranteed loan balance*—the Agency's guaranteed loan's principal balance does not exceed 50 percent [unless a different percent has been announced in a Notice published in the FEDERAL REGISTER] of the project's total development costs.

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

(e) *Modification of guarantee amount after commitment.* The Agency may modify the guarantee amount or decline to issue a loan guarantee when a lender fails to honor obligations or to fulfill representations made under the guarantee commitment.

(f) *Continuous Guarantee Compliance.* The continuous guarantee will remain in effect once construction is completed. In order to remain in compliance with 7 CFR part 3565, the following items must be submitted to and approved by the Agency. These items will be submitted to the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s).

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies in writing the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) An appraisal of the property;

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance

review by the Agency under §3565.204(c); and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 76 FR 4, Jan. 3, 2011; 81 FR 11050, Mar. 2, 2016]

§ 3565.304 Lender loan processing responsibilities.

(a) *Application.* The lender will be responsible for submitting an application for a loan guarantee in a format prescribed by the Agency. Lenders may submit an application at the feasibility stage or when they request a conditional commitment.

(b) *Project servicing, management and disposition.* Unless otherwise permitted by the Agency, the originating lender must perform all loan functions during the period of the guarantee. These functions include servicing, asset management, and, if necessary, property disposition. The lender must maintain and service the loan in accordance with the provisions of subpart I of this part and Agency servicing procedures.

§ 3565.305 Mortgage and closing requirements.

It is the lender's responsibility to ensure that the loan closing statement and required loan documents are in a form acceptable to the Agency and included in the closing docket. The lender is responsible for resolving any underwriting and loan closing deficiencies that are found. The Agency's review of the lender's loan closing documentation does not constitute a waiver of fraud, misrepresentation, or failure of judgment by the lender.

§§ 3565.306–3565.349 [Reserved]

§ 3565.350 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart H—Project Management

§ 3565.351 Project management.

As a condition of the guarantee, the lender is to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

(a) *Regulatory agreement.* A regulatory agreement between the borrower and lender must be executed at the time of loan closing and contain the following covenants:

(1) That it is binding upon the borrower and any of its successors and assigns, as well as upon the lender and any of its successors and assigns, for the duration of the guaranteed loan;

(2) That the borrower makes all payments due under the note and to the required escrow and reserve accounts;

(3) That the borrower maintains the project as affordable housing in accordance with the purposes and for the duration defined in the statute;

(4) That the borrower maintains the project in good physical and financial condition at all times;

(5) That the borrower obtains and maintains property insurance and any other insurance coverage required to protect the security;

(6) That the borrower maintains complete project books and financial records, and provides the Agency and the lender with an annual audited financial statement after the end of each fiscal year;

(7) That the borrower makes project books and records available for review by the Office of Inspector General, Rural Development staff, General Accounting Office, and the Department of Justice, or their representatives or successors upon appropriate notification;

(8) That the borrower prepares and complies with the Affirmative Fair Housing Marketing Plan and all other Fair Housing requirements;

(9) That the borrower operates as a single asset ownership entity, unless otherwise approved by the Agency;

(10) That the borrower complies with applicable federal, state and local laws; and

(11) That the borrower provides management satisfactory to the lender and

to the Agency and complies with an approved management plan for the project.

(b) *Management plan*. The lender must approve the borrower's management plan and assure that the borrower is in compliance with Agency standards regarding property management, including the requirements contained in subparts E and F of this part.

(c) *Tenant protection and grievance procedures*. Tenants in properties subject to a guaranteed loan are entitled to the grievance and appeal rights contained in 7 CFR part 3560, subpart D or successor regulation. The borrower must inform tenants in writing of these rights.

(d) *Financial management*—(1) *Borrower reporting requirements*. At a minimum, the lender must obtain, on an annual basis, an audited annual financial statement conducted in accordance with generally accepted government auditing standards.

(2) *Lender reporting requirements*. The lender must review the financial reports to assure that the property is in sound fiscal condition and the borrower is in compliance with financial requirements. The lender must report findings to the Agency as follows:

(i) *Annual reports*. The lender must submit to the Agency a copy of the annual financial audit of the project and must report on the nature and status of any findings. To the extent that outstanding findings or issues remain, the lender must submit to the Agency a copy of a plan of action for any unresolved findings.

(ii) *Monthly reports*. The lender must submit monthly reports to the Agency on all loans that are either in default, delinquent, or not in compliance with program requirements. This report must provide information on the financial condition of each loan, the physical condition of the property, the amount of delinquency, any other noncompliance with program requirements and the proposed actions and timetable to resolve the delinquency, default or non-compliance.

(3) *Reserve releases*. The lender is responsible for approving or disapproving all borrower requests for release of funds from the reserve and escrow accounts. Security deposit accounts will not be considered a reserve or escrow account.

(4) *Insurance requirements*. At loan closing, the borrower will provide the lender with documentary evidence that Agency insurance requirements have been met. The borrower must maintain insurance in accordance with Agency requirements until the loan is repaid and the lender must be named as the insurance policy's beneficiary. The lender must obtain insurance on the secured property if the borrower is unable or unwilling to do so and charge the cost as an advance.

(5) *Distribution of surplus cash*. Prior to the distribution of surplus cash to the owner, the lender must certify that the property is in good financial and physical condition and in compliance with the regulatory agreement. Such compliance includes payment of outstanding obligations, debt service, and required funding of reserve and escrow accounts.

(e) *Physical maintenance*. The lender must annually inspect the property to ensure that it is in compliance with state and local codes and program requirements. The lender must certify to the Agency that a property is in such compliance, or report to the Agency on any non-compliance items and proposed actions and timetable for resolution. Failure to provide responsive corrective action can result in reduction or cancellation of the guarantee by the Agency.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 69 FR 69176, Nov. 26, 2004]

§ 3565.352 Preservation of affordable housing.

(a) *Original purpose*. During the period of the guarantee, owners are prohibited from using the housing or related facilities for any purpose other than an approved program purpose.

(b) *Use restriction*. For the original term of the guaranteed loan, the housing must remain available for occupancy by low and moderate income households, in accordance with subpart E of this part. This requirement will be included in a deed restriction or other instrument acceptable to the Agency. The restriction will apply unless the housing is acquired by foreclosure or

an instrument in lieu of foreclosure, or the Agency waives the applicability of this requirement after determining that each of the following three circumstances exist.

(1) There is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(2) Housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(3) Additional federal assistance will not be necessary as a result of the waiver.

§ 3565.353 Affirmative fair housing marketing.

As a condition of the guarantee, the lender must ensure that the lender and borrower are in compliance with the approved Affirmative Fair Housing Marketing Plan. This plan must be reviewed annually by the lender to ensure that the borrower remains in compliance and to recommend modifications, as necessary.

§ 3565.354 Fair housing accommodations.

The lender must ensure that the borrower is in compliance with the applicable fair housing laws in the development of the property, the selection of applicants for housing, and ongoing management. See subpart A of this part.

§ 3565.355 Changes in ownership.

Any change in ownership, in whole or in part, must be approved by the lender and the Agency before such change takes effect.

§§ 3565.356–3565.399 [Reserved]

§ 3565.400 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart I—Servicing Requirements

§ 3565.401 Servicing objectives.

The participating lender is responsible for servicing the guaranteed loan throughout the term of the loan or guarantee, whichever is less. In all cases, the lender remains responsible for liquidation of the property in accordance with the Loan Note Agreement, unless otherwise determined by the Agency. A lender-servicing plan must be designed and implemented to achieve the following objectives.

(a) To preserve the value of the loan and the real estate;

(b) To avoid a loss to the lender or the Agency and to limit exposure to potential loss;

(c) To protect the interests of the tenants; and

(d) To further program objectives.

§ 3565.402 Servicing responsibilities.

The lender must service the loan in accordance with this subpart and perform the services contained in this section in a reasonable and prudent manner. The lender is responsible for the actions of its agents and representatives.

(a) *Funds management.* The lender must have a funds management system to receive and process borrower payments, including the following.

(1) All principal and interest (P&I) funds and guarantee fees collected and deposited into the appropriate custodial accounts.

(2) Payments to custodial escrow accounts for taxes and insurance premiums, assessments that might impair the security (such as ground rent), and reserve accounts for repair and capital improvement of the property.

(b) *Asset management.* The lender must ensure that the property securing the guaranteed loan remains in good physical and financial condition, in accordance with project management requirements contained in subpart H of this part.

(c) *Management of delinquencies and defaults.* Each month the lender must report to the Agency any delinquencies and defaults in accordance with subpart H of this part.

§ 3565.403 Special servicing.

Special servicing must be initiated when regular servicing actions are insufficient to resolve borrower default or property deficiencies.

(a) *Repurchase from Holder.* For securitized loans, the Holder may require the lender or Government to repurchase the security in accordance with the provisions of § 3565.405.

(b) *Responsibility of lender.* It is the lender's responsibility during special servicing to make a special effort to ensure that maintenance of the property meets Agency requirements and the tenants' rights are protected, until such time that the property is liquidated by the lender, the loan is paid in full, or the loan is assigned to the Agency. The lender must update the Agency monthly until the default is cured or a claim is filed. The lender must maintain adequate records of any and all efforts to cure the default or to foreclose.

(c) *Initiating special servicing.* When special servicing is initiated, the lender must submit for Agency review a special servicing plan that includes proposed actions to cure the deficiencies and a timeframe for completion. The special servicing plan will specify the proposed terms of any workout agreement recommended by the lender. The lender must obtain Agency approval of the terms of any workout agreement with the borrower. The workout agreement may include a loan modification, transfer of physical assets, or partial payment of claim and reamortization of the loan. Failure to comply with terms contained in the executed workout agreement will be considered a default of the guaranteed loan.

(1) *Loan modification.* The borrower and lender may agree to a loan modification when such action will improve the financial viability of the project and its operations, and when a circumstance exists that is beyond the borrower's control. The Agency must approve in advance any loan modification that extends the life of the loan or requires an increase in the amount of the guarantee. All changes must be within the requirements of section 538 of the Housing Act of 1949.

(2) *Change in ownership and transfer of physical assets.* A default or delinquency may be resolved by a change of the ownership entity in whole or in part. The Agency must approve all changes in ownership prior to the effective date of the transfer, and may require additional resources from the lender or borrower to resolve project deficiencies.

(3) *Partial payment of claims.* The lender may request a partial payment of claim as a result of a loss experienced by the lender as a means to work out a troubled loan. The Agency will accept such claim if it determines that it is in the best interest of the government. In applying the partial payment, the lender must assign the obligation covered by the partial payment to the Agency, and, if required by the Agency, reamortize the obligation using the amount of the remaining obligation over an agreed-upon term.

(d) *Claims processing.* In the event of a loss, the lender must submit claims under the guarantee in accordance with subpart J of this part. Prior to submitting a claim, the lender must exhaust all possibilities of collection on the loan.

(e) *Displacement prevention.* The actions of the lender must not harm the property's tenants through displacement.

[63 FR 39458, July 22, 1998, as amended at 67 FR 16971, Apr. 9, 2002; 70 FR 2931, Jan. 19, 2005]

§ 3565.404 Transfer of loans or mortgage servicing.

Transfer of servicing is prohibited unless the Agency determines that circumstances warrant such action, the proposed lender is an eligible lender approved by the Agency, and the transfer of servicing is approved by the Agency in advance.

§ 3565.405 Repurchase of guaranteed loans.

(a) *Repurchase by lender.* The Holder may make written demand on the lender to repurchase the unpaid guaranteed portion of the loan when the borrower is in default not less than 60 calendar days on principal or interest due on the loan; or the lender has failed to remit to the Holder its pro rata share of any

payment made by the borrower within 30 calendar days of receipt by the lender. The Holder must concurrently send a copy of the demand letter to the Agency. The lender will notify the Holder and the Agency of its decision to repurchase within 10 business days from the date of the written demand letter by the Holder. The lender may agree to repurchase the unpaid portion of the entire loan from the Holder, even though the guarantee does not cover any unguaranteed portion of the loan held by the Holder. If the lender decides to repurchase, the lender has 30 calendar days from the date of the Holder's written demand letter to do so. The guarantee does not cover any unguaranteed portion of the loan or the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the Holder's demand letter to the lender requesting the repurchase. The lender may deduct the lender's servicing fee from the repurchase amount. The lender will accept an assignment without recourse from the Holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve problems, and to prevent default where and when reasonable.

(b) *Repurchase by Agency.* (1) If the lender does not repurchase the loan as provided in paragraph (a) of this section, the Agency will purchase from the Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 calendar days after written demand to the Agency from the Holder. The guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the original demand letter of the Holder to the lender requesting the repurchase. Holders of Loan Note Guarantees that have been issued prior to the effective date of this final rule may opt to adhere to the terms and conditions of the Loan Note Guarantee then in effect. In case of loan default, the Holder of a Loan Note Guarantee issued prior to the effective date of this final rule will stipulate, in a written demand for repurchase, its preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule. If the demand for repurchase does not stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule, the Agency will process the demand for repurchase as stated in this final rule. The Holder must stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule in the first demand for repurchase. The Holder of the Loan Note Guarantee issued prior to the effective date of this final rule cannot make a subsequent demand for repurchase changing the preference stipulated in the original demand for repurchase.

(2) The Holder's demand to the Agency must include a copy of the written demand made to the lender. The Holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of an Agency approved assignment guarantee agreement, properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the Holder.

(3) The Agency will notify the lender of its receipt of the Holder's demand for payment. The lender must provide the Agency with the information necessary for the Agency to determine the appropriate amount due the Holder within 10 business days from the date of the written demand letter to the lender from the Holder requesting repurchase of the guaranteed portion. The lender will furnish a current statement certified by an appropriate authorized officer of the lender stating the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the lender must be

resolved between the lender and the Holder before payment will be approved. The Agency will coordinate the resolution of the discrepancy. Such conflict will suspend the running of the 30 calendar day payment requirement.

(4) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. As Holder, the Agency will have the right to set-off any payments the Agency owes the lender.

[70 FR 2931, Jan. 19, 2005]

§§ 3565.406–3565.449 [Reserved]

§ 3565.450 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart J—Assignment, Conveyance, and Claims

§ 3565.451 Preclaim requirements.

(a) *Lender certifications.* After borrower default and before filing a claim or assignment of the loan to the Agency, the lender must make every reasonable and prudent effort to resolve the default. The lender must provide the Agency with an accounting of all proposed and actual actions taken to cure the default. The lender must certify that all reasonable efforts to cure the default have been exhausted. Where the lender fails to comply with the terms of the loan guarantee agreement and the corresponding regulations and guidance with regard to liquidating the property, the Agency, at its option, may take possession of the security collateral and dispose of the property.

(b) *Due diligence by lender.* For all loan servicing actions where a market, net recovery or liquidation value determination is required, guaranteed lenders shall perform due diligence in conjunction with the appraisal and submit it to the Agency for review. The Phase I Environmental Site Assessment published by the American Society of Testing and Materials is considered an acceptable format for due diligence.

(c) *Environmental review.* The Agency is required to complete an environmental review under the National Environmental Policy Act, in accordance with 7 CFR part 1970. Servicing actions as defined in § 1970.6 are part of financial assistance already provided and do not require additional NEPA review. However, certain post-financial assistance actions that have the potential to have an effect on the environment, such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8, are subject to a NEPA analysis in accordance with 7 CFR part 1970.

[63 FR 39458, July 22, 1998, as amended at 81 FR 11050, Mar. 2, 2016]

§ 3565.452 Decision to liquidate.

(a) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. For interest accrual purposes, interest will accrue for 90 calendar days after the date the liquidation plan is approved by the Agency. If within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to respond to the lender's proposal or advise the lender to make revisions to the plan that was submitted, the liquidation plan will be approved by default, and the 90 calendar day period for interest accrual will commence.

(b) In the event of a default involving a loan to an Indian tribe or tribal corporation made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 *et seq.*), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the

lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

[67 FR 16971, Apr. 9, 2002, as amended at 70 FR 2932, Jan. 19, 2005]

§ 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 calendar days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender, in writing, whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Satisfactory proof of the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger or equivalent which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(3) A full and complete list of all collateral including any personal and corporate guarantees.

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

(i) Obtaining an appraisal of the collateral;

(ii) Acquiring and disposing of all collateral;

(iii) Collecting from guarantors;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(5) Necessary steps for protection of the tenants and preservation of the collateral.

(6) Copies of the borrower's latest available financial statements.

(7) Copies of the guarantor's latest available financial statements.

(8) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(9) A schedule to periodically report to the Agency on the progress of liquidation.

(10) Estimated protective advance amounts with justification.

(11) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(13) Any legal opinions supporting the decision to liquidate.

(14) The lender will obtain a complete appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. In order to formulate a liquidation plan, which maximizes recovery, collateral must be evaluated for hazardous substances, petroleum products, or other environmental hazards, which may adversely impact the market value of the collateral.

(b) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim with the liquidation plan if the lender

expects liquidation to exceed 90 calendar days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section. The loss claim calculation will include 90 calendar days of interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, the lender submits an estimated loss claim of zero. Interest accrual will cease 90 calendar days after the date the liquidation plan is approved by the Agency.

(e) Property disposition. Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) Transmitting payments and proceeds to the Agency. When the Agency is the Holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or elsewhere.

[70 FR 2932, Jan. 19, 2005]

§ 3565.454 [Reserved]

§ 3565.455 Alternative disposition methods.

The Agency, in its sole discretion, may choose to obtain an assignment of the loan from the lender or conveyance of title obtained by the lender through foreclosure or a deed-in-lieu of foreclosure.

(a) *Assignment.* In the case of an assignment of the loan, the assignment of the security instruments or the security must be in written and recordable form. Completion of the assignment will occur once the following transactions are completed to the Agency's satisfaction.

(1) Conveyance to the Agency of all the lender's rights and interests arising under the loan.

(2) Assignment to the Agency of all claims against the borrower or others arising out of the loan transactions, including:

(i) All collateral agreements affecting financing, construction, use or operation of the property; and

(ii) All insurance or surety bonds, or other guarantees, and all claims under them.

(3) Certification that the collateral has been evaluated for the presence of contamination from the release of hazardous substances, petroleum products or other environmental hazards which may adversely impact the market value of the property and the results of that evaluation.

(b) *Conveyance of title.* In the case of a conveyance of title to the property, the lender must inform the Agency in advance of how it plans to acquire title and a timetable for doing so. The Agency will accept the conveyance upon receipt of an assignment to the Agency of all claims of the lender against the property and assignment of the lender's rights to any operating funds and any reserves or escrows established for the maintenance of the property or the payment of property taxes and insurance.

§ 3565.456 Filing a claim.

Once the lender has disposed of the property or the Agency has agreed to accept an assignment of the loan or conveyance of title to the property, the lender may file a claim for the guaranteed portion of allowable losses. All claim amounts must be calculated in accordance with this subpart and be approved by the Agency.

§ 3565.457 Determination of claim amount.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future

recovery or after settlement and compromise of all parties has been completed.

(a) *Report of loss form.* An Agency approved form will be used for calculations of all estimated and final loss determinations. Estimated loss payments will only be paid by the Agency after it has approved a liquidation plan.

(b) *Estimated loss.* An estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment paid by the Agency will be applied by the lender on the loan debt. Such application does not release the borrower from liability.

(2) The Government's written authorization is required for all protective advances in excess of $5,000. Protective advances include, but are not limited to, advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance. A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations with Agency approval.

(c) *Final loss.* Within 30 calendar days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees (as provided for in this section) is completed, a final report of loss on a form approved by the Agency must be prepared and submitted by the lender to the Agency. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on the report of loss form.

(1) A determination must be made regarding the collectability of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds.

(5) Accrued interest will be supported by documentation as to how the amount was accrued.

(6) Loss payments will be paid by the Agency within 60 calendar days after the receipt of the final loss report and accounting of the collateral.

(7) Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.

(d) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt after paying operating expenses of the property.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve the form and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment.

(3) If the Agency determines that it is in the Government's best interest to take assignment of the loan and conduct liquidation, as stipulated in 42 U.S.C. 1490(i)(3), Assignment by Secretary, the Agency will pay the lender in accordance with the Loan Note Guarantee.

(h) *Date of loss.* The date of loss is the date on which the collateral will be liquidated in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(i) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for payments made by the lender for amounts due and owning on the property, including:

(i) Property taxes and other protective advances as approved by the Agency;

(ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;

(iii) Insurance of the property; and

(iv) Reasonable liquidation expenses.

(2) And by deducting the following items:

(i) Any amount received by the lender on the account of the guaranteed loan after the date of default;

(ii) Any net income received by the lender from the secured property after the date of default; and

(iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(j) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been identified and reported to the Agency as a condition for payment of claim.

[70 FR 2933, Jan. 19, 2005, as amended at 76 FR 5, Jan. 3, 2011]

§ 3565.458 Withdrawal of claim.

If the lender provides timely written notice to the Agency of withdrawal of the claim, the guarantee will continue as if the default had not occurred if the borrower cures the default prior to foreclosure or prior to acceptance of a deed-in-lieu of foreclosure.

§§ 3565.459–3565.499 [Reserved]

§ 3565.500 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart K—Agency Guaranteed Loans That Back Ginnie Mae Guaranteed Securities

SOURCE: 70 FR 2934, Jan. 19, 2005, unless otherwise noted.

§ 3565.501 Applicability.

The provisions of this subpart apply when Agency guaranteed loans are used to back Ginnie Mae securities. In instances where this subpart applies, the provisions of this subpart prevail over any other provisions of this part.

§ 3565.502 Incontestability.

In the case of loans that back Ginnie Mae securities or loans that are acquired by Ginnie Mae as a consequence of its guaranty, the Agency guarantee under this part is incontestable except that the guarantee may not be enforced by a lender who commits fraud or misrepresentation or by a lender who had knowledge of the fraud or misrepresentation at the time such a lender acquired the guarantee or was assigned the loan.

§ 3565.503 Repurchase.

Lenders and security Holders must comply with Ginnie Mae requirements regarding the repurchase of loans from pools backing Ginnie Mae guaranteed securities.

§ 3565.504 Transfers.

(a) Loans and/or mortgage servicing on loans backing Ginnie Mae guaranteed securities may only be transferred to a Ginnie Mae issuer and may only be transferred with prior Ginnie Mae approval.

(b) Agency approval shall not be required for transfer of the servicing on the guaranteed mortgages to Ginnie Mae.

§ 3565.505 Liability.

(a) Ginnie Mae shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, property condition, or violations of usury laws.

(b) Ginnie Mae's rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender.

§§ 3565.506–3565.549 [Reserved]

§ 3565.550 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

PART 3570—COMMUNITY PROGRAMS

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Subpart B—Community Facilities Grant Program

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

SOURCE: 62 FR 16469, Apr. 7, 1997, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Community Facilities Grant Program

SOURCE: 64 FR 32388, June 17, 1999, unless otherwise noted.

§ 3570.51 General.

(a) This subpart contains Rural Housing Service (RHS) policies and authorizations and establishes procedures for making essential Community Facilities Grants (CFG) authorized under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)).

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by federally recognized Indian tribes within a State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indian tribes must have equal opportunity along with other rural residents to participate in the benefits of this program.

(c) Federal statutes provide for extending RHS financial assistance without regard to race, color, religion, sex, national origin, age, disability, and marital or familial status. To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington DC 20250, or call 1–800–245–6340 (voice) or (202) 730–1127 (TDD). 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).

(d) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates is subject to the provisions of 7 CFR part 1900, subpart D. Applications for assistance are required to identify any relationship or association with an RHS employee.

(e) Copies of all forms referenced in this subpart are available in the Agency's National Office or any Rural Development field office.

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

(g) Grants made under this subpart will be administered under, and are subject to, 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as appropriate.

(h) The income data used to determine median household income must be that which accurately reflects the income of the population to be served by the proposed facility. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using 5-year income data from the American Community Survey

(ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income within the area to be served, this will be documented and the applicant may furnish, or RD may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State, or Federal sources or from a survey conducted by a reliable impartial source.

(i) CFG funds can be used for up to 75 percent of the cost to develop the facility, notwithstanding that other contributions may be from other Federal sources.

(j) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200. In 2 CFR part 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

[64 FR 32388, June 17, 1999, as amended at 79 FR 76012, Dec. 19, 2014; 80 FR 9912, Feb. 24, 2015; 89 FR 96860, Dec. 6, 2024]

§ 3570.52 Purpose.

The purpose of CFG program is to assist in the development of essential community facilities in rural areas. The Agency will authorize grant funds on a graduated basis. Eligible applicants located in smaller communities with lower populations and lower median household incomes may receive a higher percentage of grant funds. The amount of CFG funds provided for a facility shall not exceed 75 percent of the cost of developing the facility.

§ 3570.53 Definitions.

Agency. The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, or a successor agency.

Approval official. An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

CF. Community Facilities.

CFG. Community Facilities Grant.

Essential community facilities. Those public improvements requisite to the beneficial and orderly development of a community that is operated on a nonprofit basis. (See § 3570.62(a)(1)). An essential community facility must:

(1) Serve a function customarily provided by a local unit of government;

(2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks) unless it is a minor part of the total facility;

(4) Be within the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a rural area.

Facility. The physical structure financed by the Agency or the resulting service provided to rural residents.

Grantee. An entity with whom the Agency has entered into a grant agreement under this program.

Instructions. Agency internal procedures available in any Rural Development office and variously referred to as Rural Development Instructions, RD Instructions.

Minor part. No more than 15 percent of the total floor space of the proposed facility.

Nonprofit corporations. Any corporation that is not organized or maintained for the making of a profit and that meets the eligibility requirements for RHS financial assistance in accordance with § 3570.61(a)(2).

Processing office. The office designated by the State program official to accept and process applications for CF projects.

Project cost. The cost of completing the proposed facility. (Facilities previously constructed will not be considered in determining project costs.) Total project cost will include only those costs eligible for CFG assistance.

Poverty line. The level of income for a family of four as defined by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Public body. Any State, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or federally recognized Indian tribe in rural areas.

Reasonable rates and terms. The rates and terms customarily charged public and nonprofit type borrowers in similar circumstances in the ordinary course of business and subject to Agency review.

RHS. The Rural Housing Service, an agency of the United States Department of Agriculture, or a successor agency.

Rural and rural area. The terms ''rural'' and ''rural area'' mean a city, town, or unincorporated area that has a population of 20,000 inhabitants or less and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). The population figures are obtained from the most recent decennial Census of the United States (decennial Census).

Rural Development. A mission area within USDA which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service.

RUS. The Rural Utilities Service, an agency of USDA or a successor agency.

Service area. The area reasonably expected to be served by the facility.

State. The term ''State'' means each of the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

State Director. The term ''State Director'' means, with respect to a State, the Director of the Rural Development State Office.

State nonmetropolitan median household income. The median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

State strategic plan. A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success.

[64 FR 32388, June 17, 1999, as amended at 69 FR 65519, Nov. 15, 2004; 80 FR 9912, Feb. 24, 2015; 87 FR 38644, June 29, 2022]

§§ 3570.54–3570.60 [Reserved]

§ 3570.61 Eligibility for grant assistance.

The essential community facility must primarily serve rural areas, be located in a rural area, and the median household income of the population to be served by the proposed facility must be below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b)).

(a) *Eligible applicant*. An applicant must be a:

(1) Public body, such as a municipality, county, district, authority, or other political subdivision of a State;

(2) Nonprofit corporation or association. Applicants, other than nonprofit utility applicants, must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies, or broadly based ownership and control by members of the community; or

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(3) Federally recognized Indian tribe in a rural area.

(b) *Eligible facilities*. Essential community facilities must be:

(1) Located in rural areas, except for utility-type services, such as telecommunications or hydroelectric, serving both rural and non-rural areas. In such cases, RHS funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Necessary for orderly community development and consistent with the State Strategic Plan.

(c) *Credit elsewhere.* The approval official must determine that the applicant is unable to finance the proposed project from its own resources, or through commercial credit at reasonable rates and terms, or other funding sources without grant assistance under this subpart. The applicant must certify to such status in writing.

(d) *Economic feasibility.* All projects financed under the provisions of this section must be based on satisfactory sources of revenues as outlined in 7 CFR 1942.17(h) and 1942.116. The amount of CFG assistance must be the minimum amount sufficient for feasibility which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(e) *Legal authority and responsibility.* Each applicant must have, or will obtain, prior to the grant award, the legal authority necessary to own, construct, operate, and maintain the proposed facility. The applicant shall be responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. If an applicant does not have the authority to borrow funds, but owns, operates, and maintains the facility, the applicant is eligible for CFG funds.

(f) *Facilities for public use.* All facilities shall be for the benefit of the public at large without discrimination as to race, color, religion, sex, national origin, disability, and marital or familial status.

§ 3570.62 Use of grant funds.

Grants of up to 75 percent of the cost of developing essential community facilities may be used to supplement financial assistance authorized in accordance with 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Eligible CFG purposes are those listed in paragraphs (a), (b), (c), and (d) of this section. Funding for the balance of the project may consist of other CF financial assistance, applicant contributions, or loans and grants from other sources. CFGs may be used to:

(a) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses include facilities such as educational and other publicly owned facilities.

(1) ''Essential community facilities'' are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including, but not limited to:

(i) Fire, rescue, and public safety;

(ii) Health services;

(iii) Community, social, or cultural services;

(iv) Transportation facilities such as streets, roads, and bridges;

(v) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for RUS financing;

(vi) Telecommunications equipment as it relates to medical and educational telecommunications links;

(vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for RUS financing;

(viii) Natural gas distribution systems; and

(ix) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(2) ''Otherwise improve'' includes, but is not limited to, the following:

(i) The purchase of major equipment (such as solid waste collection trucks, telecommunication equipment, necessary maintenance equipment, fire service equipment, X-ray machines) which will in themselves provide an essential service to rural residents; and

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

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

(b) Construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) Relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) Pay the following expenses, but only when such expenses are a necessary part of a project to finance facilities authorized in paragraphs (a), (b), and (c) of this section:

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(3) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(4) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if the Agency determines that:

(i) Compelling reasons exist for incurring obligations before grant approval;

(ii) The obligations will be incurred for authorized grant purposes;

(iii) Contract documents have been approved by the Agency;

(iv) All environmental requirements applicable to the Agency and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the security property.

The Agency may authorize payment of such obligations at the time of grant closing. The Agency's authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

[64 FR 32388, June 17, 1999, as amended at 85 FR 57084, Sept. 15, 2020]

§ 3570.63 Grant limitations.

(a) Grant funds may not be used to:

(1) Pay initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a CF loan is part of the funding package);

(2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinance existing indebtedness;

(4) Pay interest;

(5) Pay for facilities located in nonrural areas, except as noted in § 3570.61(b)(1).

(6) Pay any costs of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b));

(7) Pay project costs when other loan funding for the project is not at reasonable rates and terms;

(8) Pay an amount greater than 75 percent of the cost to develop the facility;

(9) Pay costs to construct facilities to be used for commercial rental unless it is a minor part of the total facility;

(10) Construct facilities primarily for the purpose of housing State, Federal, or quasi-Federal agencies; and

(11) Pay for any purposes restricted by 7 CFR 1942.17(d)(2).

(b) Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household incomes being eligible for projects with a higher proportion of grant funds. Grant assistance is limited to the following percentages of eligible project costs:

(1) 75 percent when the proposed project is:

(i) Located in a rural community having a population of 5,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the State nonmetropolitan median household income.

(2) 55 percent when the proposed project is:

(i) Located in a rural community having a population of 12,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the State nonmetropolitan median household income.

(3) 35 percent when the proposed project is:

(i) Located in a rural community having a population of 20,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income.

(4) 15 percent when the proposed project is:

(i) Located in a rural community having a population of 50,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State nonmetropolitan median household income.

(5) 60 percent when the proposed project is:

(i) Located in a rural community having a population of 20,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State non-metropolitan median household income. The 60 percent grants are only available to communities impacted by a disaster that has resulted in a loss of 60 percent of the community's population and is located in a rural community designated as a major disaster area by the President.

(6) Grant assistance cannot exceed the higher of the applicable percentages contained in this section which the applicant is eligible to receive and may be further limited due to availability of funds or by the maximum grant assistance allowable determined in accordance with § 3570.66.

[64 FR 32388, June 17, 1999, as amended at 73 FR 14173, Mar. 17, 2008]

§ 3570.64 Applications determined ineligible.

If, at any time, an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The applicant will be advised that it may appeal the decision. (See 7 CFR part 11.)

§ 3570.65 Processing preapplications and applications.

For combination proposals for loan and grant funds, only one preapplication package and one application package should be prepared and submitted. Preapplications and applications for grants will be developed in accordance with applicable portions of 7 CFR 1942.2, 1942.104, and 3575.52.

(a) *Preapplications.* Applicants will file an original and one copy of ''Application for Federal Assistance (For Construction),'' with the appropriate Agency office. This form is available in all Agency offices. The preapplication and supporting documentation are used to determine applicant eligibility and priority for funding.

(1) All preapplications shall be accompanied by:

(i) Evidence of applicant's legal existence and authority; and

(ii) Appropriate clearinghouse agency comments.

(b) *Application processing.* Upon notification on ''Notice of Preapplication Review Action'' that the applicant is eligible for CFG funding, the applicant will be provided forms and instructions for filing a complete application. The forms required for a complete application, including the following, will be submitted to the processing office by the applicant:

(1) Updated ''Application for Federal Assistance (For Construction).''

(2) Financial feasibility report.

(c) *Discontinuing the processing of the application.* If the applicant fails to submit the application and related material by the date shown on ''Notice of Preapplication Review Action'' (normally 60 days from the date of this form), the Agency will discontinue consideration of the application.

§ 3570.66 Determining the maximum grant assistance.

(a) *Responsibility.* State Directors are responsible for determining the applicant's eligibility for grant assistance.

(b) *Maximum grant assistance.* Grant assistance cannot exceed the lower of:

(1) Qualifying percentage of eligible project cost determined in accordance with § 3570.63(b);

(2) Minimum amount sufficient to provide for economic feasibility as determined in accordance with § 3570.61(d); or

(3) Either 50 percent of the annual State allocation or $50,000, whichever is greater, unless an exception is made by the RHS Administrator in accordance with § 3570.90.

§ 3570.67 Project selection priorities.

Applications are scored on a priority basis. Points will be distributed as follows:

(a) *Population priorities.* The proposed project is located in a rural community having a population of:

(1) 5,000 or less—30 points;

(2) Between 5,001 and 12,000, inclusive—20 points;

(3) Between 12,001 and 20,000, inclusive—10 points; or

(4) Between 20,001 and 50,000, inclusive, when applicable—5 points.

(b) *Income priorities.* The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

(1) 60 percent of the State nonmetropolitan median household income—30 points;

(2) 70 percent of the State nonmetropolitan median household income—20 points;

(3) 80 percent of the State nonmetropolitan median household income—10 points; or

(4) 90 percent of the State nonmetropolitan median household income—5 points.

(c) *Other priorities.* Points will be assigned for one or more of the following initiatives:

(1) Project is consistent with, and is reflected in, the State Strategic Plan—10 points;

(2) Project is for health care—10 points; or

(3) Project is for public safety—10 points.

(d) *Discretionary.* (1) The State Director may assign up to 15 points to a project in addition to those that may be scored under paragraphs (a) through (c) of this section. These points are to address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster or the loss of joint financing if Agency funds are not committed in a timely fashion. In addition, the points will be awarded to projects benefiting from the leveraging of funds in order to improve compatibility and coordination between the Agency and other agencies' selection systems and for those projects that are the most cost effective.

(2) In selecting projects for funding at the National Office level, additional points will be awarded based on the priority assigned to the project by the State Office. These points will be awarded in the manner shown below. Only the three highest priority projects for a State will be awarded points. The Administrator may assign up to 30 additional points to account for geographic distribution of funds,

emergency conditions caused by economic problems, natural disasters, or leveraging of funds.

Priority	Points
1	5
2	3
3	1

§ 3570.68 Selection process.

Each request for grant assistance will be carefully scored and prioritized to determine which projects should be selected for further development and funding.

(a) *Selection of applications for further processing.* The approval official will, subject to paragraph (b) of this section, authorize grants for those eligible preapplications with the highest priority score. When selecting projects, the following circumstances must be considered:

(1) Scoring of project and scores of other applications on hand;

(2) Funds available in the State allocation; and

(3) If other Community Facilities financial assistance is needed for the project, the availability of other funding sources.

(b) *Lower scoring projects.* (1) In cases when preliminary cost estimates indicate that an eligible, high-scoring application is not feasible, or would require grant assistance exceeding 50 percent of a State's current annual allocation, or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower-scoring application for further processing provided the high-scoring applicant is notified of this action and given an opportunity to review the proposal and resubmit it prior to selection of the next application.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with the applicant, may request an additional allocation of funds from the National office.

§ 3570.69 Environmental review requirements, intergovernmental review, and public notification.

Grants awarded under this subpart, including grant-only awards, must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970, to the intergovernmental review requirements of 7 CFR 3015, subpart V and RD Instruction 1970–I, ''Intergovernmental Review,'' and the public information process in 7 CFR 1942.17(j)(9).

[81 FR 11050, Mar. 2, 2016]

§ 3570.70 Other considerations.

Each application must contain the comments, necessary certifications, and recommendations of appropriate Federal or State regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities as required by 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Proposals for facilities financed in whole or in part with Agency funds will be coordinated with appropriate Federal, State, and local agencies as required by the following:

(a) Grants under this subpart are subject to the provisions of 7 CFR 1942.17(k) which include title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, and the regulations issued thereto. Certain housing-related projects, such as nursing homes, group homes, or assisted-living facilities, must comply with the requirements of the Fair Housing Act.

(b) Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace are applicable to CFG grants and grantees. See 2 CFR part 180, as implemented by USDA through 2 CFR part 417, and RD Instruction 1940–M for further guidance.

(c) Restrictions on lobbying. Grantees must comply with the lobbying restrictions set forth in 2 CFR part 418 subpart A.

(d) Civil Rights Impact Analysis, RD Instruction 2006–P (available in any Rural Development office), and ''Civil Rights Impact Analysis Certification.''

[62 FR 16469, Apr. 7, 1997, as amended at 79 FR 76013, Dec. 19, 2014]

§ 3570.71 Strategic economic and community development.

Applicants with projects that support the implementation of Strategic Community Investment Plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of Strategic Community Investment Plans on a multi-jurisdictional and multi-sectoral basis.

[85 FR 59395, Sept. 22, 2020]

§§ 3570.72–3570.74 [Reserved]

§ 3570.75 Grantee contracts.

The requirements of 7 CFR 1942.4, 1942.17(e), 1942.17(l), 1942.118, and 1942.119 will be applicable when agreements between grantees and third parties are involved.

§ 3570.76 Planning, bidding, contracting, and construction.

Planning, bidding, contracting, and construction will be handled in accordance with 7 CFR 1942.9, 1942.18, and 1942.126.

§§ 3570.77–3570.79 [Reserved]

§ 3570.80 Grant closing and delivery of funds.

(a) ''Community Facilities Grant Agreement'' will be used as the grant agreement between the Agency and the grantee and will be signed by the grantee before grant funds are advanced.

(b) Approval officials may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 2 CFR part 200, as subsequently modified.

(c) Approval officials may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 as subsequently modified.

(d) Grant funds will not be disbursed until they are actually needed by the recipient and all borrower or other funds are expended, except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged,

(2) All interim funds have been disbursed, and

(3) Agency grant funds are needed before RHS or other loans can be closed.

(e) If grant funds are available from other agencies and are transferred for disbursement by RHS, these grant funds will be disbursed in accordance with the agreement governing such other agencies' participation in the project.

[62 FR 16469, Apr. 7, 1997, as amended at 79 FR 76013, Dec. 19, 2014; 89 FR 96860, Dec. 6, 2024]

§§ 3570.81–3570.82 [Reserved]

§ 3570.83 Audits.

(a) An audit will be conducted in accordance with 2 CFR part 200 subpart F, as adopted by USDA through 2 CFR part 400, except as provided in this section. The audit requirements apply only to the years in which grant funds are expended.

(b) Grantees who are not required to submit an audit report will, within 60 days following the end of the fiscal year in which any grant funds were expended, furnish RHS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense report signed by an appropriate official of the organization or other documentation as determined appropriate by the approval official.

[62 FR 16469, Apr. 7, 1997, as amended at 79 FR 76013, Dec. 19, 2014]

§ 3570.84 Grant servicing.

Grants will be serviced in accordance with RD Instructions 1951–E and 1951–O and 2 CFR part 200 as applicable.

[79 FR 76013, Dec. 19, 2014]

§ 3570.85 Programmatic changes.

The grantee shall obtain prior Agency approval for any change to the objectives of the approved project. (For construction projects, a material

change in approved space utilization or functional layout shall be considered such a change.) Failure to obtain prior approval of changes to the approved project or budget may result in suspension, refund, or termination of grant funds.

§ 3570.86 [Reserved]

§ 3570.87 Grant suspension, termination, and cancellation.

Grants may be suspended or terminated for cause or convenience in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable.

[79 FR 76013, Dec. 19, 2014]

§ 3570.88 Management assistance.

Grant recipients will be supervised to the extent necessary to ensure that facilities are constructed in accordance with approved plans and specifications and to ensure that funds are expended for approved purposes.

§ 3570.89 [Reserved]

§ 3570.90 Exception authority.

An RHS official may request, and the Administrator or designee may make, in individual cases, an exception to any requirement or provision of this subpart or address any omission of this subpart if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

§ 3570.91 Regulations.

Grants under this part will be in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable, and any conflicts between those parts and this part will be resolved in favor of applicable 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

[79 FR 76013, Dec. 19, 2014]

§ 3570.92 Grant agreement.

Form RD 3570–3 is a Grant Agreement which contains the procedures for making and servicing grants made under this part. Any property acquired or improved with CFG funds may have use and disposition conditions which apply to the property as provided by 2 CFR 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.

[79 FR 76013, Dec. 19, 2014]

§ 3570.93 Regional Commission grants.

(a) Grants are sometimes made by Federal Regional Commissions (designated under Title V of the Public Works and Economic Development Act of 1965) for projects eligible for RHS assistance. RHS has agreed to administer such funds in a manner similar to administering RHS assistance.

(b) The transfer of funds from a Federal Regional Commission to RHS will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of RHS and the Federal Regional Commission.

(c) The Appalachian Regional Commission (ARC) is authorized under the Appalachian Regional Development Act of 1965 to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by Rural Development. Therefore, a separate Project Management Agreement between RHS and ARC is not needed for each ARC grant.

(d) Grants by other Federal Regional Commissions are handled in accordance with a separate Project Management Agreement between the respective Federal Regional Commission and RHS for each Commission grant or class of grants administered by RHS.

(e) When the Agency has funds in the project, no charge will be made for administering Federal Regional Commission grant funds.

(f) When RHS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act (31 U.S.C. 1535).

§§ 3570.94–3570.99 [Reserved]

§ 3570.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and

have been assigned OMB control number 0575–0173. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Subparts C–E [Reserved]

Subpart F—Community Facilities Technical Assistance and Training Grants

SOURCE: 81 FR 1866, Jan. 14, 2016, unless otherwise noted.

§ 3570.251 Purpose.

This subpart contains the provisions and procedures by which the Agency will administer the Essential Community Facilities Technical Assistance and Training Program. The purpose of the program is to provide technical assistance and training with respect to essential community facilities programs. To meet this purpose, the Agency will make grants to public bodies and private nonprofit corporations, (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations) to provide associations Technical Assistance and/or training with respect to essential community facilities programs. The Technical Assistance and/or training will assist communities, Indian Tribes, and Nonprofit Corporations to identify and plan for community facility needs that exist in their area. Once those needs have been identified, the Grantee can assist in identifying public and private resources to finance those identified community facility needs.

§ 3570.252 Definitions and abbreviations.

The definitions and abbreviations in § 3570.53 apply to this subpart unless otherwise provided. In addition, these definitions and abbreviations are used in this subpart:

Actual capacity. The demonstrated ability of the Technical Assistance Provider to develop the capacity of Ultimate Recipients in the areas of developing applications for the Community Facilities program, improving the management capabilities of their community facilities, and providing training.

Administrator. The Administrator of the Rural Housing Service (RHS).

Applicant. Public bodies and private nonprofit corporations, (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations) that has applied for, or intends to apply for, a Technical Assistance and Training Grant under this subpart. The applicant must be either a Technical Assistance Provider or an Ultimate Recipient.

Audit. An examination of an organization's financial Statements by an independent Certified Public Accountant (CPA), for the purpose of expressing an opinion on the fairness with which the Statements present the financial position, results of operations, and changes in cash flows in conformity with Generally Accepted Accounting Principles (GAAP) and for determining whether the Applicant or Ultimate Recipient of Federal government funding has complied with the applicable laws, regulations, and contract for those events reflected in the financial Statements. All audits must meet the requirements of 2 CFR 200.500–200.518.

Community ties. The significant ties to the Rural Area that need to be demonstrated by a Nonprofit corporation who is an Ultimate Recipient, by either substantial public funding through taxes, revenue bonds or other local Government sources, and/or substantial voluntary community funding; and, a broadly-based ownership and control by members of the community. It can also be demonstrated by local membership and control characteristics.

CONACT. The Consolidated Farm and Rural Development Act (7 U.S.C. 1926 *et seq*).

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that

involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, Project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent Conflict of Interest, including, but not limited to, owner(s) and their immediate family members. An example of Conflict of Interest occurs when the Grantee's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the Applicant receiving the benefits or services of the grant.

Generally Accepted Accounting Principles (GAAP). A widely accepted set of rules, conventions, standards and procedures for reporting financial information, as established by the Financial Accounting Standards Board.

Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Jurisdiction. A unit of government or other entity with similar powers. Examples include, but are not limited to: City, county, district, special purpose district, township, town, borough, village, and State.

Letter of Conditions. A legal document presented to the Applicant selected for funding that outlines all conditions that must be agreed to and accepted before final grant approval.

Low income. A median household income (MHI) that does not exceed the State Non-Metropolitan Median Household Income (SNMHI) or the Poverty Line, whichever is higher.

Multi-jurisdictional. Concerning two or more Jurisdictions.

Professional services. Services provided by a person or entity having specialized knowledge and skills to plan, design, prepare procurement, construction, or other technical support documents, administer construction contracts, and/or other related services for a Project.

Project. The Technical Assistance that an Applicant is currently planning as described in the Project description in the application, to be financed in whole or in part with Agency assistance.

Secretary. The Secretary of Agriculture.

Technical Assistance. A function such as supervision, oversight, training, or professional consultation related to an Essential Community Facility that is performed for the benefit of an Ultimate Recipient or proposed Ultimate Recipient, which is a problem solving activity, as determined by the Agency.

Technical Assistance Provider. Grantee who will provide technical assistance to Ultimate Recipients.

Ultimate Recipient. Entity receiving assistance from the Grantee. If a Nonprofit corporation is either applying for funding as an Ultimate Recipient or is benefitting from the TAT Grant as the Ultimate Recipient, it must demonstrate Community Ties to the Rural Area. These ties may be demonstrated by:

(1) Obtaining substantial public funding through taxes revenue bonds, or other local Government sources, and/or substantial voluntary community funding, or

(2) Having a broadly-based ownership and control by members of the community, or

(3) Demonstrating all of the following characteristics:

(i) Members of the organization are primarily from the local rural community,

(ii) Membership is open to all adults in the local rural community,

(iii) Members of the organization have ultimate control of the proposed community facility; and

(iv) The organization receives the majority of its funding from its members or their volunteer efforts. Public bodies and Indian Tribes that are applying for funding as Ultimate Recipients or are the benefitting from TAT grant funds as the Ultimate Recipient

are not required to further demonstrate Community ties to the local Rural Areas.

[81 FR 1866, Jan. 14, 2016, as amended at 89 FR 34958, May 1, 2024]

§ 3570.253 Compliance with Federal and State requirements.

(a) *Federal statutory requirements.* Applicants must comply with, all applicable Federal laws and Executive Order requirements including, but not limited to:

(1) Section 504 of the Rehabilitation Act of 1973.

(2) Civil Rights Act of 1964.

(3) The American with Disabilities Act (ADA) of 1990.

(4) Executive Order 12549 Debarment and Suspension and 2 CFR parts 180 and 417.

(5) Section 319 of Public Law 101–121 on Lobbying.

(6) Age Discrimination Act of 1975.

(7) Fair Housing Act of 1968.

(8) Executive Order 11246 Equal Employment Opportunity.

(9) Title IX of the Education Amendments of 1972.

(10) 2 CFR parts 200 and 400 ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards''.

(b) State laws, local laws, regulatory commission regulations. Applicants must comply with all applicable state and local laws and regulatory commission regulations. If there are conflicts between this subpart and State or local laws or regulations, the provisions of this subpart will control.

§ 3570.254 Source of funds.

The Agency will reserve 5 percent of any funds annually appropriated to carry out each of the Essential Community Facilities grant, loan and loan guarantee programs unless otherwise noted in the annual Notice published in the FEDERAL REGISTER. TAT reserved grant funds not obligated by July 31 of each fiscal year will be used to fund Essential Community Facilities grant, loan, and/or loan guarantee programs.

§ 3570.255 Matching funds.

Any matching funds must comply with the requirements outlined at 2 CFR 200.306.

§ 3570.256 Allocation of funds.

The Agency will administer these grant funds and will award them on a competitive basis.

§ 3570.257 Statute and regulation references.

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

§§ 3570.258–3570.260 [Reserved]

§ 3570.261 Environmental and intergovernmental review.

All grants awarded under this subpart are subject to the environmental requirements of 7 CFR part 1940, subpart G. Technical Assistance under this program is categorically excluded unless extraordinary circumstances exist.

§ 3570.262 Applicant eligibility requirements.

There are two types of Applicants. The applicant must be either a Technical Assistance Provider or an Ultimate Recipient, and must meet eligibility requirements before being considered for Agency assistance.

(a) Applicants applying as Technical Assistance Providers must:

(1) Be a public body or a private nonprofit corporation, (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations);

(2) Be legally established and located within one of the following:

(i) A State as defined § 3570.252; or

(ii) The District of Columbia; and

(3) Have the proven ability, background, experience (as evidenced by the organization's satisfactory completion of Project(s) similar to those proposed), legal authority and actual capacity to provide Technical Assistance and/or training to Ultimate Recipients as provided in § 3570.252. To meet the requirement of actual capacity, an Applicant must either:

(i) Have the necessary resources to provide Technical Assistance and/or training to associations in Rural Areas through its staff,

(ii) Be assisted by an affiliate or member organization which has such background and experience and which

agrees, in writing, that it will provide the technical assistance, or

(iii) May contract with a non-affiliated organization for not more than 49 percent of the awarded grant to provide the proposed technical assistance.

(4) Nonprofits applying as Technical Assistance Providers must be designated tax exempt by the Internal Revenue Service.

(b) Applicants applying as Ultimate Recipients must be:

(1) A public body,

(2) An Indian Tribe, or

(3) A Nonprofit corporation that demonstrates Community ties to the Rural Area by:

(i) Obtaining substantial public funding through taxes revenue bonds, or other local Government sources, and/or substantial voluntary community funding,

(ii) Having a broadly-based ownership and control by members of the community, or

(iii) Demonstrating all of the following characteristics:

(A) Members of the organization are primarily from the local rural community,

(B) Membership is open to all adults in the local rural community,

(C) Members of the organization have ultimate control of the proposed community facility; and

(D) The organization receives the majority of its funding from its members or their volunteer efforts.

§ 3570.263 Eligible project purposes.

(a) Grant funds and any matching funds may be used by Technical Assistance Providers to:

(1) Assist communities in identifying and planning for community facility needs;

(2) Identify resources to finance community facility needs from public and private sources;

(3) Prepare reports and surveys necessary to request financial assistance to develop community facilities;

(4) Prepare applications for Agency financial assistance;

(5) Improve the management, including financial management, related to the operation of community facilities; or

(6) Assist with other areas of need identified by the Secretary.

(b) Grant Funds and any matching funds may be used by Ultimate Recipients only to prepare reports and surveys necessary to request financial assistance to develop community facilities. Applicants applying as Ultimate Recipients will be limited to this purpose.

§ 3570.264 Ineligible project purposes.

Ineligible purposes for grant funds and any matching funds include, but are not limited to:

(a) Duplicate services, such as those previously performed by an association's consultant in developing a Project, including feasibility, design, Professional Services, and cost estimates prior to receiving the grant award.

(b) Purchase real estate or vehicles, improve or renovate office space, or repair and maintain privately owned property.

(c) Pay the costs for construction, improvement, rehabilitation, modification, or operation and maintenance of an Essential Community Facility.

(d) Procure applications for the Agency's community facilities or other loan or grant program. Grant funds cannot be used to generate new applications; however, as stated in § 3570.263(a)(4) funds can be used to assist with application preparation for Agency programs.

(e) Pay for other costs that are not allowed under 2 CFR part 200.

(f) Pay an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), which has been recorded. An Applicant will be ineligible to receive a grant until the judgment is paid in full or otherwise satisfied.

(g) Intervene in Federal or adjudicatory proceedings.

(h) Fund political or lobbying activities.

(i) Conduct an income survey associated with developing a complete application for a potential Applicant.

(j) Pay for indirect or administrative costs in excess of 10% of the amount of grant.

(k) [Reserved]

(l) Provide assistance to an Ultimate Recipient, or a Project, that is not located in a Rural Area.

(m) Pay for expenses incurred more than three years after the date of the grant agreement.

(n) Provide assistance to a Project that primarily serves an area that is not considered Low Income.

(o) Fund a project where a Conflict of Interest exists.

[81 FR 1866, Jan. 14, 2016, as amended at 81 FR 27295, May 6, 2016]

§§ 3570.265–3570.266 [Reserved]

§ 3570.267 Applications.

(a) *Filing period*. The Agency will publish an annual notice in the FEDERAL REGISTER stating the filing period, where to file, and all other applicable information necessary to submit a complete application.

(b) *Application requirements*. To file an application, an organization must provide their Unique Entity Identifier (UEI) in accordance with 2 CFR part 25. Instructions for obtaining the UEI are available at *https://sam.gov/*. To file a complete application the following information must be submitted:

(1) ''Application for Federal Assistance (For Non-Construction)

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

(3) ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transaction.''

(4) ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1—For Grantees Other Than Individuals.''

(5) ''Certification Regarding Debarment.''

(6) Attachment regarding assistance provided to Agency Employees as required by RD Instruction 1900–D (1900.153(a)), as applicable.

(7) ''Equal Opportunity Agreement.''

(8) ''Assurance Agreement.''

(9) Indirect Cost Rate Agreement (if applicable, Applicant must include approved cost agreement rate schedule).

(10) Statement of Compliance with Title VI of the Civil Rights Act of 1964.

(11) ''Disclosure of Lobbying Activities'' (include only if grant exceeds $100,000).

(c) *Supporting information*. All applications shall be accompanied by the following supporting information:

(1) For Nonprofit Corporations,

(i) Certified copies of current organizational documents including Certificate of Incorporation, bylaws, and Certificate of Good Standing,

(ii) Evidence of tax exempt status from the Internal Revenue Service if applying as a Technical Assistance Provider, and

(iii) Evidence of Community Ties to a Rural Area if a Nonprofit Corporation applying as an Ultimate Recipient.

(2) For applicants applying as a Technical Assistance Provider, a narrative of their experience in providing services similar to those proposed. The narrative will provide a brief description of successfully completed Projects including the need that was identified and objectives accomplished.

(3) Latest financial information to show the Applicant's financial capacity to carry out proposed work. A current Audit is preferred; however, Applicants may submit a balance sheet and an income Statement in lieu of an Audit report.

(4) Documentation of cash matching funds, if applicable.

(5) List of proposed services to be provided.

(6) For Applicants applying as Technical Assistance Providers who have not identified the Ultimate Recipients, a narrative explaining how they will select Ultimate Recipients to be assisted with grant funds.

(7) Estimated breakdown of costs (direct and indirect) including those to be funded by Grantee as well as matching funds and other sources. Sufficient detail will be provided to permit the Agency to determine if the costs are allowed, reasonable, and applicable.

(8) Evidence that a Financial Management System used to track Project costs is in place or proposed.

(9) Documentation relevant to scoring criteria including, but not limited to:

(i) List of Ultimate Recipients to be served and the county, State or States where assistance will be provided. Identify Ultimate Recipients by name, or

other characteristics such as size, income, location, and provide MHI and population data.

(ii) Description of type of Technical Assistance and/or training to be provided and the tasks to be contracted.

(iii) Description of how the Project will be evaluated, clearly stated goals, and the method proposed to measure results.

(iv) Documentation of the need for the proposed service. Provide detailed explanation of how the proposed service differs from other similar services being provided in same area.

(v) Personnel on staff or to be contracted to provide services and their experience with similar Projects.

(vi) Statement indicating the number of months it will take to complete the Project or service, and

(vii) Documentation on cost effectiveness of Project. Provide the cost per Ultimate Recipient to be served or the proposed cost of personnel to provide assistance.

[81 FR 1866, Jan. 14, 2016, as amended at 89 FR 34958, May 1, 2024]

§§ 3570.268–3570.271 [Reserved]

§ 3570.272 Grant processing.

(a)–(c) [Reserved]

(d) Applications that are not selected for funding due to low rating will be notified by the Agency. Applications that cannot be funded in the fiscal year that the application was received will not be retained for consideration in the following fiscal year.

(e) Applicants selected for funding will need to accept the conditions set forth in the Letter of Conditions, meet all such conditions, and complete a grant agreement which outlines the terms and conditions of the grant award before grant funds will be disbursed.

§ 3570.273 Scoring.

The Agency will score each application using the following scoring factors unless otherwise provided in an annual Notice in the FEDERAL REGISTER:

(a) *Experience:* Applicant Experience at developing and implementing successful technical assistance and/or training programs:

(1) More than 10 years—40 points.

(2) More than 5 years to 10 years—25 points.

(3) 3 to 5 years—10 points.

(b) *No prior grants received:*

(1) Applicant has never received a TAT Grant—5 points.

(2) [Reserved]

(c) *Population:* The average population of proposed area(s) to be served:

(1) 2,500 or less—15 points.

(2) 2,501 to 5,000—10 points.

(3) 5,001 to 10,000—5 points.

(d) *MHI:* The average median household income (MHI) of proposed area to be served is below the higher of the poverty line or:

(1) 60 percent of the State's MHI—15 points.

(2) 70 percent of the State MHI—10 points.

(3) 90 percent of the State's MHI—5 points.

(e) *Multi-jurisdictional:* The proposed technical assistance or training project a part of a Multi-jurisdictional project comprised of:

(1) More than 10 jurisdictions—15 points.

(2) More than 5 to 10 jurisdictions—10 points.

(3) 3 to 5 jurisdictions—5 points.

(f) *Soundness of approach:* Up to 10 points.

(1) Needs assessment: The problem/issue being addressed is clearly defined, supported by data, and addresses the needs;

(2) Goals & objectives are clearly defined, tied to the need as defined in the work plan, and are measurable;

(3) Work plan clearly articulates a well thought out approach to accomplishing objectives & clearly identifies who will be served by the project;

(4) The proposed activities are needed in order for a complete Community Facilities loan and/or grant application.

(g) *Matching funds:*

(1) There is evidence of the commitment of other cash funds of 20% of the total project costs 10 points.

(2) There is evidence of the commitment of other cash funds of 10% of the total project costs 5 points.

(h) *State Director discretionary points.* The State Director may award up to 10 discretionary points for the highest priority project in each state, up to 7 points for the second highest priority

project in each state and up to 5 points for the third highest priority project that address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster, or other areas of need in their particular state. The State Director will place written documentation in the project file each time the State Director assigns these points—Up to 10 points.

(i) *Administrator discretionary points.* The Administrator may award up to 20 discretionary points for projects to address geographic distribution of funds, emergency conditions caused by economic problems, natural disasters and other initiatives identified by the Secretary—Up to 20 points.

§ 3570.274 Fund disbursement.

The Agency will make payments under this agreement in accordance with 2 CFR 200.305. All requests for advances or reimbursements must be in compliance with 2 CFR 200.306 and include any required matching fund usage.

§ 3570.275 Grant cancellation or major changes.

Any change in the scope of the Project, budget adjustments of more than 10 percent of the total budget, and any other significant change in the Project must be in compliance with 2 CFR 200.308 and 200.339. The changes must be requested in writing and approved by the Agency in writing. Any change not approved may be cause for termination of the grant.

§ 3570.276 Reporting.

(a) The Grantee must provide periodic reports as required by the Agency. A financial status report, SF 425 ''Federal Financial Report,'', and a project performance report will be required as provided in the grant agreement. The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The Project performance reports shall include, but are not limited to, the following:

(1) A description of the activities that the funds reflected in the financial status report were used for;

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

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

(4) Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a Statement of the action taken or planned to resolve the situation;

(5) Objectives and timetables established for the next reporting period;

(6) A summary of the race, sex, and national origin of the Ultimate Recipients;

(7) The final report will also address the following:

(i) What have been the most challenging or unexpected aspects of this grant?

(ii) What advice would you give to other organizations planning a similar grant? What are the strengths and limitations of this grant? If you had the opportunity, what would you have done differently?

(iii) Are there any post-grant plans for this Project? If yes, how will they be financed?

(b) [Reserved]

§ 3570.277 Audit or financial statement.

The Grantee will provide an Audit report or financial Statement in accordance with 2 CFR 200.500–200.517 and as follows:

(a) Grantees expending $750,000 or more Federal funds per fiscal year will submit an Audit conducted in accordance with 2 CFR parts 200, 215, 220, 225, 230 and 400, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.''

(b) Grantees expending less than $750,000 will provide annual financial Statements covering the grant period,

consisting of the organization's statement of income and expense and balance sheet signed by an appropriate Official of the organization. Financial statements will be submitted within 90 days after the Grantee's fiscal year.

§§ 3570.278–3570.280 [Reserved]

§ 3570.281 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subpart E.

§ 3570.282 [Reserved]

§ 3570.283 Exception authority.

The Administrator may make an exception to any requirement or provision of this subpart, if such an exception is necessary to implement the intent of the authorizing statutes in a time of national emergency or in accordance with a Presidentially-declared disaster, or on a case-by-case basis, when such an exception is in the best financial interest of the Federal Government and is otherwise not in conflict with applicable laws. No exceptions, however, will be granted for Applicant, Ultimate Recipient, or Project eligibility.

§ 3570.284 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the USDA National Appeals Division in accordance with 7 CFR part 11.

§§ 3570.285–3570.299 [Reserved]

§ 3570.300 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) for approval.

PARTS 3575–3599 [RESERVED]

CHAPTER XXXVI—NATIONAL AGRICULTURAL STATISTICS SERVICE, DEPARTMENT OF AGRICULTURE

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PART 3600—ORGANIZATION AND FUNCTIONS

Sec.
3600.1 General.
3600.2 Organization.
3600.3 Functions.
3600.4 Authority to act for the Administrator.
APPENDIX A TO PART 3600—LIST OF STATE STATISTICAL OFFICES

AUTHORITY: 5 U.S.C. 301 and 552: and 7 CFR 2.85.

SOURCE: 60 FR 57534, Nov. 16, 1995, unless otherwise noted.

§ 3600.1 General.

The National Agricultural Statistics Service (NASS) was established on April 17, 1986, by Secretary's Memorandum 1020–24, which renamed the Statistical Reporting Service concurrent with an internal restructuring. Primary NASS responsibilities are development and dissemination of national and State agricultural statistics, statistical research, and coordination of Department statistical programs.

§ 3600.2 Organization.

The headquarters organization consists of: The Administrator and Associate Administrator; Deputy Administrator for Field Operations; Four Divisions: Estimates, Survey Management, Research, and Systems and Information; and the Agricultural Statistics Board. In the field, each of the 45 State Statistical Offices, serving the 50 States, is under a State Statistician.

§ 3600.3 Functions.

(a) *Administrator*. The Administrator is responsible for the formulation of current, intermediate, and long-range policies and plans to carry out a broad statistical program for the agricultural sector and Departmental functions and activities assigned to NASS. Specific functions are:

(1) Administering an agricultural statistics program which includes estimates of production, marketings, inventories, and selected economic characteristics of the U.S. agricultural and rural economy.

(2) Administering a methodological research program to improve agricultural data collection and processing, data management, estimation, and forecasting.

(3) Administering programs to conduct surveys for other agencies, improve statistics through statistical standards for the Department, and coordinate statistical methods and techniques within the Federal Government.

(4) Administering statistical programs jointly developed through cooperative agreements with State agencies, universities, private groups, and other Federal agencies.

(5) Administering selected international agricultural statistics programs which provide foreign technical assistance, training on statistical methodology for developing countries, and exchange of information.

(b) *Associate Administrator*. The Associate Administrator is responsible for advising and counseling the Administrator and high-level policy officials on matters related to programs of NASS. Major functions include:

(1) Chairing Agricultural Statistics Board activities, designating Board membership, presiding at Board sessions, and formulating specific procedures.

(2) Chairing the NASS Strategic Planning Council which coordinates long-range planning, information resources management, and research reviews.

(3) Chairing the Resource Management Council which coordinates NASS hiring, promotion, and training activities.

(c) *Deputy Administrator for Field Operations*. The Deputy Administrator manages and coordinates data collection and estimating programs carried out by State Statistical Offices. This includes supervision of statistical programs with cooperating State and private groups, universities, and other Federal agencies. Major functions include:

(1) Formulating policies and programs that relate to functions and responsibilities of State Statistical Offices.

(2) Directing agricultural statistics programs established through cooperative agreements with State Departments of Agriculture, Land-Grant colleges and universities, or appropriate private organizations.

(3) Establishing and maintaining relationships with respondents, producers, commodity groups, data users, and other interested groups to gain cooperation in providing useful, timely, and reliable information.

(d) *Director, Estimates Division.* The Director is responsible for NASS estimating and forecasting programs. Major functions include:

(1) Defining input and output requirements, estimators and variances to be utilized, statistical standards, editing and summarization requirements, and analytic procedures.

(2) Collaborating with the Chairperson of the Agricultural Statistics Board to establish the annual programs of statistical reports.

(3) Developing appropriate systems parameters; processing, summarizing, and presenting current survey and related historical data for Agricultural Statistics Board analysis; and preparing official estimates and forecasts.

(e) *Director, Survey Management Division.* The Director is responsible for application of survey design and data collection methodologies to the agricultural statistics program. Major functions include:

(1) Constructing and maintaining appropriate sampling frames for agricultural and rural surveys.

(2) Designing, testing, and establishing survey techniques and standards, including sample design, sample selection, questionnaires, data collection methods, survey materials, and training methods for NASS.

(3) Reviewing specifications for special data collection activities for programs of other Federal or State agencies.

(f) *Director, Research Division.* The Director is responsible for researching statistical methodology for survey design, data collection, processing, estimating, and forecasting. Major functions include:

(1) Conducting statistical research to develop new and improved sampling techniques, develop improved data collection methods, and identify methods of controlling sampling and nonsampling errors.

(2) Researching statistical computing methods and developing efficient uses of computer technology including telecommunications, networking, and other applications.

(3) Developing new statistical theory and models and solving statistical problems, including numerical methods involving advanced mathematical statistics.

(g) *Director, Systems and Information Division.* The Director is responsible for NASS information management system and processing services. Specific functions are:

(1) Designing, maintaining, and providing access to an integrated and standardized information management system containing sampling frames, survey data, estimates, and administrative records utilized by NASS.

(2) Providing appropriate support for assisting users of the information management system through documentation, evaluation, training, and resolution of information management problems.

(3) Designing and issuing all reports releasing official State and national estimates and forecasts from NASS.

(h) *Chairperson, Agricultural Statistics Board.* The Chairperson reviews, prepares, and issues on specific dates, following approval by the Secretary of Agriculture as provided by law (7 U.S.C. 411a) and Departmental Regulation, the official State and national estimates relating to crop production, livestock and livestock products, dairy and dairy products, poultry and poultry products, stocks of agricultural commodities, value of farm products, farm inputs, and other assigned agricultural aspects.

§ 3600.4 Authority to act for the Administrator.

In the absence of the Administrator, the following officials are designated to serve as Acting Administrator in the order indicated:

Associate Administrator
Deputy Administrator for Field Operations
Director, Estimates Division
Director, Survey Management Division
Director, Systems and Information Division

Director, Research Division

APPENDIX A TO PART 3600—LIST OF STATE STATISTICAL OFFICES

Section 1. General

Information concerning NASS statistics programs and activities related to individual States may be obtained from the State Statistician, State Statistical Office, NASS, in the locations listed below.

Section 2. List of Addresses

Alabama, Sterling Centre, Suite 200, 4121 Carmichael Road, Montgomery, AL 36106–2872
Alaska, 809 South Chugach Street, Suite 4, Palmer, AK 99645
Arizona, 3003 North Central Avenue, Suite 950, Phoenix, AZ 85012
Arkansas, 3408 Federal Office Building, Little Rock, AR 72201
California, 1220 ''N'' Street, Room 243, Sacramento, CA 95814
Colorado, 645 Parfet Street, Suite W–201, Lakewood, CO 80215–5517
Delaware, Delaware Department of Agriculture Building, 2320 South Dupont Highway, Dover, DE 19901
Florida, 1222 Woodward Street, Orlando, FL 32803
Georgia, Stephens Federal Building, Suite 320, Athens, GA 30613
Hawaii, State Department of Agriculture Building, 1428 South King Street, Honolulu, HI 96814
Idaho, 2224 Old Penitentiary Road, Boise, ID 83712
Illinois, Illinois Department of Agriculture Building, 801 Sangamon Avenue, Room 54, Springfield, IL 62702
Indiana, 1148 AGAD Building, Purdue University, Room 223, West Lafayette, IN 47907–1148
Iowa, 833 Federal Building, 210 Walnut Street, Des Moines, IA 50309
Kansas, 632 S.W. Van Buren, Room 200, Topeka, KS 66603
Kentucky, Gene Snyder & Courthouse Building, 601 W. Broadway, Room 645, Louisville, KY 40202
Louisiana, 5825 Florida Boulevard, Baton Rouge, LA 70806
Maryland, 50 Harry S Truman Parkway, Suite 202, Annapolis, MD 21401
Michigan, 201 Federal Building, Lansing, MI 48904
Minnesota, 8 East 4th Street, Suite 500, St. Paul, MN 55101
Mississippi, 121 North Jefferson Street, Jackson, MS 39201
Missouri, 601 Business Loop West, Suite 240, Columbia, MO 65203
Montana, Federal Building & U.S. Court House, Room 398, 301 S. Park Avenue, Helena, MT 59626
Nebraska, 100 Centennial Mall N., Room 273 Federal Building, Lincoln, NE 68508
Nevada, Max C. Fleischmann Agriculture Building, Room 232, University of Nevada, Reno, NV 89557
New Hampshire, 22 Bridge Street, Room 301, Concord, NH 03301
New Jersey, Health and Agriculture Building, Room 205, CN–330 New Warren Street, Trenton, NJ 08625
New Mexico, 2507 North Telshor Boulevard, Suite 4, Las Cruces, NM 88001
New York, Department of Agriculture & Markets, 1 Winners Circle, Albany, NY 12235
North Carolina, 2 W. Edenton Street, Raleigh, NC 27601–1085
North Dakota, 1250 Albrecht Boulevard, NDSU, Room 448, Fargo, ND 58105
Ohio, 200 N. High Street, New Federal Building, Room 608, Columbus, OH 43215
Oklahoma, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105
Oregon, 1220 S.W. Third Avenue, Room 1735, Portland, OR 97204
Pennsylvania, 2301 N. Cameron Street, Room G–19, Harrisburg, PA 17110
South Carolina, 1835 Assembly Street, Room 1008, Columbia, SC 29201
South Dakota, 3528 S. Western Avenue, Sioux Falls, SD 57117
Tennessee, 440 Hogan Road, Holeman Office Building, Ellington Agricultural Center, Nashville, TN 37220–1626
Texas, 300 E. 8th Street, Federal Building, Room 504, Austin, TX 78701
Utah, 176 N. 2200 West—Suite 260, Salt Lake City, UT 84116
Virginia, 1100 Bank Street, Room 706, Richmond, VA 23219
Washington, 1111 Washington Street, SE, Olympia, WA 98504
West Virginia, 1900 Kanawha Boulevard E, Charleston, WV 25305
Wisconsin, 2811 Agriculture Drive, Madison, WI 53704
Wyoming, 504 W. 17th Street, Suite 250, Cheyenne, WY 82001

PART 3601—PUBLIC INFORMATION

Sec.
3601.1 General statement.
3601.2 Public inspection, copying, and indexing.
3601.3 Requests for records.
3601.4 Multitrack processing.
3601.5 Denials.
3601.6 Appeals.
3601.7 Requests for published data and information.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

SOURCE: 66 FR 57843, Nov. 19, 2001, unless otherwise noted.

§ 3601.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the National Agricultural Statistics Service (NASS) to the public.

§ 3601.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by NASS at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic*.

§ 3601.3 Requests for records.

Requests for records of NASS under 5 U.S.C. 552(a)(3) shall be made in accordance with §1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1643; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov*. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with §1.3(c) of this title.

§ 3601.4 Multitrack processing.

(a) When NASS has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) NASS may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) NASS shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in §1.16 of this title, or the requester is entitled to expedited processing as set forth in §1.9 of this title.

§ 3601.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with §1.7(a) of this title.

§ 3601.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.13 of this title and should be addressed as follows: Administrator, NASS, U.S. Department of Agriculture, Washington, DC 20250.

§ 3601.7 Requests for published data and information.

(a) Published data and reports produced by NASS since 1995 are available via the NASS Web site at *http://www.usda.gov/nass/* or an e-mail subscription may be established via the website under Publications. Searching on the website is available by topic, by title, or by date. The titles displayed in the search include NASS's published periodicals and annual reports. Full text of all the titles is available at no cost (PDF Files beginning 1999). Printed copies and reports published after 1996 can be purchased from the ERS-NASS sales desk at the National Technical Information Center at 1 (800) 999–

6779 (8:30 a.m.–5 p.m. Eastern Time, M-F).

(b) Information on published data, printed subscription rates, and historic publications is available from the Secretary, Agricultural Statistics Board, NASS, U.S. Department of Agriculture, Washington, DC 20250. This information is also available from the NASS website under Publications, NASS Catalog, NASS Periodicals and Annual Reports. Published data, from each State Statistical Office, are available via the NASS website under State Information or by e-mail subscription. Published data subscription forms are available from the State Statistician at each State Statistical Office. Addresses are listed in appendix A to part 3600 of this chapter.

PARTS 3602–3699 [RESERVED]

CHAPTER XXXVII—ECONOMIC RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

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PART 3700—ORGANIZATION AND FUNCTIONS

Sec.
3700.1 General.
3700.2 Organization.
3700.3 Functions.
3700.4 Authority to act for the Administrator.

AUTHORITY: 5 U.S.C. 301 and 552, and 7 CFR 2.67.

SOURCE: 61 FR 1827, Jan. 24, 1996, unless otherwise noted.

§ 3700.1 General.

The Economic Research Service (ERS), originally established in 1961 under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), was reestablished as an agency of the U.S. Department of Agriculture of September 30, 1981 (46 FR 47747), in response to Secretary's Memorandum 1000–1 of June 17, 1981, entitled ''Reorganization of Department.'' The mission of ERS is to provide economic and other social science information and analysis for public and private decisions on agriculture, food, natural resources, and rural America. Its primary customers are USDA policy officials and program administrators, the Office of the While House, Congress, and environmental, consumer, and rural public interest groups, including farm groups and industry.

§ 3700.2 Organization.

ERS maintains its offices at 1301 New York Avenue, NW., Washington, DC 20005–4788. The organization consists of:

(a) The Administrator;

(b) Associate Administrator;

(c) Five Divisions; Commercial Agriculture Division, Food and Consumer Economics Division, Information Services Division, Natural Resources and Environment Division, and Rural Economy Division; and

(d) Office of Energy and New Uses.

§ 3700.3 Functions.

(a) *Administrator and Associate Administrator*. The Administrator and Associate Administrator are responsible for developing and implementing policies and plans in support of a program of economic and social science research, analysis, and data dissemination. General functions are: Conducting research and staff analysis, and developing short to long-term outlook analysis and economic indicators.

(b) *Director, Commercial Agriculture Division*. The Director, Commercial Agriculture Division, is responsible for conducting a program of economic research; economic intelligence gathering, analysis, and reporting; and data development and dissemination on economic conditions, U.S. and foreign policies, and agriculture production, trade, and marketing. General functions are:

(1) Developing and monitoring current intelligence and indicators on domestic and international agricultural markets and related farm and trade developments and short to long-term forecasts of domestic and world agricultural markets.

(2) Assessing the technological, economic, and institutional forces influencing U.S. and world agricultural markets.

(3) Conducting special analyses of U.S. and world agricultural markets for policy officials to assist in policy development and the operation of USDA programs.

(4) Collecting necessary information and performing international, national, and regional macroeconomics analysis to estimate the effects of macro economic trends and events in the global economy on the American farm sector.

(c) *Director, Food and Consumer Economic Division*. The Director, Food and Consumer Economic Division, is responsible for providing economic research, monitoring and statistical indicators, and staff and the policy analysis of consumer and food marketing issues, including: Consumption determinants and trends; consumer demand for food quality, safety, and nutrition; food security; market competition; vertical coordination; nutrition education and food assistance programs; and food safety regulation. General functions are:

(1) Analyzing consumer behavior and food choices, including research regarding the socio-demographic and economic determinants of food and nutrient consumption; consumer valuation

of quality, safety, and nutrition characteristics; and the role of information in determining food choices.

(2) Examining food assistance and nutrition programs, nutritional adequacy of diets, and food security, including costs and benefits of food assistance and nutrition programs, program and policy alternatives, the extent and social cost of good insecurity, and the role of food assistance in meeting larger goals of welfare programs.

(3) Analyzing the food processing and distribution sector, including the ability of the sector to meet changing consumer demand; the effect of government market interventions to facilitate that response; and the effect of government interventions and rapid changes in the sector on consumer and producer welfare.

(4) Analyzing food safety issues, including consumer benefits from risk reduction, production tradeoffs in reducing hazards, impact of proposed regulations and international harmonization, and policy alternatives.

(5) Developing and monitoring indicators of individual, household, and market level food consumption, expenditures, and nutrients; food marketing costs, marketing margins, and farm-retail price spreads; and food safety hazards, their effects, and mitigation.

(d) *Director, Information Services Division.* The Director, Information Services Division, is responsible for managing and directing agencywide information technology, communications, and administrative activities in support of the economic research and analysis mission of ERS. General functions are:

(1) Developing and managing information technology infrastructure and training.

(2) Developing and managing communications, publication, and dissemination programs, policies, and procedures.

(3) Providing operations and management services, including liaison with the ARS's Administrative and Financial Management unit.

(e) *Director, Natural Resources and Environment Division.* The Director, Natural Resources and Environment Division, is responsible for providing economic research, monitoring and statistical indicators, and staff and policy analysis of agricultural resource and environment issues including the relationship between agriculture—its practices, technologies, policies, and resource use—and the environment, including effects on the sustainability of the natural resource base, preservation of species and genetic diversity, and environmental quality. General functions are:

(1) Developing and disseminating data for assessing the use of agricultural resources and technologies by agricultural producers. These data include use and ownership of land, use of agricultural chemicals and equipment, and water use.

(2) Evaluating the implications of alternative agricultural and resource conservation policies and programs on commodity prices, consumer welfare, competitiveness, and long-range maintenance of agricultural land and water resources.

(3) Analyzing the costs, benefits, and distributional impacts of alternative policies to reduce environmental and health risk externalities associated with agriculture.

(4) Monitoring and analyzing the uses and conditions of the nation's water resources and the economic consequences of agricultural and environmental policies affecting water supply, use, and quality.

(5) Analyzing the impacts of national and global developments and domestic and international policies on the use and value of land, water, capital assets, and other agricultural production decisions.

(6) Assessing the possible impacts of proposed or anticipated domestic policy and program changes on agricultural production decisions.

(7) Assessing the effects of technology on input use and markets and evaluating the factors affecting input productivity and technology adoption.

(8) Analyzing the implications of global environmental change and sustainable development for U.S. agriculture.

(f) *Director, Rural Economy Division.* The Director, Rural Economy Division, is responsible for conducting a program of economic and social science research

and analysis on national rural and agricultural conditions and trends, and identifying and assessing the potential impact of public and private sector actions and policies that affect rural areas and the agricultural sector. General functions are:

(1) Analyzing and reporting on current economic and demographic issues facing rural areas and agricultural, especially how changes in the national and global economies affect rural areas and the agriculture sector.

(2) Determining the effects of economic, social, and governmental events and actions on the demand for and supply of rural local government services, the quality of such services, and the relationships between local services and the viability of rural communities.

(3) Developing and disseminating information on current trends in the non-metropolitan and farm populations, the number, location and characteristics of such people, and the factors associated with these trends.

(4) Developing estimates and analyzing labor force trends in rural labor markets, including analyses of unemployment and employment by industry and occupational groups, including farm labor.

(5) Developing data on the income situation of rural people and evaluating the effectiveness of alternative public policies and programs in improving incomes of rural people, especially people in disadvantaged groups.

(6) Monitoring information on and analyzing the development of rural portions of geographic regions of the United States, including changes in industry mix, impacts of energy costs, credit availability, and other economic activities.

(7) Analyzing and reporting on developments in rural and agricultural financial markets and in Federal tax laws, and their consequences for agriculture and rural economies.

(8) Collecting and disseminating financial information on farms and farm enterprises, and developing techniques necessary to measure and describe the financial condition of the agriculture sector and its components.

[61 FR 1827, Jan. 24, 1996, as amended at 64 FR 40736, July 28, 1999]

§ 3700.4 Authority to act for the Administrator.

In the absence of the Administrator, the following officials are designated to serve as Acting Administrator in the order indicated:

Associate Administrator
Director, Commercial Agriculture Division
Director, Food and Consumer Economics Division
Director, Natural Resources and Environment Division
Director, Rural Economy Division
Director, Information Services Division
Director, Office of Energy and New Uses

PART 3701—PUBLIC INFORMATION

Sec.
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AUTHORITY: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

SOURCE: 66 FR 57845, Nov. 19, 2001, unless otherwise noted.

§ 3701.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Economic Research Service (ERS) to the public.

§ 3701.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ERS at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or

(301) 504–1655; TTY-VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic*.

§ 3701.3 Requests for records.

Requests for records of ERS under 5 U.S.C. 552(a)(3) shall be made in accordance with §1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov*. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with §1.3(c) of this title.

§ 3701.4 Multitrack processing.

(a) When ERS has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) ERS may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) ERS shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in §1.16 of this title, or the requester is entitled to expedited processing as set forth in §1.9 of this title.

§ 3701.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with §1.7(a) of this title.

§ 3701.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.14 of this title and should be addressed as follows: Administrator, ERS, U.S. Department of Agriculture, Washington, DC 20250.

§ 3701.7 Requests for published data and information.

Published data and reports produced by ERS since 1996 are available on the ERS Web site at *http://www.ers.usda.gov*. Searching on the website is available by topic, by title, or by date. The titles displayed in the search include ERS's separately published research reports as well as articles in ERS-produced periodicals. Full text of all the titles are available at no cost (usually in PDF Files). Printed copies and reports published before 1996 (while supplies last) can be purchased from the ERS-NASS sales desk at the National Technical Information Center at 1–800–999–6779 (8:30 a.m.–5 p.m., Eastern Standard Time, M-F).

PARTS 3702–3799 [RESERVED]

CHAPTER XXXVIII—WORLD AGRICULTURAL OUTLOOK BOARD, DEPARTMENT OF AGRICULTURE

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PART 3800—ORGANIZATION AND FUNCTIONS

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3800.1 General.
3800.2 Organization.
3800.3 Functions.
3800.4 Authority to act for the Chairperson.

AUTHORITY: 5 U.S.C. 301 and 552, and 7 CFR 2.72, except as otherwise noted.

SOURCE: 53 FR 5358, Feb. 24, 1988, unless otherwise noted.

§ 3800.1 General.

The World Agricultural Outlook Board (WAOB) was established on June 3, 1977, by Secretary's Memorandum 1920, entitled ''World Food and Agricultural Outlook and Situation Board.'' The primary responsibility of WAOB is to coordinate and review all commodity and aggregate agricultural and food data and analyses used to develop outlook and situation material within the Department of Agriculture.

§ 3800.2 Organization.

The central and only office of WAOB is located in Washington, DC, and consists of the Chairperson, Deputy Chairperson, and supporting staff.

§ 3800.3 Functions.

The WAOB has four major areas of responsibility:

(a) *Agricultural outlook and situation.* (1) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department of Agriculture.

(2) Oversee and clear for consistency of analytical assumptions and results, all estimates and analyses which significantly relate to international and domestic commodity supply and demand. This includes such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(3) Participate in planning and developing research programs relating to improving the Department's forecasting and estimating capabilities.

(4) Provide liaison between the Department and Commodity Futures Trading Commission to assure that the futures market serves the best interest of agriculture and the public.

(5) Plan and participate in Departmental, interdepartmental, regional and international outlook conferences and briefings, to maintain an awareness of current and upcoming economic issues significant to the food and agricultural system.

(b) *Interagency commodity estimates.* (1) Establish Interagency Commodity Estimates Committees to bring together estimates and analyses from supporting agencies and to develop official estimates of supply, utilization, and prices for commodities.

(2) Review for consistency of analytical assumptions and results, all proposed decisions made by the Interagency Commodity Estimates Committee prior to any release outside the Department.

(c) *Weather and climate.* (1) Serve as a focal point within the Department for coordination of weather, climate, and related crop monitoring activities.

[53 FR 5358, Feb. 24, 1988, as amended at 79 FR 44117, July 30, 2014]

§ 3800.4 Authority to act for the Chairperson.

When the Chairperson is absent or temporarily unavailable, the Deputy Chairperson is authorized to act for the Chairperson.

PART 3801—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
3801.1 General.
3801.2 Public inspection, copying, and indexing.
3801.3 Requests for records.
3801.4 Denials.
3801.5 Appeals.
3801.6 Requests for published data and information.

AUTHORITY: 5 U.S.C. 301 and 552; 7 CFR 1.1–1.23 and Appendix A.

SOURCE: 53 FR 5358, Feb. 24, 1988, unless otherwise noted.

§ 3801.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1–1.23 of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA)

(5 U.S.C. 552), and governs the availability of records of the World Agricultural Outlook Board (WAOB) to the public.

§ 3801.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. WAOB does not maintain any materials within the scope of these requirements.

§ 3801.3 Requests for records.

Requests for records of WAOB shall be made in accordance with § 1.6 (a) and (b) of this title and addressed to: Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue SW., Washington, DC 20250. This official is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 3801.4 Denials.

If the Economics Agencies FOIA Officer determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the Economics Agencies FOIA Officer shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 3801.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be in accordance with § 1.6(e) of this title and addressed to the Chairperson, World Agricultural Outlook Board, U.S. Department of Agriculture, Washington, DC 20250.

§ 3801.6 Requests for published data and information.

Information on published data, subscription rates, and all WAOB programs is available from the Chairperson, World Agricultural Outlook Board, U.S. Department of Agriculture, Washington, DC 20250.

PARTS 3802–3899 [RESERVED]

CHAPTER XLI [RESERVED]

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE, DEPARTMENT OF AGRICULTURE

EDITORIAL NOTE: Nomenclature changes to chapter XLII appear at 61 FR 3782, Feb. 2, 1996.

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PARTS 4200–4269 [RESERVED]

PART 4270—USDA BIOBASED MARKETS PROGRAM: FEDERAL PROCUREMENT AND VOLUNTARY LABELING

Sec.

4270.1 Purpose and scope.
4270.2 Definitions.
4270.3 Applicability.
4270.4 Criteria for eligibility
4270.5 Procurement programs.
4270.6 Category designation.
4270.7 Determining Biobased Content.
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4270.11 Requirements associated with promotional certification materials.
4270.12 Violations of program requirements.
4270.13 Appeal process.
4270.14 Reporting and recordkeeping.
4270.15 Oversight and monitoring.
4270.16–4270.98 [Reserved]
4270.99 OMB control number.

AUTHORITY: 7 U.S.C. 8102.

SOURCE: 89 FR 97465, Dec. 9, 2024, unless otherwise noted.

§ 4270.1 Purpose and scope.

(a) This part sets forth the procedures and guidelines for the implementation of the USDA Biobased Markets Program, called the BioPreferred® Program, established by section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA) as amended by the Food, Conservation, and Energy Act of 2008, and further amended by the Agricultural Act of 2014, and the Agriculture Improvement Act of 2018 (Pub. L. 107–171, 116 Stat. 476, 7 U.S.C. 8102).

(b) The guidelines in this part establish:

(1) A process for designating categories of products that are, or can be, produced with biobased Intermediate Ingredients or feedstocks and whose procurement by procuring agencies and other relevant Stakeholders will carry out the objectives of section 9002 of FSRIA;

(2) The criteria for eligibility and the process through which Biobased Products can participate in the BioPreferred Program, be subject to preferred Federal procurement, and be eligible to display the USDA Certified Biobased Product Label;

(3) Specifications for the correct and incorrect uses of the USDA Certified Biobased Product Label and Certification Icon, which apply to Participating Organizations and Other Entities; and

(4) Actions that constitute noncompliance with this part.

§ 4270.2 Definitions

Agricultural materials. Plant, animal, and marine matter, raw materials or residues used in the manufacturing of a commercial or industrial product excluding food, feed, motor vehicle fuel, heating oil, and electricity.

Applicable minimum biobased content. The required Biobased Content level set by USDA that a product must meet or exceed to qualify for the Federal procurement preference and use of the USDA Certified Biobased Product Label.

ASTM International (ASTM). A nonprofit organization, formerly known as American Society for Testing and Materials, that provides an international forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

Biobased content. The amount of recent, biologically derived organic carbon in the material or product expressed as a percent of weight (mass) of the total organic carbon in the material or product.

Biobased content testing. The testing that is performed to verify a product's Biobased Content. For products participating in the BioPreferred Program, the Biobased Content is to be determined using ASTM Method D6866, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.

Biobased product(s). (1) A product determined by USDA to be a commercial or industrial product (other than food or feed) that is:

(i) Composed, in whole or in significant part, of Biological Products, including renewable domestic Agricultural Materials, Renewable Chemicals, and forestry materials; or

(ii) An Intermediate Ingredient or Feedstock.

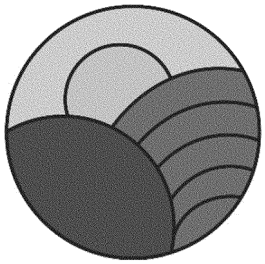
(2) The term Biobased Product includes, with respect to forestry materials, Forest Products that meet Biobased Content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. For the purposes of the BioPreferred Program, the term Biobased Product does not include motor vehicle fuels, heating oils, or electricity.

Biodegradability. A quantitative measure of the extent to which a material is capable of being decomposed by biological agents, especially bacteria.

Biological products. Products derived from living materials.

Certification icon. The distinctive image, as shown in figure 1 (note that actual size will vary depending on application), that depicts the symbols of the sun, the soil, and the aquatic environments to be used with USDA's permission to identify Certified Biobased Products. The icon will be used in materials including, but not limited to, advertisements, catalogs, procurement databases, websites, and promotional and educational materials. The colors used in the Certification Icon can be found in the USDA BioPreferred Program Brand and Marketing Guidelines available on the BioPreferred Program website (*biopreferred.gov*).

FIGURE 1 TO DEFINITION OF CERTIFIED ICON—CERTIFICATION ICON



Certified application. An application for a Biobased Product to participate in the BioPreferred Program that has completed all steps of the certification process, including an initial Prequalification review and Biobased Content Testing as required, and has received a notice of certification.

Certified biobased product. A Biobased Product that is eligible for preferred Federal procurement because it meets the definition and Applicable Minimum Biobased Content criteria for one or more Designated Product Categories as specified in the Register of Designated Categories, and for which the Participating Organization has received approval from USDA to utilize the USDA Certified Biobased Product Label.

Complex assembly. A system of distinct materials and components assembled to create a finished product with specific functional intent where some or all of the system components contain some amount of biobased material or feedstock.

Days. As used in this part means calendar Days.

Defined product category. Any product category that has been established for a specified grouping of Biobased Products with similar characteristics and intended uses. A Defined Product Category includes a description of the product characteristics that fall within the category. The other product category is not a Defined Product Category.

Designated product category. A grouping of Biobased Products, including finished products, Intermediate Ingredients or Feedstocks, and Complex Assemblies, identified in the Register of Designated Categories on the BioPreferred Program website (*biopreferred.gov*). Certified or Qualified

Biobased Products that meet the criteria for at least one designated category are eligible for the procurement preference established under section 9002 of FSRIA.

Designated representative. An entity authorized by a Participating Organization to act on their behalf to obtain certification or to affix the USDA Certified Biobased Product Label to the Participating Organization's Certified Biobased Product or its packaging or perform other marketing functions.

Federal agency. Any executive agency or independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

Forest product. A product made from materials derived from the practice of forestry or the management of growing timber. The term Forest Product includes:

(1) Pulp, paper, paperboard, pellets, lumber, and other wood products; and

(2) Any recycled products derived from forest materials.

Formulated product. A product that is prepared or mixed with other Ingredients, according to a specified formula and includes more than one Ingredient.

FSRIA. The Farm Security and Rural Investment Act of 2002, Public Law 107–171, 116 Stat. 134 (7 U.S.C. 8102).

Ingredient. A component, or a part of a compound or mixture, that may be active or inactive.

Innovative criteria. Benchmark for demonstrating new and emerging approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the Biobased Product. Biobased Products must meet one of the Innovative Criteria as defined by USDA to be eligible for preferred Federal procurement and to display the USDA Certified Biobased Product Label.

Intermediate ingredient or feedstock. A material or compound made in whole or in significant part from Biological Products, including renewable Agricultural Materials (including plant, animal, and marine materials) or forestry materials that have undergone value added processing (including thermal, chemical, biological, or a significant amount of mechanical processing), excluding harvesting operations, offered for sale by a Participating Organization and that is subsequently used to make a more complex compound or product.

ISO. The International Organization for Standardization, a network of national standards institutes working in partnership with international organizations, governments, industries, business, and consumer representatives.

ISO 9001 conformant. An entity that meets all the requirements of the ISO 9001 standard, but that is not required to be ISO 9001 certified. ISO 9001 refers to the ISO's standards and guidelines relating to quality management systems. Quality management is defined as what the manufacturer does to ensure that its products or services satisfy the customer's quality requirements and comply with any regulations applicable to those products or services.

Other entity. Any person, group, public or private organization, or business other than USDA or Participating Organizations that may wish to use the USDA Certified Biobased Product Label or Certification Icon in informational or promotional material related to a Certified Biobased Product.

Parent product. The Certified Biobased Product in a test exempt relationship that was originally tested for certification. A test exempt product references the Certified Application of its Parent Product.

Participating organization. An entity that has completed the steps required to have a Certified and/or Qualified Biobased Product under the BioPreferred Program. Participants can include entities that perform the necessary chemical and mechanical processes to make a Biobased Product, and entities that offer for sale Biobased Products that they do not manufacture but that are marketed and sold under their own brand.

Prequalification. The step during the certification process at which an application is conditionally approved pending the product undergoing Biobased Content Testing.

Procuring agency. Any Federal Agency that is using Federal funds for procurement or any business contracting

with any Federal Agency with respect to work performed under the contract.

Qualified biobased product(s). A product that is eligible for preferred Federal procurement because it meets the definition and Applicable Minimum Biobased Content criteria for one or more Designated Product Categories as specified in the Register of Designated Categories.

Register of Designated Categories. The list of product categories that are eligible for the procurement preference established under section 9002 of FSRIA, including the category name, description, required minimum Biobased Content, and date of finalization. The Register of Designated Categories can be found on the BioPreferred Program website at *biopreferred.gov*.

Renewable chemical. A monomer, polymer, plastic, Formulated Product, or chemical substance produced from renewable biomass.

Secretary. The Secretary of the United States Department of Agriculture.

Stakeholder. Individuals or officers of State or local government organizations, private non-profit institutions, or organizations, and private businesses or consumers.

USDA. The United States Department of Agriculture.

USDA Certified Biobased Product label. A combination of the Certification Icon (as defined in this part); one of three statements identifying whether the USDA certification applies to the product, the package, or both the product and package; and the letters ''FP'' to indicate that the product is within a Designated Product Category and eligible for preferred Federal procurement. The distinctive image, as shown in figures 2, 3, and 4 (note that actual size will vary depending on application), identifies products as USDA Certified Biobased Products. The colors used in the USDA Certified Biobased Product Label can be found in the USDA BioPreferred Program Brand and Marketing Guidelines available on the BioPreferred Program website (*biopreferred.gov*). The USDA Certified Biobased Product Label is owned and its use is managed by USDA (standard trademark law definition applies).

FIGURE 2 TO DEFINITION OF USDA CERTIFIED BIOBASED PRODUCT LABEL—USDA CERTIFIED BIOBASED PRODUCT LABEL

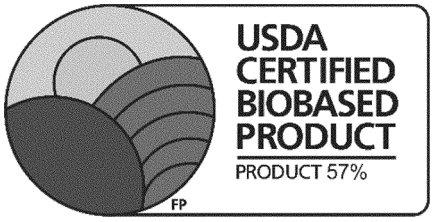
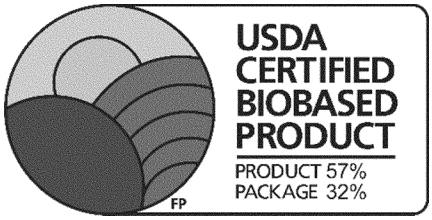


FIGURE 3 TO DEFINITION OF USDA CERTIFIED BIOBASED PRODUCT LABEL—USDA CERTIFIED BIOBASED PACKAGE LABEL



FIGURE 4 TO DEFINITION OF USDA CERTIFIED BIOBASED PRODUCT LABEL—USDA CERTIFIED BIOBASED PRODUCT & PACKAGE LABEL



§ 4270.3 Applicability.

(a) *Applicability to Federal procurements*—(1) *Applicability to procurement actions.* The guidelines in this part apply to all procurement actions by Procuring Agencies involving product categories designated by USDA in this part, where the Procuring Agency makes purchases of $10,000 or more of one of these products during a fiscal year, or where the quantity of such products or of functionally equivalent products purchased during the preceding fiscal year was $10,000 or more. The $10,000 threshold applies to Federal Agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger Federal department or agency.

(2) *Exception for procurements subject to Environmental Protection Agency (EPA) regulations under the Solid Waste Disposal Act.* For any procurement by any Procuring Agency that is subject to regulations of the Administrator of the EPA under section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (40 CFR part 247), these guidelines do not apply to the extent that the requirements of this part are inconsistent with such regulations.

(3) *Procuring products composed of the highest percentage of Biobased Content.* Section 9002(a)(2) of FSRIA (7 U.S.C. 8102(a)(2)) requires Procuring Agencies to procure Qualified Biobased Products composed of the highest percentage of Biobased Content practicable. Procuring agencies may decide not to procure such Qualified Biobased Products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

(4) *Incidental purchases.* This part does not apply to purchases of Qualified Biobased Products that are unrelated to or incidental to Federal funding (*i.e.*, purchases that are not the direct result of a contract or agreement with persons supplying products to a Procuring Agency or providing support services that include the supply or use of products).

(5) *Exemptions.* The following applications are exempt from the preferred procurement requirements of this part:

(i) Military equipment: Products or systems designed or procured for combat or combat-related missions.

(ii) Spacecraft systems and launch support equipment.

(b) *Applicability to Participating Organizations and Other Entities*—(1) *Participating Organizations.* The requirements in this part apply to all prospective Participating Organizations who wish to participate in the BioPreferred Program. Those wishing to participate in the BioPreferred Program are required to obtain and maintain product certification. USDA will allow only one owner or Designated Representative of a branded product to participate. Participating Organizations may not obtain product certification for a product using a brand name owned by a separate organization unless they are acting on behalf of the brand owner, with their approval, as a Designated Representative.

(2) *Other Entities.* The requirements in this part apply to Other Entities who wish to use the USDA Certified Biobased Product Label or Certification Icon in promoting the sales or

the public awareness of Certified Biobased Products.

§ 4270.4 Criteria for eligibility.

A product must meet each of the criteria specified in paragraphs (a) through (c) of this section to be eligible to participate in the BioPreferred Program.

(a) *Biobased Product.* The product for which certification is sought must be a Biobased Product as defined in § 4270.2. Products must undergo Biobased Content Testing as described in § 4270.7 of this part to confirm the products meet or exceed the applicable minimums.

(1) *Products that are qualified for preferred Federal procurement but not certified as of the date of publication of this rule.* If the product is qualified for preferred Federal procurement through the BioPreferred Program as of January 8, 2025, the product will remain eligible under the legacy rules, which can be found on the BioPreferred Program website (*biopreferred.gov*), until the product is reformulated, discontinued, or until December 9, 2027, whichever comes first. These products must follow the procedures described in § 4270.9 before December 9, 2027 to remain eligible.

(2) *Exclusions.* Motor vehicle fuels, heating oil, and electricity are excluded by statute from this Program. For the purposes of this Program, food, animal feed, and products intended to be ingested or inhaled such as pharmaceuticals or nutraceuticals are also excluded.

(b) *Minimum Biobased Content.* The Biobased Content of the product must be equal to or greater than the Applicable Minimum Biobased Content, as described in paragraphs (b)(1) and (2) of this section.

(1) *Products that fall under one or more Defined Product Categories*—(i) *Product is within a single product category.* If the Biobased Product is within a single Defined Product Category that, at the time the application for certification is submitted, has been designated by USDA for preferred Federal procurement, the Applicable Minimum Biobased Content requirement for the product is the minimum Biobased Content specified for the Defined Product Category as found in the Register of Designated Categories on the BioPreferred Program website at *biopreferred.gov*.

(ii) *Product is within multiple product categories.* If the Biobased Product is marketed within more than one Defined Product Category identified for preferred Federal procurement at the time the application for certification is submitted and uses the same packaging for each use, the product's Biobased Content must meet or exceed the specified minimum Biobased Content for each of the applicable product categories, as found in the Register of Designated Categories on the BioPreferred Program website at *biopreferred.gov*, to become certified in each category. If the product's Biobased Content does not meet the specified minimum Biobased Content for the category that most closely matches the product's primary intended use, the product is not eligible to participate.

(2) *Products that do not meet the definition of at least one Defined Product Category.* If the Biobased Product does not meet the definition of a Defined Product Category that has been designated by USDA at the time the application for certification is submitted, the Applicable Minimum Biobased Content is 30 percent. USDA will evaluate such products as described in § 4270.6 to determine the viability of designating a new product category. If a new category is subsequently designated for preferred Federal procurement, the Applicable Minimum Biobased Content will become, as of the effective date indicated in the Register of Designated Categories, the minimum Biobased Content specified for the newly Defined Product Category.

(c) *Innovative Criteria.* In determining eligibility for certification under the BioPreferred Program, USDA will consider as eligible only those products that use innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the Biobased Product. USDA will consider products that meet one or more of the criteria in paragraphs (c)(1) through (4) of this section to be eligible for certification. USDA will also consider other documentation of innovative approaches in the growing, harvesting, sourcing, procuring,

processing, manufacturing, or application of Biobased Products on a case-by-case basis. USDA may deny or revoke certification for any products whose manufacturers are unable to provide USDA with the documentation necessary to verify claims that innovative approaches are used.

(1) *Product applications.* (i) The Biobased Product or material is used or applied in applications that differ from historical applications; or

(ii) The Biobased Product or material is grown, harvested, manufactured, processed, sourced, or applied in other innovative ways; or

(iii) The Biobased Content of the product or material makes its composition different from products or material used for the same historical uses or applications.

(2) *Manufacturing and processing.* (i) The Biobased Product or material is manufactured or processed using renewable, biomass energy or using technology that is demonstrated to increase energy efficiency or reduce reliance on fossil-fuel based energy sources; or

(ii) The Biobased Product or material is manufactured or processed with technologies that reduce waste and ensure high feedstock material recovery and use.

(3) *Environmental Product Declaration.* The product has a current Environmental Product Declaration as defined by International Standard ISO 14025, Environmental Labels and Declarations—Type III Environmental Declarations—Principles and Procedures.

(4) *Raw material sourcing.* (i) The raw material used in the product is sourced from a Legal Source, a Responsible Source, or a Certified Source as designated by ASTM D7612 (Standard Practice for Categorizing Wood and Wood-Based Products According to Their Fiber Sources); or

(ii) The raw material used in the product is 100% resourced or recycled (such as material obtained from building deconstruction or agricultural wastes); or

(iii) The raw material used in the product is acquired as a result of activities related to a natural disaster, debris clearing, right-of-way maintenance, tree health improvement, or public safety; or

(iv) The raw material used in the product is grown, harvested, manufactured, processed, sourced, or applied in other sustainable and ethically sourced ways as determined by USDA. Examples include but are not limited to rainforest and habitat conservation, wildlife protection, ethical workplace practices, and adherence to environmental management systems, such as ISO 14001.

§ 4270.5 Procurement programs.

(a) *Integration into the Federal procurement framework.* The Office of Federal Procurement Policy, in cooperation with USDA, has the responsibility to coordinate this policy's implementation in the Federal procurement regulations. These guidelines are not intended to address full implementation of these requirements into the Federal procurement framework. This will be accomplished through revisions to the Federal Acquisition Regulation.

(b) *Federal Agency preferred procurement programs.* (1) Each Federal Agency will maintain and implement a procurement program that will assure that Qualified Biobased Products are purchased to the maximum extent practicable and that is consistent with applicable provisions of Federal procurement laws. Each procurement program will contain:

(i) A preference program for purchasing Qualified Biobased Products;

(ii) A training program to educate the Federal Agency and its contractors on the requirements for purchasing Qualified Biobased Products;

(iii) Provisions for the annual review and monitoring of the effectiveness of the procurement program;

(iv) Provisions for reporting quantities and types of Biobased Products purchased by the Federal Agency and its contractors through the BioPreferred Program Portal in the System for Award Management (*https://sam.gov*) as required by 48 CFR 52.223–2; and

(v) Provisions for reviewing and eliminating specifications that prohibit the purchasing of Qualified Biobased Products.

(2) In developing their preference program, Federal agencies will adopt one

of the following options, or a substantially equivalent alternative, as part of the procurement program:

(i) A policy of awarding contracts on a case-by-case basis to the vendor offering a Qualified Biobased Product composed of the highest percentage of Biobased Content practicable except when such products:

(A) Are not available within a reasonable timeframe;

(B) Fail to meet performance standards for their intended use, or the reasonable performance standards of the Federal Agency; or

(C) Are not available at a reasonable price.

(ii) A policy of setting minimum Biobased Content specifications in such a way as to assure that the required Biobased Content of Qualified Biobased Products is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part.

(iii) A policy of documenting and reporting cases where it is not possible to award contracts and set specifications in such a way that is consistent with section 9002 of FSRIA and the requirements of this part.

(3) In implementing the preference program, Federal agencies will treat as eligible for the preference Biobased Products from designated countries, as that term is defined in 48 CFR 25.003 (Federal Acquisition Regulation), provided that those products otherwise meet all requirements for participation in the preference program.

(4) Each Federal Agency will continue to establish an annual targeted biobased-only procurement requirement under which the Procuring Agency will issue a certain number of biobased-only contracts when the Procuring Agency is purchasing products, or purchasing services that include the use of products, that are included in a Biobased Product category designated by the Secretary.

(c) *Procurement specifications.* Federal agencies that have the responsibility for drafting or reviewing specifications for products procured by Federal agencies will ensure that their specifications require the use of Qualified Biobased Products, consistent with the guidelines in this part. These specifications must be put in place no later than six months after a designated category of products is finalized and added to the Register of Designated Categories. USDA will identify the allowable time frame for specifications to be put in place in the Register of Designated Categories found on the BioPreferred Program website at *biopreferred.gov*. The Biobased Content of Qualified Biobased Products within a Designated Product Category may vary considerably from product to product based on the mix of Ingredients used in its manufacture. In procuring Qualified Biobased Products, the percentage of Biobased Content should be maximized, consistent with achieving the desired performance for the product.

§ 4270.6 Category designation.

(a) *Procedure.* Designated Product Categories are found in the Register of Designated Categories on the BioPreferred Program website (*biopreferred.gov*).

(1) *General.* In designating product categories, USDA will designate categories composed of generic groupings of specific products, Intermediate Ingredients or Feedstocks, or Complex Assemblies and will identify the minimum Biobased Content for each listed category or subcategory. As product categories are designated for procurement preference, they will be added to the Register of Designated Categories on the BioPreferred Program website at *biopreferred.gov*.

(i) *Adding new product categories to the Register of Designated Categories.* If a product does not fall within a Defined Product Category that has been designated by USDA at the time the application for certification is submitted, the Applicable Minimum Biobased Content is 30 percent, and it will be listed in the other product category. USDA will evaluate the viability of designating new product categories to categorize products in the other product category more appropriately, following the procedure described in paragraphs (a)(1)(i)(A) through (D) of this section.

(A) New Defined Product Categories that are identified during the category evaluation process will be added to the Register of Designated Categories on the BioPreferred Program website

(*biopreferred.gov*). Using the data gathered during the certification process, USDA will establish a provisional category name, definition, and minimum Biobased Content for each new product category based on the product(s) that fall within the new category.

(B) The provisional minimum will be in place for a period of six months following the addition of the new Defined Product Category to the Register of Designated Categories. During that time, any product that falls within the category based on the category definition and has a Biobased Content that is either at least 30 percent or within 30 percentage points of the provisional minimum, whichever is higher, will be considered for inclusion.

(C) After a period of six months following the addition of the new product category to the Register of Designated Categories, USDA will re-evaluate the provisional category name, description, and minimum Biobased Content based on the data gathered during the year. At that time, USDA will make final the product category name, description, and minimum Biobased Content, and the category will no longer be considered provisional.

(D) Procuring agencies, in accordance with this part, are encouraged to give a procurement preference for Qualified Biobased Products that falls within provisionally designated categories and are required to give a procurement preference for Qualified Biobased Products that falls within designated categories no later than six months after the finalized product category is added to the Register of Designated Categories. By that date, Federal agencies responsible for products to be procured will ensure that the relevant specifications require the use of Biobased Products that fall within the designated categories.

(ii) *Revising Defined Product Categories on the Register of Designated Categories.* USDA will periodically evaluate the need to update the product categories included in the Register of Designated Categories by reviewing items including, but not limited to, the category names, definitions, minimum Biobased Contents, subcategories, and the need for the category or subcategory. If the data support making updates, USDA will amend the category and publish the updated category to the Register of Designated Categories. No later than six months after the amended category is published to the Register of Designated Categories, procuring agencies, in accordance with this part, will give a procurement preference for Qualified Biobased Products that fall within the amended designated category. By that date, Federal agencies responsible for products to be procured will ensure that the relevant specifications require the use of Biobased Products that fall within the designated categories.

(2) *Public comments.* Interested parties, including manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative Applicable Minimum Biobased Content for a new, provisional, defined, or Designated Product Category by, in consultation with USDA, developing and conducting an analysis to support the proposed alternative Applicable Minimum Biobased Content. If approved by USDA, the proposed alternative Applicable Minimum Biobased Content would become the Applicable Minimum Biobased Content for products that fall within that category to be certified.

(3) *Continued eligibility.* If the applicable required minimum Biobased Content for a product to be eligible to participate in the BioPreferred Program is revised by USDA, the product will remain certified or qualified, as applicable, only if it meets the new minimum Biobased Content level. In those cases where the Biobased Content of a certified or qualified product fails to meet the new minimum Biobased Content level, USDA will notify the Participating Organization that their certification is no longer valid. Such Participating Organizations must notify USDA of their intent to increase the Biobased Content of their product to a level at or above the new minimum Biobased Content level within 120 Days and must re-apply for certification within an additional 120 Days if they wish to continue to participate in the Program. The affected product's certification will expire if the Participating Organization does not notify USDA of the intent to reformulate within 120 Days or if the Participating

Organization does not re-apply within the additional 120 Days. Participating Organizations who have re-applied for certification may continue using the existing USDA Certified Biobased Product Label until they receive notification from USDA on the results of their re-application for certification.

(b) *Considerations.* (1) In designating product categories, USDA will consider the availability of Qualified Biobased Products and the economic and technological feasibility of using such products, including price. USDA will gather information on individual Qualified Biobased Products within a category and extrapolate that information to the category level for consideration in designating product categories.

(2) In designating product categories for the BioPreferred Program, USDA will consider as eligible only those products that use innovative approaches in growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the Biobased Product. USDA will consider products that meet one or more of the criteria in § 4270.4(b)(1) and (2) to be eligible for the BioPreferred Program. USDA will also consider other documentation of innovative approaches in growing, harvesting, sourcing, procuring, processing, manufacturing, or application of Biobased Products on a case-by-case basis.

§ 4270.7 Determining Biobased Content.

(a) *Certification requirements.* For any Biobased Product seeking to participate in the BioPreferred Program, prospective Participating Organizations must submit an application as specified in § 4270.9 and confirm that the product meets the Applicable Minimum Biobased Content requirements and the definition for the Defined Product Category within which the Biobased Product falls. Paragraph (c) of this section addresses how to determine Biobased Content. Upon request, manufacturers and vendors must provide USDA and Federal agencies information to verify Biobased Content claims for Qualified Biobased Products.

(b) *Minimum Biobased Content.* Unless specified otherwise in the designation of a particular product category, the minimum Biobased Content requirements in a specific category designation refer to the organic carbon portion of the product, and not the entire product.

(c) *Determining Biobased Content.* Verification of Biobased Content must be based on third party ASTM/ISO compliant test facility testing using the ASTM Standard Method D6866 (Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis). ASTM Standard Method D6866 determines Biobased Content based on the amount of biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product.

(1) *General.* Biobased Content will be based on the amount of biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product.

(2) *Complex Assemblies*—(i) *Equation.* The Biobased Content of a Complex Assembly product, where the product has n components whose Biobased Content and organic carbon content can be experimentally determined, may be calculated using the following equation:

$$Biobased\ Content\ of\ Product = \frac{\sum_{i=1}^{n} M_i * BBC_i * OCC_i}{\sum_{i=1}^{n} M_i * OCC_i}$$

Where:

M_i = mass of the ith component

BCC_i = biobased carbon content of the ith component (%)

OCC_i = organic carbon content of the ith component (%)

(ii) *Proportional sampling.* The Biobased Content of an Assembly product may be determined by sub-sampling (by weight) each organic constituent in a proportion representative of its content within the assembly and

combining the sub-samples into a measurable quantity so that a single ASTM D6866 analysis of the combined sub-samples is representative of the assembly.

(d) *Products and Intermediate Ingredients or Feedstocks with the same formulation*. In the case of products and Intermediate Ingredients or Feedstocks that are essentially the same formulation but marketed under more than one brand name, Biobased Content test data may be shared as specified in paragraphs (d)(1) and (2) of this section.

(1) *Test exemptions*. In situations where a new product for which certification is sought is composed of the same Ingredients and has the same Biobased Content as a product that has already been certified and tested by a company that the interested party has a direct relationship with, the interested party may apply for a test exemption by referencing the Certified Application of the certified Parent Product in lieu of having the new product undergo Biobased Content Testing using ASTM D6866.

(2) *Families*. In situations where a Participating Organization is seeking certification for two or more products that are composed of the same Ingredients and have the same Biobased Content but are marketed for different uses or under more than one brand name, the products may be grouped in a family. Biobased Content test data must only be obtained for one of the products in the family, and the test data will apply to all products within the family.

§ 4270.8 [Reserved]

§ 4270.9 Initial approval process.

(a) *Application*. Prospective Participating Organizations seeking USDA approval to use the USDA Certified Biobased Product Label and to become qualified for preferred Federal procurement for an eligible Biobased Product must submit an application for each Biobased Product or product family. USDA has developed a standardized application form that must be used. The standardized application form and instructions are available on the BioPreferred Program website (*biopreferred.gov*). The contents of an acceptable application are as specified in paragraphs (a)(1) and (2) of this section.

(1) *General content*. The applicant must provide the information as specified in paragraphs (a)(1)(i) though (viii) of this section.

(i) Contact information, including the name, mailing address, email address, and telephone number of the applicant.

(ii) The product's brand name(s) or other identifying information.

(iii) Intended uses of the product.

(iv) The biobased source(s) of the raw materials used in the product.

(v) Information to document that one or more of the Innovative Criteria specified in § 4270.4(c) has been met.

(vi) The corresponding Designated Product Category classification for preferred Federal procurement.

(vii) The estimated Biobased Content of the product.

(viii) A web link directly to the applicant's website (if available).

(2) *Commitments*. The applicant must verify in the application that the product for which use of the USDA Certified Biobased Product Label is sought is a Biobased Product as defined in § 4270.2. The applicant must also agree to statements in the application that commit the applicant to submitting to USDA the information specified in paragraphs (a)(1)(i) through (viii) of this section, some of which USDA will post to the BioPreferred Program website (*biopreferred.gov*), and to providing USDA with up-to-date information on this website.

(b) *Evaluation of applications*—(1) *Initial evaluation*. USDA will evaluate each application to determine if it contains the information specified in paragraph (a) of this section and to determine compliance with the criteria specified in § 4270.4. If USDA determines that the application is incomplete, USDA will contact the applicant via email with an explanation of the application's deficiencies. Once the deficiencies have been addressed, the applicant may respond to USDA with an explanation of how the application's deficiencies were addressed for re-evaluation by USDA, and USDA will update the application as needed. If the applicant does not provide a response within

90 Days, USDA will make the application inactive.

(2) *Prequalification.* (i) USDA will provide a written response to each applicant as quickly as practicable, but no later than 90 Days after the receipt of a complete application, depending on the responsiveness of the applicant. The written response will inform the applicant of whether the application has been conditionally approved, or prequalified, to move forward to Biobased Content Testing, or has been disapproved. After notification that the application has been conditionally approved, if any of the information specified in paragraphs (a)(1)(i) through (viii) of this section has changed, the applicant must provide updates to USDA (for posting by USDA on the BioPreferred Program website).

(ii) For those applications that are conditionally approved to move forward, Biobased Content Testing must be completed as described in § 4270.7. Test results obtained prior to the application being conditionally accepted or obtained in a manner that does not comply with this part cannot be accepted.

(iii) After Biobased Content Testing has been completed, USDA will evaluate the results and determine if the product meets the criteria described in § 4270.4(b). For those applications that meet the criteria described in § 4270.4(b), USDA will issue a notice of certification, as specified in paragraph (c) of this section. A notice of certification must be issued before the use of the USDA Certified Biobased Product Label can begin.

(iv) For those applications that are disapproved, USDA will inform the applicant in writing of each criterion not met.

(c) *Notice of certification.* Once USDA confirms that the test results document an acceptable Biobased Content, USDA will issue a notice of certification to the applicant that includes the date of certification, name of the product(s) covered by the certification, and certified Biobased Content of the product(s). Upon receipt of a notice of certification, the applicant may begin using the USDA Certified Biobased Product Label on the Certified Biobased Product and may advertise that the product is a Certified Biobased Product. Paragraph (c)(1) of this section presents the procedures for revising the information provided under paragraphs (a)(1)(i) through (viii) of this section after a notice of certification has been issued.

(1) If at any time, during the application process or after a product has been certified, any of the information specified in paragraphs (a)(1)(i) through (viii) of this section changes, the applicant must notify USDA of the change within 30 Days. Such notification must be provided in writing via email to USDA. Failure to notify USDA of any change made to a Certified Biobased Product may result in the violation actions described in § 4270.12.

(2) After receiving the notice of certification, the Participating Organization may request to display a Biobased Content percentage that is lower than the content measured by the ASTM D6866 test results but is greater than or equal to the applicable category minimums. Such requests must be sent in writing via email to USDA and must be approved by USDA.

(3) If, after reviewing the test results, USDA determines that the product does not meet the Applicable Minimum Biobased Content, USDA will issue a notice of denial of certification and will inform the applicant in writing via email of each criterion not met.

(d) *Term of certification*—(1) *General.* The effective date of certification is included in the notice of certification from USDA. Except as specified in paragraphs (d)(1)(iii) and (iv) and (d)(2) through (4) of this section, certifications will remain in effect for five years. The applicant will be notified 90 Days before the certification expires, at which time, the product must be retested in accordance with the procedure as specified in § 4270.7.

(i) If the certification is not renewed within the 90 Days, the product certification will expire, the product will no longer be a Certified Biobased Product, and the product information will be removed from the BioPreferred Program website (*biopreferred.gov*).

(ii) If a Participating Organization whose product certification has expired wishes to renew the certification, the

participant must follow the procedures required for original certification.

(iii) All certifications are subject to periodic USDA auditing activities, as described in § 4270.15. If a Participating Organization fails to participate in such audit activities or if such audit activities reveal Biobased Content violations, as specified in § 4270.12, the certification will be subject to suspension and revocation according to the procedures specified in § 4270.12(c)(3).

(iv) If USDA discovers that a certification has been issued for an ineligible product as a result of errors on the part of USDA during the approval process, USDA will notify the Participating Organization in writing that the certification is revoked effective 30 Days from the date of the notice.

(2) *Reformulations.* If at any time during the term of certification a Certified Biobased Product is reformulated, the participant must notify USDA of the change. USDA will consider the changes and inform the participant if re-testing is required as specified in paragraphs (d)(2)(i) through (iii) of this section.

(i) If the product formulation or raw materials of a Certified Biobased Product are changed such that the Biobased Content of the product is reduced to a level below that reported in the Certified Application, the existing certification will no longer be valid for the product under these revised conditions and the Participating Organization and its Designated Representatives must discontinue affixing the USDA Certified Biobased Product Label to the product and must not initiate any further advertising of the product using the USDA Certified Biobased Product Label. USDA will consider a product under such revised conditions to be a reformulated product, and the Participating Organization must submit a new application for certification using the procedures specified in paragraph (a) of this section.

(ii) If the product formulation of a Certified Biobased Product is changed such that the Biobased Content of the product is increased from the level reported in the Certified Application, and the raw materials are not significantly changed, the existing certification will continue to be valid for the product.

(iii) If the applicable required minimum Biobased Content for a product to participate in the BioPreferred Program is revised by USDA, Participating Organizations must follow the requirements specified in § 4270.6(a)(3).

(3) *Test exemptions.* For those products that are exempt from Biobased Content Testing as described in § 4270.7, the test exempt certification will expire at the same time as the Certified Application of the Parent Product.

(4) *Special considerations.* (i) For those Participating Organizations who have Qualified Biobased Products that are not certified as of January 8, 2025. USDA will solicit Biobased Content test data obtained using the ASTM D6866 test method. Participants who provide USDA with ASTM D6866 test data that has been obtained within the past five years from January 8, 2025 and whose products meet the requirements as described in § 4270.4 will receive certification for their products covered by the test data. The term of certification as described in paragraph (d)(1) of this section will then apply.

(ii) Participants who have Qualified Biobased Products that are not certified as of January 8, 2025 and do not provide recent ASTM D6866 test results within three years of the publication of this rule will be required to have their products tested and certified as described in § 4270.7. If certification is not completed within three years of the publication of this rule, these Biobased Products will no longer be listed as Qualified Biobased Products on the BioPreferred Program's website (*biopreferred.gov*) and will be removed from the BioPreferred Program's website (*biopreferred.gov*).

(iii) For those participants who have Certified Biobased Products that have been certified for more than five years as of the date of publication of this rule, USDA will require that the certification be renewed as described in paragraph (d)(1) of this section within three years of January 8, 2025. If an application for renewal is not completed within three years, the product certification will expire, the product will no longer be a Certified Biobased Product, and the product information will be removed from the BioPreferred Program website (*biopreferred.gov*).

§ 4270.10 [Reserved]

§ 4270.11 Requirements associated with promotional certification materials.

(a) *How participation in the BioPreferred Program can be promoted.* Guidance on promoting participation in the BioPreferred Program is provided in paragraphs (a)(1) and (2) of this section. USDA will evaluate additional requests for uses of promotional materials or references to the Program and will offer guidance on the BioPreferred Program website (*biopreferred.gov*).

(1) *Participating Organizations.* Only Participating Organizations that have received a notice of certification, or Designated Representatives of the Participating Organization, may utilize certification materials provided by the BioPreferred Program. A Participating Organization that has received a notice of certification for a product under this part:

(i) May use the USDA Certified Biobased Product Label (in one of the approved variations, as applicable) on the product, its packaging, and other related materials including, but not limited to, advertisements, catalogs, specification sheets, procurement sheets, procurement databases, promotional material, websites, or user manuals for that product, according to the requirements set forth in this section.

(ii) Is responsible for the manner in which the USDA Certified Biobased Product Label is used by its companies, as well as its Designated Representatives, including advertising agencies, marketing and public relations firms, and subcontractors.

(2) *Other Entities.* Other Entities who have entered into a partnership agreement with USDA may use the BioPreferred Program's promotional certification materials to advertise or promote Certified Biobased Products in materials including, but not limited to, advertisements, catalogs, procurement databases, websites, and promotional and educational materials. Other Entities may use:

(i) The Certification Icon;

(ii) The phrase ''USDA Certified Biobased Product/Package/Product & Package,'' as applicable; and

(iii) The BioPreferred Program name in general statements as described in paragraph (b) of this section, as long as the statements do not imply that a non-certified product is certified or endorsed by USDA.

(b) *Correct usage of the USDA Certified Biobased Product Label and other promotional certification materials.* (1) The USDA Certified Biobased Product Label can be affixed only to Certified Biobased Products and their associated packaging.

(2) The USDA Certified Biobased Product Label may be used in material including, but not limited to, advertisements, catalogs, procurement databases, websites, and promotional and educational materials to distinguish certified products from those that are not certified. The USDA Certified Biobased Product Label may be used in advertisements for both Certified Biobased Products and non-certified/labeled products if the advertisement clearly indicates which products are certified/labeled. Care must be taken to avoid implying that any non-certified products are certified.

(3) When educating the public about the USDA Certified Biobased Product Label, the watermarked sample version of the USDA Certified Biobased Product Label may be used without reference to a specific Biobased Product. For example, the following or similar claims are acceptable: ''Look for the 'USDA Certified Biobased Product Label. It means that the product meets USDA standards for the minimum amount of Biobased Content and the manufacturer or vendor has provided relevant information on the product to be posted on the BioPreferred Program website (*biopreferred.gov*).'' This exception allows Participating Organizations or Other Entities to use a sample USDA Certified Biobased Product Label in documents such as corporate reports, but only in an informative manner, not as a statement of product certification.

(4) The USDA Certified Biobased Product Label may appear next to a picture of the Certified Biobased Product(s) or text describing it.

(5) The USDA Certified Biobased Product Label must stand alone and

not be incorporated into any other certification mark or logo designs.

(6) The USDA Certified Biobased Product Label may be embossed, stamped, or used as a watermark provided the use does not violate any BioPreferred Program brand standards or usage restrictions specified in this part.

(7) The text portion of the USDA Certified Biobased Product Label must be written in English and may not be translated, even when the certification mark is used outside of the United States.

(c) *Incorrect usage of the USDA Certified Biobased Product Label and other promotional certification materials.* (1) The USDA Certified Biobased Product Label will not be used on any product that has not been certified by USDA as a ''USDA Certified Biobased Product.''

(2) The USDA Certified Biobased Product Label will not be used in a way that does not maintain the integrity of the label and the BioPreferred Program.

(3) The word ''BioPreferred'' will not be used as a descriptor for anything other than the Program, including but not limited to products, categories, and companies. The BioPreferred Program name, the word ''BioPreferred,'' and the phrase ''USDA Certified Biobased Product'' are not interchangeable. For example, certified products may not be referenced as being ''BioPreferred products.''

(4) The USDA Certified Biobased Product Label will not be used on any advertisements or informal materials where both Certified Biobased Products and non-certified products are shown unless it is clear that the USDA Certified Biobased Product Label applies to only the Certified Biobased Product(s).

(5) The BioPreferred Program name and the USDA Certified Biobased Product Label will not be used to imply endorsement by USDA or the BioPreferred Program of any particular product, service, or company.

(6) The BioPreferred Program name and the USDA Certified Biobased Product Label will not be used in any form that could be misleading to the consumer.

(7) The BioPreferred Program name and the USDA Certified Biobased Product Label will not be used by manufacturers or vendors of Certified Biobased Products in a manner disparaging to USDA or any other government body.

(8) The BioPreferred Program name, the word ''BioPreferred,'' the USDA Certified Biobased Product Label, and the Certification Icon will not be altered or incorporated into other label or logo designs.

(9) The USDA Certified Biobased Product Label will not be used on business cards, company letterhead, company stationary, or email signatures.

(10) The BioPreferred Program name, the word ''BioPreferred,'' the USDA Certified Biobased Product Label, and the Certification Icon will not be used in, or as part of, any company name, logo, product name, service, or website, except as may be provided for in this part.

(11) The BioPreferred Program name, the word ''BioPreferred,'' the USDA Certified Biobased Product Label, and the Certification Icon will not be used in a manner that violates any of the applicable requirements contained in this part.

(d) *Imported products.* The USDA Certified Biobased Product Label can be used only with a product that is certified by USDA under this part. The USDA Certified Biobased Product Label cannot be used to imply that a product meets or exceeds the requirements of biobased programs in other countries. Products imported for sale in the U.S. must adhere to the same guidelines as U.S. sourced Biobased Products. Any product sold in the U.S. as a ''USDA Certified Biobased Product/Package/Product & Package'' must have received certification from USDA.

(e) *Elements of the USDA Certified Biobased Product Label.* The USDA Certified Biobased Product Label will consist of the Certification Icon, the Biobased Content percentage, the letters ''FP'' to indicate that the product is qualified for preferred Federal procurement, and one of the three variations of text specified in paragraphs (e)(1) through (3) of this section, as applicable.

(1) USDA Certified Biobased Product: Product.

(2) USDA Certified Biobased Product: Package.

(3) USDA Certified Biobased Product: Product & Package.

(f) *Physical aspects of the USDA Certified Biobased Product Label.* The USDA Certified Biobased Product Label elements may not be altered, cut, separated into components, or distorted in appearance or perspective. The USDA Certified Biobased Product Label must appear only in the colors specified in paragraphs (f)(1) and (2) of this section unless approval is given by USDA for an exception.

(1) A multi-color version of the USDA Certified Biobased Product Label is preferred. The USDA Certified Biobased Product Label colors to be applied will be stipulated in the ''USDA BioPreferred Program Brand and Marketing Guidelines'' document available on the BioPreferred Program website (*biopreferred.gov*).

(2) Black or white outline versions of the USDA Certified Biobased Product Label are acceptable.

(g) *Placement of the USDA Certified Biobased Product Label.* (1) The USDA Certified Biobased Product Label can appear directly on a product, its associated packaging, in user manuals, and in other materials including, but not limited to, advertisements, catalogs, procurement databases, and promotional and educational materials.

(2) The USDA Certified Biobased Product Label will not be placed in a manner that is ambiguous about which product is a Certified Biobased Product or that could indicate certification of a non-certified product.

(3) When used to distinguish a Certified Biobased Product in material including, but not limited to, advertisements, catalogs, procurement databases, websites, and promotional and educational materials, the USDA Certified Biobased Product Label must appear near a picture of the product or text describing it.

(i) If all products on a page are Certified Biobased Products with the same Biobased Content percentage, the USDA Certified Biobased Product Label may be placed anywhere on that page.

(ii) If a page contains a mix of Certified Biobased Products and non-certified Biobased Products, the USDA Certified Biobased Product Label will be placed in close proximity to the Certified Biobased Products. An individual USDA Certified Biobased Product Label near each Certified Biobased Product may be necessary to avoid confusion.

(h) *Minimum size and clear space requirements for the USDA Certified Biobased Product Label.* (1) The USDA Certified Biobased Product Label may be sized to fit the individual application as long as the correct proportions are maintained, and all elements of the USDA Certified Biobased Product Label remain legible.

(2) The USDA Certified Biobased Product Label must be surrounded by a border of clear space that must be of sufficient width to offset it from surrounding images and text to avoid confusion. If a one-color outline version of the USDA Certified Biobased Product Label is used, the USDA Certified Biobased Product Label must appear on a solid background that is a contrasting color.

(i) *Where to obtain copies of the promotional certification materials.* The USDA Certified Biobased Product Label and other associated promotional materials including the USDA BioPreferred Program Brand and Marketing Guidelines are available at the BioPreferred Program website (*biopreferred.gov*).

§ 4270.12 Violations of program requirements.

This section identifies the types of actions that USDA considers violations under this part and the penalties (*e.g.*, the suspension or revocation of certification) associated with such violations.

(a) *General.* Violations under this section occur on a per product basis and the penalties are to be applied on a per product basis. Entities cited for a violation under this section may appeal using the provisions in § 4270.13. If certification for a product is revoked, the Participating Organization whose certification has been revoked may seek re-certification for the product specified under the provisions in § 4270.9.

(b) *Types of violations.* Actions that will be considered violations of this part include, but are not limited to,

the examples as described in paragraphs (b)(1) through (4) of this section:

(1) *Biobased Content violations.* USDA reserves the right to request occasional testing of Certified Biobased Products without notice to compare the Biobased Content of the tested product with the product's Applicable Minimum Biobased Content and the Biobased content reported in its Certified Application. Such testing will be conducted using ASTM Method D6866 in accordance with the procedures discussed in § 4270.7.

(i) If the testing shows that the Biobased Content of a Certified Biobased Product is less than its Applicable Minimum Biobased Content, then a violation of this part will have occurred.

(ii) If the testing shows that the Biobased Content is less than that reported in the product's Certified Application but is still equal to or greater than its Applicable Minimum Biobased Content(s), USDA will provide written notification to the Participating Organization. The participant must submit, within 90 Days from receipt of USDA written notification, a new application for the lower Biobased Content. Failure to submit a new application within 90 Days will be considered a violation of this part.

(A) The participant can submit a new application to use the Biobased Content reported to it by USDA in the written notification.

(B) Alternatively, the participant may submit a new application and elect to retest the product in question. If the participant elects to retest the product, it must test a sample of the current product, and the procedures in § 4270.9 must be followed. USDA reserves the right to select the sample that will be submitted for retesting.

(2) *USDA Certified Biobased Product Label violations.* (i) Any usage or display of the USDA Certified Biobased Product Label that does not conform to the requirements specified in § 4270.10.

(ii) Affixing the USDA Certified Biobased Product Label to any product prior to issuance of a notice of certification from USDA.

(iii) Affixing the USDA Certified Biobased Product Label to a Certified Biobased Product during periods when certification has been suspended or revoked.

(iv) Using an image or icon other than the official USDA Certified Biobased Product Label in association with certification claims.

(3) *Application violations.* Knowingly providing false or misleading information in any application for certification of a Biobased Product.

(4) *BioPreferred Program website violations.* Failure to provide USDA with updated information when the information for a Certified Biobased Product becomes outdated or when new information for a Certified Biobased Product becomes available.

(c) *Noncompliance and escalation of actions.* Any identified violations as described in paragraphs (b)(1) through (4) are considered noncompliance with this part. USDA will respond to noncompliance through actions that include, but are not limited to, the examples as described in paragraphs (c)(1) through (4).

(1) *Noncompliance.* USDA will provide the applicable Participating Organization and any Other Entity involved, as known to USDA, written notification of any noncompliance identified by USDA, as well as actions that should be taken to resolve the noncompliance. USDA may remove the product or company information from the BioPreferred Program website (*biopreferred.gov*) until the noncompliance is corrected. If satisfactory resolution of the noncompliance is not reached, USDA will consider the noncompliance to be a violation of this part and may pursue further action as discussed in paragraphs (c)(2) through (4) of this section.

(2) *Violation.* USDA will first issue a notice of violation. Entities who receive a notice of violation for any violation must correct the violation(s) within 30 Days from receipt of the notice of violation. If the entity receiving a notice of violation is a Participating Organization, USDA will also issue notices of suspensions and revocations, as discussed in paragraph (c)(3) of this section. USDA reserves the right to further pursue action against these entities as provided in paragraph (c)(4) of this section. If the entity receiving a notice of violation is an Other Entity

(*i.e.*, not a Participating Organization), then USDA may pursue action according to paragraph (c)(4) of this section.

(3) *Suspension and Revocation.* (i) If a violation is applicable to a Participating Organization and the participant fails to make the required corrections within 30 Days of receipt of a notice of violation, USDA will notify the participant, via email and certified mail as appropriate, of the continuing violation, and the certification for that product will be suspended. As of the date that the participant receives a notice of suspension, the participant and their Designated Representatives must not affix the USDA Certified Biobased Product Label to any of that product or associated packaging not already labeled and must not distribute any additional products bearing the USDA Certified Biobased Product Label. USDA will both remove the product information from the BioPreferred Program website (*biopreferred.gov*) and actively communicate the product suspension to buyers in a timely and overt manner.

(ii) If, within 30 Days from receipt of the notice of suspension, the participant whose USDA product certification has been suspended makes the required corrections and notifies the USDA that the corrections have been made, the participant and their Designated Representatives may, upon receipt of USDA approval of the corrections, resume use of the USDA Certified Biobased Product Label. USDA will also restore the product information to the BioPreferred Program website (*biopreferred.gov*).

(iii) If, following the 30-Day period, the participant does not make the required corrections, the certification for that product will be revoked. As of that date, the participant must not affix the USDA Certified Biobased Product Label to any of that product not already labeled. In addition, the participant and their Designated Representatives are prohibited from further sales of the product to which the USDA Certified Biobased Product Label is affixed, and the product will no longer be listed on the BioPreferred Program website (*biopreferred.gov*) as a product qualified for preferred Federal procurement.

(iv) If a participant whose product certification has been revoked wishes to participate in the BioPreferred Program again, the participant must follow the procedures required for the original certification specified in § 4270.9.

(4) *Other remedies.* In addition to the suspension or revocation of the product certification, depending on the nature of the violation, USDA may pursue suspension or debarment of the entities involved in accordance with 2 CFR part 417 and 48 CFR subpart 9.4. USDA further reserves the right to pursue any other remedies available by law, including any civil or criminal remedies, against any entity that violates the provisions of this part.

§ 4270.13 Appeal process.

Participating Organizations whose product certification has been revoked may appeal to USDA.

(a) *Filing an appeal.* (1) Appeals to the Agency must be filed within 30 Days of receipt by the appellant of a notice of suspension and revocation. Appeals must be filed in writing via email to the BioPreferred Program's email address as noted on the BioPreferred Program website (*biopreferred.gov*).

(2) All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not made in accordance with the applicable Program regulations, policies, or procedures, or otherwise was not proper.

(b) *Reviewing appeals.* (1) If USDA sustains a Participating Organization's appeal of a notice of suspension and revocation, the participant and its Designated Representative(s) may immediately resume affixing the USDA Certified Biobased Product Label to the Certified Biobased Product and sell and distribute the Certified Biobased Product with the USDA Certified Biobased Product Label. In addition, USDA will reinstate the product's information to the BioPreferred Program website (*biopreferred.gov*).

(2) If USDA denies a participant's appeal of a notice of suspension and revocation, then the notice of suspension and revocation stands.

(c) *Appeals of decisions made on appeals.* Appeals of any of the BioPreferred Program's decisions may be made to the Rural Business-Cooperative Service Administrator. Appeals must be made, in writing, within 30 Days of receipt of USDA's decision and addressed to: Rural Business-Cooperative Service Administrator, 1400 Independence Avenue SW, Washington, DC 20250–1522 STOP 3250. If the Rural Business-Cooperative Service Administrator sustains an appeal, the provisions of paragraph (b) of this section will apply.

§4270.14 Reporting and recordkeeping.

(a) *Providing product information to Federal agencies*—(1) *Informational website.* An informational USDA website implementing section 9002 of FSRIA can be found at: *biopreferred.gov*. USDA will maintain a web-based information site for participating originations with Certified Biobased Products and Federal agencies to exchange information, as described in paragraphs (a)(1)(i) through (iv) of this section as applicable.

(i) *Product information.* The website will, as determined to be necessary by the Secretary based on the availability of data, provide the information specified in §4270.9. USDA encourages Federal agencies to utilize this website to obtain current information on designated categories, contact information for Participating Organizations, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the website, participants are expected to provide relevant information to Federal agencies, subject to the limitations specified in paragraph (a)(1)(ii) of this section, with respect to product characteristics, including verification of such characteristics if requested.

(ii) *Providing information on price and environmental and health benefits.* Federal agencies may not require Participating Organizations with Certified Biobased Products to provide procuring agencies with more data than would be required of other manufacturers or vendors offering products for sale to a Procuring Agency (aside from data confirming the Biobased Contents of the products) as a condition of the purchase of Biobased Products from the participant. USDA encourages industry Stakeholders to provide information on environmental and public health benefits based on industry accepted analytical approaches including, but not limited to, material carbon footprint analysis, the International Standards Organization (ISO) 14040, the ASTM International life-cycle cost method (E917) and multi-attribute decision analysis (E1765), and the British Standard Institution PAS 2050. USDA will make such Stakeholder-supplied information available on the BioPreferred Program website (*biopreferred.gov*).

(iii) *Industry standards test information.* The product information will include any relevant industry standard test information as supplied by the participant. In assessing performance of a Certified Biobased Product, USDA requires that procuring agencies rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing may be conducted by a laboratory compliant with the requirements of the standards body. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

(iv) *Biodegradability information.* If Biodegradability is claimed by a participant with a Certified Biobased Product as a characteristic of that product, USDA requires that, if requested by procuring agencies, these claims be verified using the appropriate, product-specific ASTM Biodegradability standard(s). Such testing must be conducted by an ASTM/ISO-compliant laboratory. The procuring official will decide whether Biodegradability data must be brand-name specific in the case of products that are essentially of the same formulation. ASTM Biodegradability standards include:

(A) D5338 (Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions);

(B) D5864 (Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components);

(C) D5988 (Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials in Soil);

(D) D6006 (Standard Guide for Assessing Biodegradability of Hydraulic Fluids);

(E) D6400 (Standard Specification for Compostable Plastics) and the standards cited therein;

(F) D6139 (Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants of Their Components Using the Gledhill Shake Flask);

(G) D6868 (Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates); and

(H) D7081 (Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment).

(2) *Advertising, labeling, and marketing claims.* Participating Organizations are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to 16 CFR part 260 (Federal Trade Commission Guides for the Use of Environmental Marketing Claims). For further requirements on marketing claims associated with the BioPreferred Program, refer to the ''USDA BioPreferred Program Brand and Marketing Guidelines'' found on the BioPreferred Program website (*biopreferred.gov*).

(b) *Records.* Participating Organizations will maintain records documenting compliance with this part for each product that has received a notice of certification, as specified in paragraphs (b)(1) through (3) of this section.

(1) The results of all tests, and any associated calculations, performed to determine the Biobased Content of the product.

(2) The notice of certification from USDA, the dates of changes in formulation that affect the Biobased Content of Certified Biobased Products, and the dates when the Biobased Content of Certified Biobased Products were tested.

(3) Documentation of analyses performed by participants to support claims of environmental or human health benefits, life cycle cost, sustainability benefits, and product performance made by the participant.

(c) *Record retention.* For each Certified Biobased Product, records kept under paragraphs (a) and (b) of this section must be maintained for at least three years beyond the end of the certification period (*i.e.*, three years beyond the date the product's term of certification expires). Records may be kept in either electronic format or hard copy format. All records kept in electronic format must be readily accessible and/or provided by request.

§ 4270.15 Oversight and monitoring.

(a) *General.* USDA will conduct oversight and monitoring of Participating Organizations, Designated Representatives, and Other Entities involved with the BioPreferred Program to ensure compliance with this part. This oversight may include, but not be limited to, conducting facility visits to Participating Organizations that have Certified Biobased Products and their Designated Representatives. Participating Organizations are required to cooperate fully with all USDA audit efforts for the enforcement of the BioPreferred Program requirements.

(b) *Biobased Content Testing.* USDA will conduct Biobased Content Testing of Certified Biobased Products as described in § 4270.12(b)(1) to ensure compliance with this part.

(c) *Inspection of records.* Participating Organizations must allow Federal representatives access to the records required under § 4270.14 for inspection and copying during normal business hours.

(d) *Audits.* USDA will conduct an annual desk audit on an ongoing basis to verify that the product and company information supplied by Participating Organizations remain valid. Through the BioPreferred Program website (*biopreferred.gov*), Participating Organizations will be asked to confirm that they still manufacture the product, that the formulation remains the same, and that the information described under § 4270.9(a)(1) remains valid. Participants may also be asked

for additional supplemental information.

(1) If a Participating Organization indicates that their product or company information needs to be updated during an annual desk audit, these updates will be incorporated into the BioPreferred Program website (*biopreferred.gov*). If it is indicated that a product is no longer manufactured, the product information will be removed from the BioPreferred Program website (*biopreferred.gov*).

(2) If a Participating Organization fails to complete an annual desk audit, the participant will be considered to be in noncompliance with this part, and the Participating Organization and associated product information will be removed from the BioPreferred Program website (*biopreferred.gov*). USDA reserves the right to revoke product certification for failure to participate in an audit.

§§ 4270.16–4270.98 [Reserved]

§ 4270.99 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0570–0083.

PARTS 4271–4273 [RESERVED]

PART 4274—DIRECT AND INSURED LOANMAKING

Subparts A–C [Reserved]

Subpart D—Intermediary Relending Program (IRP)

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

SOURCE: 63 FR 6053, Feb. 6, 1998, unless otherwise noted.

Subparts A–C [Reserved]

Subpart D—Intermediary Relending Program (IRP)

SOURCE: 86 FR 72156, Dec. 21, 2021, unless otherwise noted.

§ 4274.301 Introduction.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries. This applies to borrowers, ultimate recipients and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. All complete applications received before December 21, 2021 will be processed, awarded, and serviced in accordance with the existing regulatory provisions in effect at the complete application date for the program under which the application was submitted. An intermediary borrower may use the Agency-prescribed self-election template, available at the USDA Rural Development website under ''Details'' in the RBCS IRP program section to have its existing loans, and any loans approved under the previous regulation but not yet closed, serviced under these provisions.

(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities in partnership with other public and private resources, and in accordance with

State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish a revolving loan fund for the purpose of providing loans to ultimate recipients to promote community development, establish new businesses, establish and support microlending programs, and create or retain employment opportunities in rural areas.

(c) Intermediaries are required to identify any known relationship or association with an Agency employee. Any processing or servicing Agency activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of 7 CFR part 1900, subpart D.

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available at USDA Rural Development's website under the ''Resources'' section, in the Rural Development National Office, or any Agency State Office.

§ 4274.302 Definitions.

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

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

Affiliate. Affiliate means individuals and entities are affiliates of each other when:

(1) One controls or has the power to control the other, or a third party or parties controls or has the power to control both. Factors such as ownership, management, current and previous relationships with or ties to another concern, and contractual relationships, shall be considered in determining whether affiliation exists. It does not matter whether control is exercised, so long as the power to control exists. Concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANC), Native Hawaiian Organizations (NHO), Community Development Corporations (CDC), or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management.

(2) There is an identity of interest between immediate family with identical or substantially identical business or economic interests (such as where the immediate family operate concerns in the same or similar industry in the same geographic area); however, an individual or entity may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

Agency. The Rural Business-Cooperative Service (RBCS) that has the responsibility to administer the Intermediary Relending Program (IRP).

Agency IRP loan. An IRP loan from the Agency to an intermediary with established terms and evidenced by a loan agreement and promissory note between parties.

Agency IRP loan funds. Cash proceeds of an Agency IRP loan received by an intermediary are considered Agency IRP loan funds.

Agricultural production or agriculture production. The cultivation, growing, or harvesting of plants and crops (including farming) breeding, raising, feeding, or housing of livestock (including ranching); forestry products, hydroponics, or nursery stock; or aquaculture.

Aquaculture. The commercial cultivation of aquatic animals and plants in natural or controlled marine or freshwater environments.

Citizen. An individual who is a citizen of the United States or resides in any State in the United States after being legally admitted for permanent residence.

Community development. Advancing livable and vibrant communities through coordinated approaches to economic, environmental, and human development by means of comprehensive business-based technical and financial assistance.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially, or there is a real or perceived benefit from engaging in certain projects or

transactions. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members and as stated in § 4274.321(b)(4).

Cooperative. An entity that is legally chartered by a State in which it operates as a cooperatively-operated business, or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with the return of residual earnings paid to such members on the basis of patronage.

Hydroponics. The commercial cultivation of plants by placing the roots in liquid nutrient solutions rather than in soil.

Immediate family. 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, stepchild, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Indian tribe. The term as defined in 25 U.S.C. 5304(e); any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq*.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Intermediary. The entity requesting or receiving, as applicable, Agency IRP loan funds for establishing or recapitalizing an IRP revolving loan fund and relending to ultimate recipients.

Intermediary equity contribution. Represents an intermediary's investment in the IRP revolving loan fund, in the form of cash and unencumbered ownership in an amount determined by the applicant. This must be contributed to the IRP revolving loan fund prior to, or concurrently to, the disbursement of Agency IRP loan funds from the Agency. This contribution becomes restricted and must remain as equity in the IRP revolving loan fund subject to the provisions of §§ 4274.332(d) and 4274.341(b)(1) and (2).

IRP revolving loan fund. A group of assets:

(1) Obtained through or related to an Agency IRP loan; and

(2) Accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

Loan agreement. The agreement, which utilizes the requisite OMB-approved form, between the Agency and the intermediary setting forth the terms and conditions of the Agency IRP loan.

Military personnel. Individuals currently on active duty in the regular service, having enlisted from civilian or Reserve Officers' Training Corps status, or individuals on active duty in the regular service with more than six months until their anticipated date of release from service.

Principals of intermediary. Members, officers, directors, and other individuals or entities directly involved in the operation and management, including those setting policy, of an intermediary.

Public agency. Any State, Indian Tribal or local government, or any branch or agency of such government having authority to act on behalf of that government, to borrow funds and engage in activities eligible for funding under this subpart.

Revolved funds. The cash portion of an IRP revolving loan fund that includes fees, principal, and interest payments received from ultimate recipients and is not composed of any Agency IRP loan funds.

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) and (I), 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:

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

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

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

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

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable governor or leader in a similar position and request comments to be submitted within five business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Rural Development State Office website and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

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

(2) An area that is attached to the urbanized area of a city or town with

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

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

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

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

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

Technical assistance. A function performed for the benefit of an ultimate recipient, or proposed ultimate recipient, that is a problem-solving activity that assists the ultimate recipient in selecting, initiating, or completing a project. The Agency will determine whether a specific activity qualifies as technical assistance.

Ultimate recipient. An entity or individual that receives a loan from an intermediary's IRP revolving loan fund.

Underrepresented group. U.S. citizens with identifiable common characteristics, (including, but not limited to, racial and ethnic minorities, disabled and/or gender) that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population.

Value-added agricultural product. Any agricultural commodity that meets the requirements specified here. The agricultural commodity must meet one of the following value-added methodologies:

(1) Has undergone a change in physical state;

(2) Is a source of farm or ranch-based renewable energy; or

(3) Is aggregated and marketed as a locally produced agricultural food product.

Work plan. A narrative provided by the intermediary that demonstrates the feasibility of the intermediary and its lending program to meet the objectives of the IRP program, including a set of goals, strategies, anticipated outcomes, and well-developed targeting criteria for assisting eligible ultimate recipients.

[86 FR 72156, Dec. 21, 2021, as amended at 87 FR 38644, June 29, 2022]

§ 4274.303 Review or appeal rights.

An intermediary may have appeal or review rights for adverse Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

§ 4274.304 Exception authority.

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

§ 4274.305 Other regulatory requirements.

(a) *Intergovernmental consultation.* The approval of an Agency IRP loan to an intermediary is subject to intergovernmental consultation in accordance with Executive Order 12372. For ultimate recipients located in States where the State has elected to review the program under the intergovernmental review process, in accordance with Executive Order 12372, the intermediary and ultimate recipient must submit a notification in the form of a project description to the State single point of contact. The intermediary must include any comments from the State with the intermediary's request to use the Agency IRP loan funds for the ultimate recipient. Prior to the Agency's decision on the request, the ultimate recipient must demonstrate compliance with the requirements of intergovernmental consultation. These requirements are set forth in 2 CFR part 415, subpart C, General Program Administrative Regulations.

(b) *Environmental requirements.* The requirements of 7 CFR part 1970 apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans in order to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(1) All IRP loans between the Agency and the intermediary are considered categorical exclusions absent the existence of extraordinary circumstances in accordance with 7 CFR part 1970. All intermediaries must execute an Exhibit H, ''Multi-tier Action Environmental Compliance Agreement,'' to RD Instruction 1970–A as part of their IRP application submitted to the Agency. The intermediary must sign a certification that they have National Environmental Policy Act (NEPA) staff capable of undertaking an environmental review that meets Agency standards. For intermediaries that don't have capable staff, the Agency will deliver sufficient training to intermediaries on the environmental process and how to determine whether an ultimate recipient project is a categorical exclusion or requires an environmental assessment and review.

(2) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, an environmental review will be completed in accordance with 7 CFR 1970.55. For projects that do not qualify for a categorical exclusion, or which may be subject to an extraordinary circumstance under 7 CFR 1970.52, the intermediary will refer the project to the Agency for review under 7 CFR part 1970, subpart C. The intermediary retains responsibility for providing sufficient information for the Agency to make an environmental determination, though Agency staff may also opt to complete the environmental review with information provided by either the intermediary or ultimate recipient.

(3) The Agency will prepare an environmental impact statement for any application for a loan from Agency IRP loan funds determined to have a significant adverse effect on the quality of the human environment.

(c) *Equal opportunity and nondiscrimination requirements.* In accordance with Title V of Public Law 93–495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, intermediary, or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime any cash of the IRP revolving loan fund is involved.

(1) The civil rights compliance requirements contained in 7 CFR part

1901, subpart E, apply to intermediaries and ultimate recipients.

(2) The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, ''Nondiscrimination in Federally Assisted Programs,'' 42 U.S.C. 2000d–4, §504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1990 (as amended).

(d) *Seismic safety of new building construction.* The IRP is subject to the provisions of Executive Order 12699, which require each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(1) All new buildings financed from the IRP revolving loan fund, whether directly or through participations, must be designed and constructed in accordance with the seismic provisions of the most current version of the International Building Code (IBC) or two versions prior; currently that is 2021 IBC, 2018 IBC or 2015 IBC, or an above-code seismic standard that meets or exceeds the equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions.)

(2) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications constitutes evidence of compliance with the seismic requirements of the appropriate code.

§4274.306–§4274.309 [Reserved]

§4274.310 Eligibility requirements—intermediaries.

To be eligible to receive an Agency IRP loan, an intermediary must comply with the requirements specified in paragraphs (a) through (i) of this section.

(a) *Type of entity.* The intermediary must be one of the following types of entities:

(1) A private nonprofit corporation;

(2) A public agency;

(3) An Indian Tribe; or

(4) A cooperative.

(b) *Legal authority.* The intermediary must have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan. If the intermediary is an affiliate of another entity, the intermediary's governing board must be independent of the affiliated entity.

(c) *Proven record.* The intermediary must have a proven lending record of successfully assisting rural business and industry or, for intermediaries that propose to finance community development, a proven lending record of successfully assisting rural community development projects of the type planned. The intermediary must have the capacity to conduct outreach and marketing, the underwriting of loan applications, and provide the servicing and monitoring of its proposed IRP portfolio.

(1) Except as provided in paragraph (c)(2) of this section, such record must include recent experience in loan making and servicing with loans that are similar in nature to those proposed by the intermediary and a delinquency and loss rate acceptable to the Agency. Any request for an exception must be specifically addressed in the loan application and be supported with concluding statements that relate to the items specified in paragraphs (c)(2)(i) and (ii) of this section.

(2) The Agency may approve an exception to the requirement for loan making and servicing experience provided the intermediary:

(i) Itself has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects through technical assistance or business development projects to the type and size of planned ultimate recipient borrowers; and

(ii) Will, before the loan is closed, employ individuals with loan making and servicing experience and qualifications and expertise for the operation

and administration of an IRP revolving loan fund as described in § 4274.340(a)(1)(ii). These shall not include contracted staff and staff from affiliates of the intermediary.

(d) *Staff.* The intermediary itself must employ a staff with loan making and servicing expertise acceptable to the Agency. The intermediary may contract for general services, such as, clerical, administrative, and accounting services, and loan packaging. The intermediary may not routinely contract their lending outreach, loan underwriting, management, or day-to-day operations. Essential activities of a business lending operation and the administration of the IRP revolving loan fund must be conducted in-house.

(e) *Capitalization/equity.* The intermediary's balance sheet must have capitalization or equity acceptable to the Agency and deemed sufficient to sustain its lending and business operations.

(f) *Citizens.* At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens.

(g) *Delinquent debt.* An intermediary is ineligible to receive an Agency IRP loan if the intermediary or any principal of the intermediary has any delinquent debt to the Federal government. Agency IRP loan funds cannot be used to satisfy the delinquent debt.

(h) *Conditions.* No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the intermediary itself; and

(2) The amount of the loan, together with other funds available, is adequate to ensure the continuation or establishment of an effective IRP revolving loan fund or achieve the purposes for which the loan is made.

(i) *Other financing unavailable.* The intermediary must be unable to finance the continuation or establishment of an effective IRP revolving loan fund from its own resources, or through commercial credit, or from other Federal, State, or local programs at reasonable rates and terms.

(j) *Restrictions.* Intermediaries established for the purpose of, or that predominantly use IRP loan funds for, the financial benefit of an affiliate through loan participations or other funding methods will not be allowed.

§ 4274.311 Eligibility requirements—ultimate recipients.

To be eligible for a loan from an intermediary under this subpart, an ultimate recipient must meet or comply with the requirements specified in paragraphs (a) through (g) of this section.

(a) *Type of entity.* The ultimate recipient must be a legal entity that can incur debt, including but not limited to, an individual; a public organization; a private organization; or other legal entity.

(b) *Legal authority.* The ultimate recipient must have the legal authority to incur the debt and carry out the purpose of the loan.

(c) *Citizens.* An individual ultimate recipient must be a citizen. In the case of an entity ultimate recipient, at least 51 percent of the outstanding membership or ownership of the entity must be citizens.

(d) *Location.* The ultimate recipient project must be located in an eligible rural area, although funds may also be used for community projects that predominantly serve rural residents of a State. Predominantly serves means more than 50 percent of the ultimate recipient's service is to rural residents of a State.

(e) *Other financing unavailable.* The ultimate recipient must be unable to finance the entirety of the proposed project from its own resources, or through commercial credit or from other Federal, State, or local programs at reasonable rates and terms.

(f) *Legal or financial influence.* (1) The intermediary and its principals (including immediate families) must hold no legal or financial interest or influence in or with the ultimate recipient as this is considered a conflict of interest, as defined. However, this paragraph does not prevent an intermediary that is organized as a cooperative from making a loan to one of its members per § 4274.321(b)(4) of this subpart.

(2) The ultimate recipient must, along with its principals (including their immediate families), hold no legal or financial interest or influence

in or with the intermediary as per § 4274.321(b)(4) as this is considered a conflict of interest, as defined.

(g) *Delinquent debt.* An ultimate recipient is ineligible to receive a loan from IRP loan funds if the ultimate recipient or any of its principals has any federal delinquent debt or is debarred from engaging in business with the Federal government. IRP loan funds may not be used to satisfy any Federal delinquent debt or used to make an otherwise ineligible ultimate recipient eligible for IRP loan funds.

(h) *Fund usage.* Ultimate recipients must demonstrate, to the Agency's satisfaction, that loan funds will remain in the United States and the facility being financed will primarily create new or save existing jobs for rural U.S. residents.

§ 4274.312–§ 4274.319 [Reserved]

§ 4274.320 Loan purposes.

(a) *Agency IRP loans.* The intermediary must deposit the Agency IRP loans into the intermediary's IRP revolving loan fund to provide loans directly to eligible ultimate recipients or in cooperation with banks and other lending organizations through loan participation agreements.

(b) *IRP revolving loan fund loans.* Ultimate recipients receiving loans from an IRP revolving loan fund must use those loans for business or community development projects and for projects that predominately serve communities and residents in rural areas.

(1) The Secretary may relend funds to eligible intermediaries for projects that:

(i) Promote community development;

(ii) Establish new businesses;

(iii) Establish and support microlending programs; and

(iv) Create or retain employment opportunities.

(2) Such loan purposes may include, but are not limited to, those purposes identified in paragraphs (b)(2)(i) through (xx) of this section.

(i) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(ii) Business construction, conversion, enlargement, repair, modernization, or development.

(iii) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(iv) Purchase of equipment, leasehold improvements, machinery, or supplies.

(v) Pollution control and abatement.

(vi) Transportation services.

(vii) Start-up operating costs and working capital.

(viii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed three years.

(ix) Feasibility studies.

(x) Debt refinancing.

(A) The intermediary is responsible for making prudent lending decisions based on sound underwriting principles when considering the restructuring of an ultimate recipient's debt.

(B) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable, and refinancing is necessary to create new or save existing jobs or create or continue a needed service.

(xi) Reasonable fees and charges to the ultimate recipient are allowed only as specifically listed in this paragraph. Authorized fees include loan documentation and fees for recording a collateral lien, environmental data collection fees, management consultant fees, and other fees for services rendered by professionals in relation to the loan project. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. Additional charges to the ultimate recipient, whether by a fee or interest rate increase, for an intermediary's costs related to loan participations are not allowed. In addition, the intermediary shall not be charged fees related to the purchase or sale of a loan participation. The maximum amount of any fee will be what is reasonable and customary in the community or region where the project is located; provided, however, that all costs must be actual costs and shall not be marked-up beyond actual cost. Any such fees or charges are to be fully documented and justified.

(xii) Hotels, motels, tourist homes, bed and breakfast establishments, non-owner-occupied real estate, convention centers, and other tourist and recreational facilities except as prohibited by § 4274.321. These types of facilities are allowed when the pro rata value, supported by an analysis of the supporting real estate appraisal, of the owner's living quarters is deleted from the appraised value.

(xiii) Educational institutions.

(xiv) Revolving lines of credit provided the portion of the intermediary's total IRP revolving loan fund that is committed to, or in use for revolving lines of credit, will not exceed 25 percent at any time.

(A) All ultimate recipients receiving revolving lines of credit must reduce the outstanding balance of the revolving line of credit to zero at least once each year.

(B) The intermediary must approve all revolving lines of credit for a specific maximum amount and for a specific maximum time period, not to exceed two years.

(C) The intermediary must provide a detailed description, which will be incorporated into the intermediary's work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description must include evidence that the intermediary has an adequate system for:

(*1*) Interest calculations on varying balances; and

(*2*) Monitoring and control of the ultimate recipients' cash, inventory, and accounts receivable.

(D) If, at any time, the Agency determines that an intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the government, the Agency may terminate the intermediary's authority to use the IRP revolving loan fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

(xv) Aquaculture and hydroponics, as defined in this subpart.

(xvi) Commercial fishing.

(xvii) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage.

(xviii) Forestry, which includes businesses primarily engaged in the commercial operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation.

(xix) Value-added production.

(xx) Housing, only when related to community development projects and, limited to working capital, equipment, pre-business development costs, and other such business purposes. Agency IRP loan funds may be used to assist a housing project planner, a housing project builder, a construction sub-contractor (indirect soft costs such as architectural, engineering and legal fees), or for any other business-related aspect of a housing project that is separate from the sale and/or purchase transaction involved in transferring ownership of a single or multi-family dwelling. While the proceeds from a sale might be used by an ultimate recipient to repay an Agency IRP loan, an Agency IRP loan cannot be used to finance a residential housing purchase. Agency IRP loans may not be used to assist in the purchase of residential housing (single, multiple dwelling, etc.) as financial assistance moves outside of community development when the financial assistance (a mortgage loan) is requested for a purchase.

(c) *Participations.* (1) Loans made to eligible ultimate recipients by eligible intermediaries in cooperation with banks and other organizations through loan participation agreements shall be considered an eligible loan to an ultimate recipient for the purposes of this program. Loan participations are allowed in the IRP program, subject to the provisions of this regulation, with the intent to assist intermediaries in the management of their revolving loan fund, to meet the needs of larger ultimate recipient projects, and to promote cooperation in community projects where multiple lenders may be involved. In a participation, the lead

(originating) bank retains a partial interest in the loan, holds all loan documentation in its own name, services the loan, and deals directly with the customer for the benefit of all participants. All loan participants share in the credit risk of the associated loan up to the amount of their participation.

(2) Loan participant buyers are able to compensate for low loan demand or invest in large loans without servicing burdens and origination costs. Lenders selling loan participations can accommodate a larger credit while mitigating some of the risk by reducing their credit exposure.

(3)(i) Participation agreements between the lead lender and buying participants are executed with each transaction and must address, among other items:

(A) The obligation of the lead lender to furnish timely credit information and to provide notification of material changes in the borrower's status;

(B) Requirements that the lead lender consult with participants and obtain their consent prior to modifying any loan, guaranty, or security agreements and before taking any action on defaulted loans; and

(C) The specific rights and remedies available to the lead and participating lenders upon default of the borrower.

(ii) A Master (open ended) participation agreement between the intermediary and any lender is not allowed. All loans made through use of participation agreements must be to eligible ultimate recipients and for eligible purposes. The ultimate recipients, lead lender and all participating lenders must agree to be bound by the applicable requirements of this regulation.

(4) Participation in loans where 50 percent or more of the loan funds are used to refinance a lead lender's existing loans to the borrower are ineligible. The Agency does not consider take out or terming out a construction loan as refinancing.

(5) No more than 50 percent of an intermediary's loan funds may be used to purchase loans from any individual lender or affiliation of lenders, to prevent an exclusive relationship with a lender or lender holding company. Likewise, no more than 50 percent of the total intermediary loans to ultimate recipients may be sold or participated to an individual lender or affiliation of lenders. An exception to these limits may be requested by the intermediary and is subject to review by the Agency of the intermediary's lending portfolio, credit quality and overall use of loan participations.

§4274.321 Ineligible loan purposes.

(a) *Agency IRP loans.* The intermediary cannot use Agency IRP loan funds to pay for its administrative costs and expenses.

(b) *IRP revolving loan fund loans.* IRP revolving loan fund loans cannot be used for any of the purposes identified in paragraphs (b)(1) through (13) of this section.

(1) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(2) Distribution, payment, or loans to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity, or control, in the ultimate recipient. This is not intended to prevent the sale of a business among immediate family members as long as the selling immediate family member does not retain an ownership interest and the price paid is deemed to be reasonable. This type of transaction is not an arm's length transaction and reasonableness of the price paid will be based upon an appraisal acceptable to the Agency.

(3) Charitable institutions and fraternal organizations that would not have revenue from sales, fees, or stable revenue source to support their operation and repay the loan.

(4) Assistance to Federal government employees, active-duty military personnel, employees of the intermediary, or any organization for which such persons are directors or officers or have 20 percent or more ownership.

(5) A loan to an ultimate recipient that has an application pending with or a loan outstanding from another intermediary involving an IRP revolving loan fund if the total Agency IRP loans would exceed the limits established in §4274.331(c).

(6) Agricultural production. For the purposes of this program, Agricultural production does not include those activities specifically listed as eligible uses of IRP revolving loan fund loans in § 4274.320(b)(15) through (19).

(7) The transfer of ownership unless the loan will keep the business from closing, prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(8) Community antenna television services or facilities.

(9) Any illegal activity.

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

(11) Loans to lending and investment institutions and insurance companies.

(12) Golf courses, racetracks, or gambling facilities.

(13) An entity is ineligible if it derives more than 15 percent of its annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds or Tribal-authorized gambling proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

§ 4274.322–§ 4274.329 [Reserved]

§ 4274.330 Agency IRP loan conditions and terms.

(a) *Revolving fund.* The intermediary must place Agency IRP loan funds in the intermediary's IRP revolving loan fund, and these funds must only be used to provide loans to eligible ultimate recipients per § 4274.320(a).

(b) *Loan closing.* Loan closing between the intermediary and the Agency must take place within six months of loan approval and obligation of funds, or funds will be forfeited, and the Agency will deobligate the loan.

(c) *Term.* The Agency IRP maximum loan term will be 30 years. Principal and interest payments will be scheduled at least annually. All Agency IRP loans will have interest-only payments scheduled for a maximum of the first three years following the loan closing. An intermediary may request a shorter interest-only period during the application process. All Agency IRP loans will automatically, fully amortize with principal and interest payments due in the fourth year on the anniversary of the closing date. The Agency IRP loan will fully amortize based on the total amount of the loan.

(d) *Interest rate.* The interest rate for an Agency IRP loan will be a fixed rate of one percent per annum over the term of the loan.

(e) *Security.* Security for all Agency IRP loans to intermediaries must ensure that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. The intermediary is responsible for making loans to ultimate recipients in a manner that fully protects the interests of the intermediary and the Federal Government.

(1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible asset capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible asset capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving loan fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, the Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary must covenant that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to

protect the Federal Government interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients, including all documents representing an interest in a participation loan made pursuant to §4273.320 of this chapter, must be assignable.

(3) In addition to normal security documents, a first lien interest in the intermediary's IRP revolving loan fund account(s) will be accomplished by a control agreement satisfactory to the Agency. Agency signatures for withdrawals are not required. The depository bank must waive its offset and recoupment rights against the depository account to the Agency and subordinate any liens it may have against the IRP depository bank account. The use of Form RD 402–1, ''Deposit Agreement,'' or a similar form developed by the Agency's Office of the General Counsel is acceptable.

(f) *Loan limits.* (1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within three years after loan closing. Only one Agency IRP loan will be approved by the Agency for an intermediary in any single fiscal year unless the additional request is from an IRP earmark that serves a different geographical area than the initial non-earmarked loan.

(2) The Agency IRP loan to an intermediary will not exceed the maximum award amount established by the Agency in an annual Notice.

(3) Intermediaries that have received one or more Agency IRP loans may apply for and be considered for additional Agency IRP loans provided that the outstanding loans of the intermediary's IRP revolving loan fund are generally sound, the intermediary is in compliance with all applicable regulations and its loan agreements with the Agency, and either:

(i) The intermediary has insufficient IRP revolving loan funds available for lending to meet current and expected ultimate recipient loan demand. Funds available for lending consist of Agency IRP loan funds not yet disbursed by the Agency, revolved funds, and cash on-hand in the IRP revolving loan fund. Necessary cash reserves including, but not limited to, debt service reserves, may be deducted from the IRP revolving loan fund cash on-hand in determining funds available for lending. The intermediary must provide documentation acceptable to the Agency of the current and expected ultimate recipient loan demand; or

(ii) The Agency IRP loan will serve a geographic area not included in an area currently served by an existing IRP intermediary and it is not possible or feasible to expand the existing IRP loan's service area to include the new geographic area; and

(4) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed $15 million at any time.

§4274.331 IRP revolving loan fund loan conditions and terms.

(a) *Conditions and terms.* Loan conditions and terms made by an intermediary to an ultimate recipient from the IRP revolving loan fund will be negotiated by the intermediary and ultimate recipient.

(1) *Interest rate.* The interest rate must be within limits established by the intermediary's work plan approved by the Agency. The rate must be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving loan fund's debt service reserve and administrative costs.

(2) *Repayment.* The loan term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary's work plan approved by the Agency.

(b) *Security.* The intermediary is responsible for adherence to prudent lending practices when obtaining adequate security on each of its ultimate recipient loans.

(c) *Loan limits.* Loans from intermediaries to ultimate recipients using the IRP revolving loan fund must not exceed the limits in paragraphs (c)(1) and (2) of this section. In accordance with §4274.321(b)(5), these loan limits

apply to ultimate recipients cumulatively based on all existing and pending loans from one or multiple IRP intermediaries. The loan limits of ultimate recipient loans made from Agency IRP funds may be based on the total amount of the Agency IRP loans awarded. However, should any portion of an intermediary's Agency IRP loan funds be de-obligated by the Agency, the ultimate recipient loan limit will thereafter be based on the actual amount of Agency IRP loan funds advanced to the intermediary and loaned out to ultimate recipients. Intermediaries with multiple IRP loans that have combined those IRP funds in accordance with § 4274.332(b)(6) may base their ultimate recipient loan limits on the combined amount of Agency IRP loans. The maximum amount of an IRP Agency loan made by an intermediary to an ultimate recipient, whether directly or held through loan participation and including the balance of any existing ultimate recipient loans, shall be the lesser of:

(1) $400,000; and

(2) Fifty percent of the originally-approved Agency IRP loan amount to an intermediary (including the unpaid balance of any existing ultimate recipient loans).

§ 4274.332 Post award requirements.

(a) *Applicability*. Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency may impose in making a loan. Whenever this subpart imposes a requirement on loans made from the ''IRP revolving loan fund,'' such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary's IRP revolving fund for as long as any portion of the intermediary's IRP loan from the Agency remains unpaid. This includes revolved funds. Whenever this subpart imposes a requirement on loans made by intermediaries from ''Agency IRP loan funds,'' without specific reference to the IRP revolving loan fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds and will not apply to loans made from revolved funds.

(b) *Maintenance of IRP revolving loan fund*. For as long as any part of an Agency IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving loan fund. All Agency IRP loan funds received by an intermediary must be deposited in an IRP revolving loan fund. The IRP revolving loan fund can only be used for receiving advances from the Agency, making payments to the Agency, disbursing ultimate recipient loans, and collecting ultimate recipient loan repayments. This includes transferred IRP revolving loan funds from another intermediary as a result of a transfer and assumption. Interest earned, cash obtained from fees assessed from activities of the IRP revolving loan fund, etc. must remain part of the IRP revolving loan fund though these monies may be used to pay administrative expenses as provided below. All Agency IRP loan activity must be managed through the IRP revolving loan fund. The intermediary may transfer additional assets into the IRP revolving loan fund to cover any shortage at any time. The intermediary must deposit all cash of the IRP revolving loan fund in a separate bank account or accounts. The intermediary is prohibited from commingling other funds of the intermediary with the funds in the IRP revolving loan fund. Intermediaries may use an operating account, general fund, or Automated Clearing House (ACH) account to initially collect payments from ultimate recipients, as long as those payments are transferred to the IRP revolving loan fund within 10 working days of receipt or by the end of the Federal fiscal quarter, whichever occurs first. All moneys deposited to the IRP revolving loan fund bank account or accounts must be money of the IRP revolving loan fund, and such accounts must be properly secured in accordance with § 4274.330(e). The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP

revolving loan fund are a part of the IRP revolving loan fund.

(1) The intermediary can use the portion of the IRP revolving loan fund that consists of Agency IRP loan funds only for making loans in accordance with §4274.320. The intermediary may use the portion of the IRP revolving loan fund that consists of revolved funds for debt service reserve and reasonable administrative costs, in accordance with this section, or for making additional ultimate recipient loans.

(2) The intermediary must submit for Agency approval an annual budget of proposed IRP revolving loan fund income and expenses including expected administrative costs. The annual budget must itemize income, including interest received from ultimate recipients, interest earnings on deposits, fees, and other income excluding principal recaptured from ultimate recipients, and expenses including interest repaid to the Agency, administrative expenses, liquidation expenses, loan write-offs, and other fees and costs excluding principal repaid to the Agency. The intermediary cannot use proceeds received from the collection of principal repayment by an ultimate recipient for administrative expenses. The amount removed by the intermediary from the IRP revolving loan fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving loan fund, including loan servicing, and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget. The administrative expenses that the intermediary charges to the IRP fund may never exceed the actual income earned on an annual basis. An intermediary can contract personnel for hire per §4274.340(a)(1)(ii); but the intermediary may not routinely contract loan underwriting, management, or day-to-day operations. Essential activities of the IRP revolving loan funds must be conducted in-house.

(3) The intermediary must establish a debt service reserve fund. The purpose of the debt service reserve fund is to ensure that adequate cash is available for the annual IRP loan installment(s) in the event that the IRP revolving loan fund has insufficient cash to make these payments. The minimum amount of cash in the debt service reserve fund must be at least equal to the intermediary's cumulative, annual debt service requirements for all Agency IRP loans outstanding. This account should be established by the date of loan closing, but the minimum required cash balance does not have to be reached until the third anniversary of an Agency IRP loan closing. The minimum required balance must be maintained for the life of the Agency IRP loan thereafter. The debt service reserve funds can only be withdrawn when there is insufficient cash in the IRP revolving loan fund's other account(s) to make the annual Agency IRP loan installments, and such withdrawals require the prior written concurrence of the Agency. Any withdrawal that causes the cash balance to drop below the minimum amount required must be repaid to the debt service reserve fund as soon as possible, but in no event can such repayment be longer than six months from the date of withdrawal. The funding of this debt service reserve fund may not come from Agency IRP loan funds and must come from an unencumbered source.

(4) The intermediary must make any cash in the IRP revolving loan fund that is not needed for debt service or approved administrative costs available for additional loans to ultimate recipients. If the Agency determines that the intermediary has substantial amounts of Agency IRP loan funds available for lending that is not being regularly loaned out to ultimate recipients, the Agency may require, at its discretion, that those funds be returned to the Agency in accordance with paragraph (b)(8) of this section.

(5) The intermediary must deposit all reserves and other cash of the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with other securities in accordance with normal banking practices and all applicable State laws. The account must be interest-bearing if

feasible and any interest earned thereon remains a part of the IRP revolving loan fund. The intermediary cannot use funds for any certificates of deposit over a 30-day duration or for investments in securities. All instruments associated with the revolving loan fund must be liquid and not impose fees associated with the withdrawal or movement of cash.

(6) If an intermediary receives more than one IRP loan, the intermediary does not need to establish and maintain a separate IRP revolving loan fund for each loan. Instead, the intermediary may combine them and maintain only one IRP revolving loan fund, unless the Agency requires separate IRP revolving loan funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving loan fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements of the Agency. The combining of multiple loans in one IRP revolving loan fund does not preclude the intermediary from being able to individually track the activity of each Agency IRP loan. The Agency must be able to readily determine the ultimate recipient loans made from each Agency IRP loan.

(7) The intermediary may deposit their full equity contribution for the entire Agency IRP loan before the initial advance of Agency IRP loan funds or it may deposit its matching percent at each interval that loan advances are made by the Agency.

(8) IRP revolving loan fund funds are intended to be active mechanisms to enhance business development in rural communities. If Agency IRP loan funds have been unused for a period of six months or more, those funds in excess of $250,000 will be returned to the Agency unless the Agency concurs with an intermediary's request for an exception. Any exception would be based on evidence satisfactory to the Agency that every effort is being made by the intermediary to utilize the IRP revolving loan fund funding for loans to ultimate recipients in conformance with program objectives.

(9) The full measure of collateral must be made up of cash available in the IRP revolving loan fund, the debt service reserve, and the total outstanding balance of ultimate recipient loans. At all times, the sum of the IRP revolving loan fund, debt service reserve, and principal amount outstanding on performing ultimate recipient loans must equal 100 percent of what is owed to the Agency by the intermediary plus any equity contribution amount. Therefore, if any part of the collateral fluctuates to the extent that the minimum retention requirement falls below the 100 percent plus the equity contribution threshold, the intermediary must inject cash into the IRP revolving loan fund and or debt service reserve fund to ensure that the total collateral is maintained at the minimum required level.

(10) The intermediary must also file a Uniform Commercial Code (UCC) financing statement at closing in order to perfect the Agency's security interest in the ultimate recipient's promissory notes. The intermediary is responsible for covering the costs of filing as well as ensuring the necessary filings are renewed and recorded with the Secretary of State, or the equivalent tribal official as appropriate.

(c) *Agency oversight.* The Agency will monitor each intermediary based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contact with the intermediary as necessary. The Agency will send written notices on payments coming due to the intermediary approximately 15 days in advance of the payment due date.

(d) *Return of equity.* An intermediary with an IRP loan(s) where the cash portion of the IRP revolving loan fund includes fees, principal and interest payments received from ultimate recipients and is not composed of any original Agency IRP loan funds, may annually request a partial or full return of their contributed equity under the following conditions:

(1) The intermediary is current in all payments to the Agency and in compliance with all elements of their loan

agreement and Agency reporting requirements;

(2) The ratio of intermediary equity to the Agency loan after the return of equity remains consistent with the initial equity injection percentage by the intermediary; and

(3) Any return of an intermediary's equity from the revolving loan fund must be approved by the Agency in writing and is limited to an amount that the Agency determines will not cause additional credit risk to the revolving loan fund or the Agency and is in compliance with paragraph (b)(9) of this section.

§4274.333 Loan agreements between the Agency and the intermediary.

The intermediary and the Agency must execute a loan agreement or a supplement to a previous loan agreement at loan closing for each Agency IRP loan. The Agency will prepare the loan agreement and the intermediary must review it prior to loan closing. The intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(a) The loan agreement will, at a minimum, set out:

(1) The amount of the loan;

(2) The interest rate;

(3) The term and repayment schedule;

(4) The provisions for late charges. The intermediary must pay a late charge of four percent of the payment due if payment is not received within 15 calendar days following the due date. The Agency will consider the late charge as unpaid if it is not received within 30 calendar days of the missed due date for which it was imposed. The Agency will add any unpaid late charge to the loan's principal balance, and it will be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default.

(i) A per diem amount will be shown on the late notice sent to the intermediary. The Agency will continue sending notices to the intermediary on the late payments or any further payments until the account is in a current status.

(ii) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(5) The disbursement procedure. The Agency will disburse the Agency IRP loan funds to the intermediary on an as-needed basis after the loan agreement and promissory note are executed, and after any other conditions precedent to disbursement of funds are fully satisfied. Fund disbursement requests must be submitted with an intermediary's request for Agency concurrence in accordance with the provisions of §4274.352(a). Only the amount of Agency IRP loan funds necessary to fund the given ultimate recipient loan request(s) can be requested by the intermediary and disbursed by the Agency. The intermediary's equity contribution may not be used for administrative costs. When lending, the intermediary's equity contribution must be loaned out prior to or on a pro rata basis with Agency IRP loan funds. For purposes of computing interest, the date of each draw down of an Agency IRP loan constitutes the date the funds are advanced under the loan agreement.

(6) The provisions regarding default. On the occurrence of any event of default (monetary or nonmonetary), the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable laws and regulations. Any of the following may be regarded as an ''event of default'' at the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or failure to comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may be applicable; or

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to the Agency; or

(iii) The occurrence of:

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay

its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors; or

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, in whole or of a substantial part of its assets, being authorized or instituted by or against it; or

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors, loan making or policymaking body) arising since the date of the Agency's award of assistance hereunder, which condition was an inducement to the Agency's original award.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project funded from the IRP revolving loan fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the Agency, upon the Agency's request, in the event of default by the intermediary.

(ii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iii) The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving loan fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with 7 CFR part 1806, subpart B.

(iv) Intermediaries must provide fidelity bond coverage, or employee dishonesty insurance, for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through ''blanket'' coverage providing protection for all appropriate employees and officials.

(A) The minimum amount of fidelity bond/employee dishonesty coverage required by the Agency will equal the total, cumulative annual debt service requirements for all Agency IRP loans. Intermediaries with fidelity bond/employee dishonesty coverage requirements through other Agency programs (*e.g.*, the Rural Microentrepreneur Assistance Program) must add the coverage requirements of those programs to the coverage requirements of this section in calculating the minimum coverage amount.

(B) Evidence of this coverage must be provided at, or prior to, loan closing and must be maintained for the life of the IRP loan. During the term of the loan, the intermediary must provide evidence to the Agency, upon request, that adequate fidelity bond/employee dishonesty coverage is in place.

(v) The Agency may also require the intermediary to carry other appropriate insurance, such as coverage for public liability, leasehold, and property damage.

(b) The intermediary must agree in the loan documents to:

(1) Not make any changes in the intermediary's articles of incorporation, charter, or by-laws that would impact the intermediary's eligibility for the IRP program or would adversely affect their ability to operate the IRP program in accordance with the provisions of this instruction and any other applicable laws, regulations, and executive orders without the prior written concurrence of the Agency. This pertains to the Agency's original IRP loan funds and revolved funds.

(2) Not make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency's written concurrence;

(3) Maintain a separate ledger and segregated accounting for the IRP revolving loan fund;

(4) Provide to the Agency:

(i) An annual audit as described in 2 CFR part 200, subpart F, or any successor regulation;

(A) The financial audit report period may be different than the IRP reporting periods. Intermediaries must promptly provide the auditor with the records and documentation necessary for the completion of the audit following the end of the audit period. The audit report must be submitted to the Agency within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period as described in 2 CFR 200.512. Audits must cover all the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards (GAAP) and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. Compilations or reviews do not satisfy the audit requirement.

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by 2 CFR part 200, subpart F, as codified in 2 CFR 400.1, should submit audits conducted in accordance with that regulation.

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been loaned out to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or loan agreement, or the Agency determines that the intermediary's IRP revolving loan fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports must contain information only on the IRP revolving loan fund. Information required to be included in these reports as well as detailed reporting instructions will be provided by the Agency through a revolving loan fund user manual (available on the USDA Rural Development Intermediary Relending Program website) or similar documentation, which may be amended from time to time;

(iii) Annual proposed budget for the following year that meets the requirements of § 4274.332(b)(2); and

(iv) Other reports as the Agency may require from time to time;

(5) Before the initial lending of Agency IRP loan funds to an ultimate recipient, to obtain written Agency approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. If the intermediary plans to sell participations in its loans made to ultimate recipients, the loan participation agreement and any planned interest rate spread or associated fees must be submitted to the Agency for review and concurrence;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer may approve changes in forms, security policy, IRP revolving loan fund plan, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's IRP loan is outstanding.

(7) To secure the indebtedness by pledging the IRP revolving loan fund, including all of its loans derived from the proceeds of the Agency loan award,

and pledging its real and personal property and other rights and interests as the Agency may require;

(8) In the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the agency's interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

(9) Funds not disbursed to the intermediary by the end of the 36th month of the IRP loan from the Agency will be deobligated and not available for disbursement to the intermediary.

(10) For revolved funds, the intermediary is responsible for continuing compliance with the terms and conditions of the loan agreement until the Agency loan is fully satisfied and repaid.

[86 FR 72156, Dec. 21, 2021, as amended at 87 FR 18967, Apr. 1, 2022]

§ 4274.334—§ 4274.339 [Reserved]

§ 4274.340 Application content and submittal.

Intermediaries seeking to participate in the IRP program must submit an application in accordance with paragraph (a) of this section. Intermediaries applying for a subsequent Agency IRP loan may instead submit a streamlined application in accordance with paragraph (b) of this section. All intermediaries must submit their applications as provided in paragraph (c) of this section.

(a) *Intermediary application content.* A complete application will include forms as requested in the intermediary application checklist guide available on the USDA Rural Development Intermediary Relending Program website plus information identified in paragraphs (a)(1) through (12) of this section.

(1) A work plan/narrative that demonstrates the feasibility of the intermediary's program to meet the objectives of this program. The work plan must include, at a minimum:

(i) A copy of the intermediary's policy and/or procedural manuals to assure the Agency that its mission and goals align with that of the Agency (*i.e.,* economic development, promoting rural America, regional and community development.)

(ii) Document the intermediary staff's ability in administering an IRP revolving loan fund. This includes but is not limited to providing a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. Their qualifications should detail their experience in loan making, loan monitoring, and loan servicing including liquidations. The personnel may be either members or employees of the intermediary's organization or on an as-needed basis and as allowed by this regulation, contracted personnel.

(A) Contract personnel may be used to train, develop, or supervise the intermediary's members or employees or to provide interim expertise while the intermediary develops relevant in-house experience. The intermediary may contract for general services, such as clerical, administrative, and accounting services, and loan packaging.

(B) The intermediary cannot use contract personnel for the primary functions of its lending program, such as credit analysis and loan underwriting. The intermediary is expected to make an independent lending decision for each ultimate recipient loan request.

(*1*) The contract between the intermediary and the person or entity providing such service must be submitted for Agency review.

(*2*) The terms of the contract and its duration must be sufficient to develop in-house expertise and to ensure the Agency loan is adequately serviced throughout its term. The contract must provide for termination at the request of the Agency whether or not for cause.

(C) If the Agency determines the intermediary's personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(iii) Demonstrate a need for loan funds. At a minimum, the intermediary must either positively identify a sufficient number of proposed and known

ultimate recipients it has on hand to justify the level of Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for the IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms (*e.g.,* jobs created for low-income area residents or self-empowerment opportunities funded) and should relate to the purpose of IRP (*see* § 4274.301(b)); and

(v) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(2) Demonstrate the sustainability of the IRP revolving loan fund by providing a pro forma balance sheet at start-up and projected balance sheets for at least three additional years including the accumulated debt service reserve; financial statements for the last three years, or from inception of the operations of the intermediary if less than three years; and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving loan fund only and a separate set of projections that shows the intermediary organization's total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first three years, the projections for the IRP revolving loan fund must extend to include at least one year with a full annual installment on the IRP loan.

(3) Provide documentation of any funds pledged and intermediary equity contribution that will be contributed into the IRP revolving loan fund to serve as security for the IRP loan and to pay for part of the cost of the ultimate recipient projects. Pledged funds and intermediary equity contribution must be in the form of cash and cannot be in-kind contributions; they also cannot be used as intermediary operating funds.

(4) A written agreement of the intermediary to abide with the Agency audit requirements.

(5) Complete organizational documents including: Articles of Incorporation (initial loan only), Bylaws, Certificate of Good Standing, a list of board members with contact and lending experience information, and evidence of authority to conduct the proposed lending activities (this could be satisfied with a statement from the intermediary's counsel).

(6) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of an IRP program. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects.

(7) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations.

(8) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to the IRP.

(9) Latest audit report, if available.

(10) The IRP revolving loan fund plan is a separate stand-alone document from the application and may be revised in the future. The IRP revolving loan fund plan governs the use of the RLF and must be developed by the intermediary and approved by the Agency. The plan must include a detailed explanation of the intermediary's fund administration policies and procedures in addition to planned fund use after the original IRP

loan funds in the RLF have revolved. Fund administration policies and procedures must also include information regarding the review and approval of loans from the fund, including participation loans. The revolving loan fund plan must be of sufficient and detailed information to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient, including participation loans. The IRP revolving loan fund plan must contain:

(i) The specific service area of the IRP fund including names of counties and or cities within the service area;

(ii) Borrower eligibility criteria, loan purposes, loan priorities, fees, rates, terms, loan limits and collateral requirements;

(iii) Details on the intermediary's application review and approval process;

(iv) Details on the method of disposition of funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, the reporting requirements by the ultimate recipient's management; and

(v) A copy of the intermediary's ultimate recipient loan application package and sample loan documents (*i.e.*, application forms, debt instruments, collateral and security documents, etc.).

(11) Credit Elsewhere Certification (*see* Agency template available at the USDA Rural Development Intermediary Relending Program website).

(12) Prior to applying for program funding, a resolution by the intermediary's board of directors is required. At a minimum, the executive director of the intermediary must make the organization's board of directors aware of the possibility that the organization may be entering into a significant debt.

(b) *Streamlined applications.* Intermediaries that have an active Agency IRP loan may submit a streamlined application that includes the following:

(1) Submission of the information required under the Intermediary Guide (available at the USDA Rural Development Intermediary Relending Program website) and paragraphs (a)(1) through (4) of this section except that the information required by paragraph (a)(2) of this section may be limited to projections for the proposed new IRP revolving loan fund.

(2) A statement that the new loan would be operated in accordance with the work plan on file for the previous IRP loan(s) may be submitted in lieu of a new work plan. Any substantial change to an existing work plan would require the submission of a new work plan.

(3) Intermediaries that have received one or more Agency IRP loans may apply for and be considered for additional Agency IRP loans provided that the outstanding loans of the intermediary's IRP revolving loan fund are generally sound, the intermediary is in compliance with all applicable regulations and its loan agreements with the Agency, and the revolving loan fund's liabilities do not significantly exceed their assets. The intermediary must have a reasonable plan to disburse any unused IRP loan funds within six months of loan closing in addition to showing the need for additional IRP funds in accordance with paragraph (a)(1)(iii) of this section.

(c) *Application submittal.* Intermediaries must submit the complete application in one package. The intermediary must file its application with the Agency State Office in the State in which the intermediary's headquarters is located. An intermediary headquartered in the District of Columbia may file its application with the Delaware/Maryland Rural Development State Office, Attention: Business Programs, 1221 College Park Drive, Suite 200, Dover, DE 19904.

§ 4274.341 Processing applications for loans.

(a) *Processing applications.* Applications are accepted in the Rural Development State Office on an ongoing basis. The Agency will review all applications received for eligibility and will score each application according to the criteria in paragraph (b) of this section. Eligible applications received by the Rural Development State Office by close of business on September 30, December 31, March 31, and June 30 of each year will compete based on score

ranking for available funds with other applications in that Federal fiscal quarter. If the quarterly application deadline falls on a weekend or holiday, the application deadline will be the next business day. The Agency will rank all eligible, scored applications each Federal fiscal quarter and will fund applications in the order of priority ranking using available funds for that quarter. The Agency will retain unsuccessful applications due to limited funding for consideration in subsequent reviews, through a total of four quarterly reviews.

(b) *Scoring.* The Agency will use a point system to determine an eligible applicant's priority ranking for available loan funds. Points will be awarded only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the work plan items have a high probability of being accomplished. Application content must contain sufficient information to assess the applicant's ability to manage an IRP revolving loan fund and allow the Agency to assign priority points in accordance with the criteria discussed in this section. The Agency will award points using the criteria identified in paragraphs (b)(1) through (9) of this section. Any application that does not meet the minimum value for receiving points associated with a criterion will receive no points for that criterion.

(1) *Intermediary equity contribution for initial Agency IRP loan applications only (maximum 35 points).* The Agency will award points under this criterion if the applicant is applying for its first ever Agency IRP loan and will contribute cash matching funds to the IRP revolving loan fund. These funds must be deposited into the IRP account at closing and are subject to the same use restrictions as Agency IRP loan funds. These funds must be loaned out to ultimate recipients in conjunction with Agency IRP loan funds. The amount of cash matching funds contributed will be:

(i) At least 5 percent, but less than 10 percent of the requested loan amount—10 points.

(ii) At least 10 percent, but less than 20 percent of the requested loan amount—15 points.

(iii) At least 20 percent, but less than 30 percent of the requested loan amount—20 points.

(iv) At least 30 percent, but less than 40 percent of the requested loan amount—25 points.

(v) At least 40 percent, but less than 50 percent of the requested loan amount—30 points.

(vi) More than 50 percent of the requested loan amount—35 points.

(2) *Intermediary equity contribution for subsequent Agency IRP loan applications only (maximum 35 points).* The Agency will award points under this criterion if the applicant is applying for a subsequent IRP loan and will contribute cash matching funds to the IRP revolving loan fund. The Agency must determine that the applicant's performance under their current IRP loan(s) is satisfactory in accordance with §4274.330(f)(3) in order to be eligible and receive points under this criterion. These funds must be deposited into the IRP account at closing and are subject to the same use restrictions as Agency IRP Funds and loaned out to ultimate recipients in conjunction with Agency IRP loan funds. Cash matching funds are not required of subsequent applicants, but points will be awarded if the amount of cash matching funds contributed will be:

(i) At least 5 percent, but less than 10 percent of the requested loan amount—10 points.

(ii) At least 10 percent, but less than 20 percent of the requested loan amount—15 points.

(iii) At least 20 percent, but less than 30 percent of the requested loan amount—20 points.

(iv) At least 30 percent, but less than 40 percent of the requested loan amount—25 points.

(v) At least 40 percent, but less than 50 percent of the requested loan amount—30 points.

(vi) More than 50 percent of the requested loan amount—35 points.

(3) *Community Representation (10 points).* Governing board of directors where 50 percent or more of its members consist of business, banking, civic and community leaders that are representative of the rural communities within the service area(s) that intermediary serves. These board members

are diversely spread across the service areas and represent at least 50 percent of the intermediary total service area. These board members are not employees of the intermediary. Statewide and national IRP lenders must have a board of directors with members that are also familiar with current economic conditions and the inherent credit risks of making and servicing loans outside of the intermediary's primary location to receive these points. Documentation in the workplan must address these qualifications.

(4) *Leveraging (maximum 25 points).* The Agency will award points if the intermediary will limit the funding of ultimate recipient project loans with Agency IRP funds. IRP revolving loan fund funds that consist of revolved funds may also be used as leveraging. However, any projects funded must continue to comply with the loan agreement and requirements of this subpart so long as any part of the Agency IRP loan remains unpaid. The intermediary's equity contribution will be the following percentages of an ultimate recipient's total project costs:

(i) At least 10 percent, but less than 25 percent of the total project costs—5 points will be awarded;

(ii) At least 25 percent, but less than 50 percent of the total project costs—10 points will be awarded; or

(iii) Fifty percent or more of the total project costs—25 points will be awarded.

(5) *Median household income (maximum 15 points).* The Agency will award points under this criterion based on the degree to which the median household income in the service area of the intermediary exceeds the poverty line for a family of four. For applicant intermediaries whose service area includes multiple locations or geographic areas, weighted averages based on the populations will be used in calculating the area's median household income. For median household income computations, applicant intermediaries will use income data from the latest decennial census of the United States, updated according to changes in the consumer price index as published annually by the Agency. The poverty line used will be as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), which will be published annually by the Agency. If the median household income in the intermediary's service area exceeds the poverty line for a family of four by:

(i) At least 50 percent, but not more than 75 percent, 5 points will be awarded;

(ii) At least 25 percent, but less than 50 percent, 10 points will be awarded; or

(iii) Below 25 percent, 15 points will be awarded.

(6) *Unemployment (maximum 15 points).* The Agency will award points under this criterion based on the extent to which the unemployment rate in the intermediary's service area exceeds the national unemployment rate. For unemployment computations, applicant intermediaries must use the unemployment data published by the Bureau of Labor Statistics, U.S. Department of Labor, for the most current month available at the time of application in comparison to the national unemployment rate for the same month. If the service area is a single city, town, or Indian Reservation and current, monthly unemployment data is not available for that city or town, the current, monthly unemployment rate for the county (or Indian Reservation) in which the service area is located should be used. For applicant intermediaries whose service area includes multiple locations or geographic areas, a weighted average based on the populations should be used in calculating the area's unemployment rate. If the unemployment rate in the intermediary's service area is:

(i) Equal to, or less than 25 percent above the national unemployment rate, 5 points will be awarded;

(ii) At least 25 percent above, but less than 50 percent above the national unemployment rate, 10 points will be awarded; or

(iii) Fifty percent or more above the national unemployment rate, 15 points will be awarded.

(7) *Trauma (maximum 15 points).* Under this criterion, the Agency will award 15 points if 50 percent or more of the intermediary's service area is experiencing trauma due to a major natural disaster, as declared by the Federal Emergency Management Agency (FEMA), that occurred not more than

three years prior to the filing of the application for assistance. Intermediaries with proposed statewide and nationwide service areas do not qualify for these points.

(8) *Experience (maximum 30 points).* The Agency will award points under this criterion based on the number of years the intermediary entity has in successfully making and servicing commercial loans. If the intermediary entity itself has actual experience in making and servicing commercial loans, with a successful record, for:

(i) At least 1 but less than 3 years, 5 points will be awarded;

(ii) At least 3 but less than 5 years, 10 points will be awarded;

(iii) At least 5 but less than 10 years, 20 points will be awarded; or

(iv) Ten or more years, 30 points will be awarded.

(9) *Size of loan request (maximum 20 points).* The Agency will award points under this criterion based on the size of the intermediary's loan request. If the size of the loan request is:

(i) $500,000 or less, 20 points will be awarded; or

(ii) Over $500,000, and up to $750,000, 10 points will be awarded

(10) *Administrator (maximum 10 points).* The Administrator may award up to 10 additional points to an application to account for either or both of the items identified in below:

(i) The project meets the President/Secretary Initiative(s) (*e.g.*, local foods, regional development, persistent poverty, energy-related, etc.); or

(ii) The applicant's service area will include areas not currently served by existing IRP Intermediaries. Statewide and nationwide Intermediaries will not be considered for Administrator points with regard to whether an area is currently covered by an existing IRP fund.

§ 4274.342–§ 4274.344 [Reserved]

§ 4274.345 Letter of conditions.

The Agency will provide the successful intermediary with a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary must complete, sign, and return the requisite forms provided by the Agency indicating the intermediary's intent to meet the conditions and the request of obligation of funds. If the intermediary identifies certain conditions that cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency must approve in writing of any proposed changes made to the initially issued or proposed letter of conditions prior to acceptance and finalization

§ 4274.346 Agency IRP loan closing.

(a) At the time the Agency IRP loan is closed, the intermediary must certify to each condition identified in paragraphs (a)(1) through (5) of this section.

(1) No major changes have been made in the work plan except those approved in the interim by the Agency.

(2) All requirements of the letter of conditions have been met.

(3) There has been no material adverse change in the intermediary's financial condition, nor any other material adverse change in the intermediary, for any reason, during the period of time from the Agency's loan approval to loan closing regardless of the cause or causes of the change and whether or not the change or causes of the change were within the intermediary's control. Any material adverse change must be explained by the intermediary. The Agency, at its sole discretion, will consider any such change and determine if it is significant enough to prevent the loan closing or disbursement of IRP loan funds to the intermediary.

(4) There are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(5) Certification that the intermediary has received Agency staff training on how to distinguish a required environmental review from a categorical exclusion in accordance with § 4274.305(b).

(b) The Agency will consider all requested changes submitted in writing

to the Agency but will only approve changes that do not materially affect the IRP project, its capacity, employment, original projections, or credit factors.

§ 4274.347–§ 4274.350 [Reserved]

§ 4274.351 Loan approval and obligating funds.

(a) The loan will be considered approved on the date that the obligation of funds document (*Form RD 1940–1, Request for Obligation of Funds*), is signed by the Agency. Agency IRP loans not closed within six months of approval by the Agency will be deobligated and the loan funds will no longer be available to the intermediary.

(b) An obligation of funds established for an intermediary may be transferred by the Agency to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

§ 4274.352 Loan documentation for ultimate recipients.

(a) *Agency IRP loans.* Prior Agency concurrence is required when an intermediary makes loans to an ultimate recipient from its Agency IRP loan funds (this applies to each Agency IRP loan received). A request for Agency concurrence in approval of a proposed loan to an ultimate recipient, whether made directly or through a loan participation purchase, must contain or comply with, as appropriate, the items identified in paragraph (b)(1) through (5) of this section and must include information listed in the IRP Revolving Loan Fund File Checklist, on the Agency website at the USDA Rural Development Intermediary Relending Program website:

(1) Certification by the intermediary that:

(i) The ultimate recipient is eligible for the loan;

(ii) The loan is for an eligible purpose;

(iii) Agency IRP loan funds are not more than 75 percent of the total project costs;

(iv) The loan complies with all applicable statutes and regulations;

(v) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and

(vi) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary. The interest and influence of a cooperative member when the intermediary is a cooperative is an allowable exception to this paragraph.

(2) A completed and executed request for environmental information on a form provided by the Agency for projects that meet the criteria for a NEPA review categorical exclusion, NEPA environmental assessment or NEPA environmental impact statement in accordance with § 4274.305(b)(2).

(3) All comments obtained in accordance with § 4274.305(a) regarding intergovernmental consultation (if required).

(4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files to allow the Agency to determine the:

(i) Name, address, Unique Entity Identifier, Federal ID number, and North American Classification System (NAICS) Code of the ultimate recipient;

(ii) Loan purpose;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Uses and sources of funds; and

(vi) Nature and lien priority of the collateral.

(5) Such other information as the Agency may request.

(b) *Revolved IRP loan funds.* An intermediary may use revolved funds to make loans to ultimate recipients in accordance with § 4274.320(b) without obtaining prior Agency concurrence as

required in §4274.352(a) and are also exempted from completion of items required by paragraphs (a)(2) and (3) of this section.

[86 FR 72156, Dec. 21, 2021, as amended at 89 FR 34958, May 1, 2024]

§4274.353–§4274.359 [Reserved]

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989: 7 U.S.C. 1932(a); and Public Law 116–136, Division B, Title I.

SOURCE: 61 FR 67633, Dec. 23, 1996, unless otherwise noted.

Subpart A—General

SOURCE: 81 FR 35997, June 3, 2016, unless otherwise noted.

§ 4279.1 Introduction.

(a) As of October 1, 2020, this subpart is specifically applicable to and only contains regulations for Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID–19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Some of the requirements of this subpart are waived or altered for B&I CARES Act Program Loans. The waivers and alterations are provided in § 4279.190 of this subpart. Other than B&I CARES Act Program Loans, this subpart is no longer used for making Business and Industry (B&I) loans guaranteed by the Agency. Subpart B of part 4287 of this chapter is retained for servicing B&I CARES Act Program Loans and B&I loans guaranteed by the Agency prior to October 1, 2020. Requirements for B&I loans guaranteed by the Agency after October 1, 2020 (other than B&I CARES Act Loans) may be found at 7 CFR part 5001.

(b) The lender is responsible for ascertaining that all requirements for making, securing, servicing, and collecting the loan are complied with.

(c) Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms and regulations referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *http://www.rd.usda.gov/publications*. Whenever a form is designated in this subpart, it is initially capitalized and its reference includes predecessor and successor forms, if applicable.

[81 FR 35997, June 3, 2016, as amended at 85 FR 31040, May 22, 2020; 85 FR 62196, Oct. 2, 2020]

§ 4279.2 Definitions and abbreviations.

(a) *Definitions.* The following definitions apply to this subpart:

Administrator. The Administrator of Rural Business–Cooperative Service within the Rural Development mission

area of the U.S. Department of Agriculture.

Affiliate. An entity that is related to another entity by owning shares or having an interest in the entity, by common ownership, or by any means of control.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I Guaranteed Loan Program. References to the National or State Office should be read as prefaced by ''Agency'' or ''Rural Development'' as applicable.

Agricultural production. The breeding, raising, feeding, or housing of livestock for fiber or food for human consumption and the cultivation, growing, or harvesting of crops.

Annual renewal fee. The annual renewal fee is a fee that is paid once a year by the lender and is required to maintain the enforceability of the Loan Note Guarantee.

Appraisal surplus. The difference between the fair market value of an asset and its depreciated book value when the fair market value is higher.

Arm's-length transaction. A transaction between ready, willing, and able disinterested parties that are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other.

Assignment Guarantee Agreement. Form RD 4279–6, ''Assignment Guarantee Agreement,'' is the signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Bankruptcy Code. The provisions of title 11 of the United States Code or any successor statute.

Biofuel. A fuel derived from Renewable Biomass.

Bond. A form of debt security in which the authorized issuer (borrower) owes the bond holder (lender) a debt and is obligated to repay the principal and interest (coupon) at a later date(s) (maturity). An explanation of the type of bond and other bond stipulations must be attached to the bond issuance.

Borrower. The person that borrows, or seeks to borrow, money from the lender, including any party liable for the loan except for guarantors.

Certificate of Incumbency and Signature. Form RD 4279–7, ''Certificate of Incumbency and Signature,'' is used to validate authenticity of Agency representatives' signatures on Forms RD 4279–4, 4279–5, and 4279–6.

Collateral. The asset(s) pledged by the borrower to secure the loan.

Commercially available. A system that has a proven operating history for at least 1 year specific to the proposed application. Such a system is based on established design and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and the balance of system equipment and spare parts are readily available, and service is readily available to properly maintain and operate the system. An established warranty exists for major parts and labor. If the system is currently commercially available only outside of the United States, authoritative evidence of the foreign operating history, performance, and reliability is required in order to address the proven operating history.

Conditional Commitment. Form RD 4279–3, ''Conditional Commitment,'' is the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the attachment to the Conditional Commitment.

Conflict of interest. A situation in which a person has competing personal, professional, or financial interests that prevents the person from acting impartially.

Cooperative organization. An entity that is legally chartered as a cooperative or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Debt Collection Improvement Act. The Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq*. requires that any monies that are payable or may become payable from the United States

under contracts and other written agreements to any person not an agency or subdivision of a State or local government may be subject to certain collection options, such as administrative offset, for a delinquent debt the person owes to the United States.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan agreement, or other documents relating to the loan. Default could be a monetary or non-monetary default.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Delinquency. A loan for which a scheduled loan payment is more than 30 days past due and cannot be cured within 30 days.

Energy projects. Commercially available projects that generate energy or power or projects that produce biofuel. Projects that have energy outputs that are a by-product of operations or that the Agency otherwise determines is not an energy project are not subject to the increased equity requirement for energy projects required by § 4279.131(d)(1).

Existing business. A business that has been in operation for at least 1 full year. Mergers or changes in the business name or legal type of entity of a business that has been in operation for at least 1 full year are considered to be existing businesses as long as there is not a significant change in operations. Newly-formed entities that are buying existing businesses will be considered an existing business as long as the business being bought remains in operation and there is no significant change in operations.

Existing lender debt. A debt owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Future recovery. Funds collected by the lender after a final loss claim is processed.

High impact business development investment. A business that scores at least 25 points under § 4279.166(b)(4).

High-priority project. A project that scores more than 50 percent of the priority points available under § 4279.166(b)(1) through (5).

Holder. A person, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of the Assignment Guarantee Agreement.

Immediate family. 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 cousin.

In-house expenses. Expenses associated with activities that are routinely the responsibility of a lender's internal staff or its agents. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Interest. A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as a percentage of the principal amount owed. The term interest does not include default or penalty interest or late payment fees or charges.

Interim financing. A temporary or short-term loan made with the clear intent when the loan is made that it will be repaid through another loan that provides permanent financing. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The eligible lender approved by the Agency to make, service, and collect the Agency guaranteed loan that is subject to this subpart. Agency approval of the lender will be evidenced by an outstanding Form RD 4279–4,

''Lender's Agreement,'' between the Agency and the lender.

Lender's Agreement. Form RD 4279–4, ''Lender's Agreement,'' or predecessor form, between the Agency and the lender setting forth the lender's loan responsibilities.

Liquidation expenses. Costs directly associated with the liquidation of collateral, including preparing collateral for sale (*e.g.*, repairs and transport) and conducting the sale (*e.g.*, advertising, public notices, auctioneer expenses, and foreclosure fees). Liquidation expenses do not include in-house expenses. Legal/attorney fees are considered liquidation expenses provided that the fees are reasonable, as determined by the Agency, and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

Loan agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan classification. The process by which loans are examined and categorized by degree of potential loss in the event of default.

Loan Note Guarantee. Form RD 4279–5, ''Loan Note Guarantee,'' issued and executed by the Agency, containing the terms and conditions of the guarantee.

Loan packager. A person, other than the applicant borrower or lender, that prepares a loan application package.

Loan service provider. A person, other than the lender of record, that provides loan servicing activities to the lender.

Loan-to-discounted value. The ratio of the dollar amount of a loan to the discounted dollar value of the collateral pledged as security for the loan.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Local government. A county, municipality, town, township, village, or other unit of general government, including tribal governments, below the State level.

Material adverse change. Any change in circumstance associated with a guaranteed loan, including the borrower's financial condition or collateral, that, individually or in the aggregate, has jeopardized, or could be reasonably expected to jeopardize, loan performance.

Natural resource value-added product. Any naturally occurring resource, including agricultural resources, that is processed to add value or to generate renewable energy from a natural resource.

Negligent loan origination. The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing. The failure of a lender to perform those services that a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

New business. A startup or otherwise new business that has been in operation for less than 1 full year. New businesses include newly-formed entities leasing space or building ground-up facilities, even if the owners of the new or startup business own affiliated businesses doing the same kind of business.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on an equal basis.

Participation. Sale of an interest in a loan by the lead lender to one or more participating lenders wherein the lead lender retains the note, collateral securing the note, and all responsibility for managing and servicing the loan. Participants are dependent upon the lead lender for protection of their interests in the loan. The relationship is typically formalized by a participation agreement. The participants and the borrower have no rights or obligations to one another.

Person. An individual or entity.

Poverty. A community or area (including a county, city, or equivalent

such as parish, borough, municipio, or census designated place) where at least 20 percent of the population have income below the poverty line.

Pro rata. On a proportional basis.

Promissory note. Evidence of debt with stipulated repayment terms. ''Note'' or ''promissory note'' shall also be construed to include ''Bond'' or other evidence of debt, where appropriate.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances affecting the collateral made for property taxes, rent, hazard and flood insurance premiums, and annual assessments. Legal/attorney fees are not a protective advance.

Public body. A municipality, county, or other political subdivision of a State; a special purpose district; an Indian tribe on a Federal or State reservation or other federally-recognized Indian tribe; or an organization controlled by any of the above.

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

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

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

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

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

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

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

Report of loss. Form RD 449–30, ''Guaranteed Loan Report of Loss,'' used by lenders when reporting a financial loss under an Agency guarantee.

Rural Development. The mission area of USDA that is comprised of the Rural Business–Cooperative Service, the Rural Housing Service, and the Rural Utilities Service and is under the policy direction and operational oversight of the Under Secretary for Rural Development.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. A financial statement analysis normally contains spreadsheets for balance sheet and income statement items and includes a cash flow analysis and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

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

Subordination. An agreement among the lender, borrower, and Agency whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan.

Tangible balance sheet equity. Tangible equity divided by tangible assets. Formula: ((Assets—intangible assets)—liabilities)/(Assets—intangible assets) or (Equity—intangible assets)/(Assets—intangible assets).

Transfer and assumption. The conveyance by a borrower to an assuming borrower of the assets, collateral, and liabilities of the loan in return for the assuming borrower's binding promise to pay the outstanding debt.

USDA Lender Interactive Network Connection (LINC). The portal Web site currently at *https://usdalinc.sc.egov.usda.gov/* used by lenders to update loan data in the Agency's Guaranteed Loan System. Current LINC capabilities include loan closing and status reporting.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in title 38 U.S.C. 101(12).

Working capital. Current assets available to support a business' operations and growth. Working capital is calculated as current assets less current liabilities.

(b) *Abbreviations*. The following abbreviations apply to this subpart:

B&I—Business and Industry
CFR—Code of Federal Regulations
DCIA—Debt Collection Improvement Act
FDIC—Federal Deposit Insurance Corporation
FSA—Farm Service Agency
GAAP—Generally Accepted Accounting Principles of the United States
LINC—USDA Lender Interactive Network Connection
NAD—National Appeals Division
OMB—Office of Management and Budget
REAP—Rural Energy for America Program
U.S.—United States of America
USDA—U.S. Department of Agriculture

(c) *Accounting terms*. Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP.

§§ 4279.3–4279.14 [Reserved]

§ 4279.15 Exception authority.

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

§ 4279.16 Appeals.

Applicants, borrowers, lenders, and holders have appeal or review rights for Agency decisions made under this subpart, subpart B of this part, or subpart B of part 4287 of this chapter. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The borrower, lender, and holder can appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the borrower, the lender and borrower must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the lender may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

§§ 4279.17–4279.28 [Reserved]

§ 4279.29 Eligible lenders.

An eligible lender must be domiciled in a State as defined in § 4279.2 or the District of Columbia and must not be debarred or suspended by the Federal government. If the lender is under a cease and desist order, or similar constraint, from a Federal or State agency, the lender must inform the Agency. The Agency will evaluate the lender's eligibility on a case-by-case basis, given the risk of loss posed by the cease and desist order. The Agency will only approve loan guarantees for lenders with adequate capital to fund and cover potential liquidation expenses for guaranteed loans it proposes to make and adequate experience and expertise to make, secure, service, and collect B&I loans. The lender must provide documentation as to its capital and experience in commercial lending. The lender and the Agency will execute a Lender's Agreement for each lender approved to participate in the program. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each

loan guarantee; however, a new Lender's Agreement must be executed with any existing lenders making new loans on or after August 2, 2016. The Agency may revoke a lender's eligible status at any time for cause, including those examples cited in § 4279.29(c).

(a) *Regulated lenders.* A regulated lender is any Federal or State chartered bank, or other financial institution, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Savings Bank, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include the National Rural Utilities Cooperative Finance Corporation and credit unions provided that they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency.

(b) *Non-regulated lenders.* The Agency may consider an applicant lender that does not meet the criteria of paragraph (a) of this section for eligibility to become a guaranteed lender for a 3-year period provided that the Agency determines that the applicant lender has the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program. When the applicant lender is a multi-tiered entity, it will be considered in its entirety. Insurance companies (formerly included as traditional lenders) and non-regulated lenders (formerly known as other lenders) previously approved as guaranteed lenders prior to August 2, 2016 must reapply to become an approved non-regulated lender in order to originate new guaranteed loans. However, both insurance companies and non-regulated lenders that have executed a Lender's Agreement must continue to service the guaranteed loans in their portfolios in accordance with that agreement.

(1) In order to become an eligible lender, non-regulated lenders must:

(i) Have been making commercial loans for at least 5 years;

(ii) Have a record of successfully making at least 10 commercial loans annually totaling at least $1 million for each of the last 5 years, with lender's delinquent commercial loan portfolio over this period not exceeding (a) 6 percent of all commercial loans made and (b) 3 percent in commercial loan losses (based on the original principal loan amount);

(iii) Have and maintain tangible balance sheet equity of at least 10 percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender;

(iv) Have and maintain a line of credit issued by a regulated lender that is acceptable to the Agency;

(v) Agree to establish and maintain an Agency approved loss reserve equal to 3 percent of each B&I loan closed and agree to increase the loss reserve for anticipated losses as required by the Agency;

(vi) Have adequate policies and procedures to ensure that internal credit controls provide adequate loanmaking and servicing guidance; and

(vii) Have undergone a credit examination at its own expense from a recognized independent reviewer acceptable to the Agency. The applicant lender should consult with the Agency prior to receiving an examination to ensure the examiner will be acceptable.

(2) A non-regulated lender that wishes consideration to become a guaranteed lender must submit a request in writing to the Agency. The Agency will notify the prospective lender whether the lender's request for eligibility is approved or rejected. If rejected, the Agency will notify the prospective lender, in writing, of the reasons for the rejection. The lender must include in its written request the following:

(i) An audited financial statement not more than 1 year old that evidences the lender has the required tangible balance sheet equity and the resources to successfully meet its responsibilities;

(ii) A copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities. If licensing by the State is not required, an attorney's

opinion stating that licensing is not required and that the entity has the legal authority to engage in the proposed loanmaking and servicing activities must be submitted;

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity, including a list of the industries for which it has provided financing; status of its loan portfolio, including a list of loans in the portfolio with each loan's current loan classification code and delinquency and loss rates as outlined in § 4279.29(b)(1)(ii); experience of management and loan officers; sources of funds for the proposed loans; office location and proposed lending area; an estimate of the number and size of guaranteed loan applications the lender will develop; and proposed rates and fees, including loan origination, loan preparation, and servicing fees;

(iv) A copy of the examination required under paragraph (b)(1)(vii) of this section; and

(v) Documentation as to how the lender will fulfill the requirements of § 4279.30.

(3) Non-regulated lenders must submit audited financial statements to the Agency annually for monitoring purposes.

(4) Renewal of eligible lender status to continue making B&I loans is not automatic. Eligible lender status will lapse 3 years from the date of Agency approval and execution of the Lender's Agreement unless the lender obtains a renewal. A lender whose eligible status has lapsed must continue to service any outstanding loans guaranteed under this part but may not submit requests for new loan guarantees. Lenders whose eligibility has lapsed may file a subsequent request under this subsection. Lenders requesting renewal must complete and execute a new Lender's Agreement, along with a written update of the eligibility criteria required by this section for approval. Lenders requesting renewal must resubmit the information required by paragraph (b)(2) of this section and must address how the lender is complying with each of the required criteria described in paragraph (b)(1) of this section. The written update of the eligibility criteria must also include any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans since the original or last renewal date of eligible lender status. The lender must provide this information to the Agency at least 60 days prior to the expiration of the existing agreement to be assured of a timely renewal.

(c) *Revocation of eligible lender status.* The Agency may revoke a lender's status at any time for cause. Cause for revoking eligible status includes:

(1) Failure to maintain status as an eligible lender as set forth in § 4279.29 of this subpart;

(2) Knowingly submitting false information when requesting a guarantee or basing a guarantee request on information known to be false or which the lender should have known to be false;

(3) Making a guaranteed loan with deficiencies that may cause losses not to be covered by the Loan Note Guarantee, such as negligent loan origination;

(4) Conviction of the lender or its officers for criminal acts in connection with any loan transaction whether or not the loan was guaranteed by the Agency;

(5) Violation of usury laws in connection with any loan transaction whether or not the loan was guaranteed by the Agency;

(6) Failure to obtain and maintain the required security for any loan guaranteed by the Agency;

(7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commitment or amendment thereof in accordance with § 4279.173(b);

(8) Violation of any term of the Lender's Agreement;

(9) Failure to correct any Agency-cited deficiency in loan documents in a timely manner;

(10) Failure to submit reports required by the Agency in a timely manner;

(11) Failure to process Agency guaranteed loans as would a reasonably prudent lender;

(12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed with the available funds and, once completed, will be suitable for the borrower's needs;

(13) Repetitive recommendations for servicing actions or guaranteed loans with marginal or substandard credit quality or that do not comply with Agency requirements;

(14) Negligent loan origination;

(15) Negligent loan servicing;

(16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan; or

(17) Violation of applicable nondiscrimination law, including, but not limited to, statutes, regulations, USDA Departmental Regulations, the USDA Non-Discrimination Statement, and the Equal Credit Opportunity Act. USDA's Non-Discrimination Statement is located at the following Web site: *http://www.usda.gov/wps/portal/usda/usdahome?navtype=FT&navid=NON_DISCRIMINATION*.

(d) *Debarment of lender*. The Agency may debar a lender in addition to the revocation of the lender's status.

[81 FR 35997, June 3, 2016, as amended at 81 FR 54477, Aug. 16, 2016]

§ 4279.30 Lenders' functions and responsibilities.

(a) *General*. (1) Lenders have the primary responsibility for the successful delivery of the guaranteed loan program. Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities to originate and service the loan guaranteed under this subpart, subpart B of this part, and subpart B of part 4287 of this chapter. Lenders may contract for services but are ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations. No person may act as, or work for, both a loan packager and loan service provider on the same guaranteed loan. All lenders obtaining or requesting a loan guarantee are responsible for:

(i) Processing applications for guaranteed loans;

(ii) Developing and maintaining adequately documented loan files, which must be maintained for at least 3 years after any final loss has been paid;

(iii) Recommending only loan proposals that are eligible and financially feasible;

(iv) Properly closing the loan and obtaining valid evidence of debt and collateral in accordance with sound lending practices prior to disbursing loan proceeds;

(v) Keeping an inventory accounting of all collateral items and reconciling the inventory of all collateral sold during loan servicing, including liquidation;

(vi) Monitoring construction and operation;

(vii) Distributing loan funds;

(viii) Servicing guaranteed loans in a prudent manner, including liquidation if necessary;

(ix) Reporting all conflicts of interest, or appearances thereof, to the Agency;

(x) Following Agency regulations and agreements; and

(xi) Obtaining Agency approvals or concurrence as required.

(2) This subpart, subpart B of this part, and subpart B of part 4287 of this chapter contain the regulations for this program, including the lenders' responsibilities. If a lender fails to comply with these requirements, the Agency may reduce any loss payment in accordance with the applicable regulations.

(b) *Credit evaluation*. The lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by persons other than the originating officer, and there must be good credit documentation procedures. The Agency will only issue guarantees for loans that are sound and have reasonable assurance of repayment. The Agency will not issue guarantees for marginal or substandard loans.

(c) *Environmental responsibilities*. Lenders are responsible for becoming familiar with Federal environmental

requirements; considering, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and developing proposals that minimize the potential to adversely impact the environment.

(1) Lenders must assist the borrower in providing details of the project's impact on the environment and historic properties in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' (or successor regulation), when applicable; assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(2) Lenders must ensure the borrower has:

(i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' or successor regulation, including the provision of all required Federal, State, and local permits;

(ii) Complied with any mitigation measures required by the Agency; and

(iii) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or that will have an adverse effect on the environment.

(3) Lenders must alert the Agency to any environmental issues related to a proposed project or items that may require extensive environmental review.

§§ 4279.31–4279.43 [Reserved]

§ 4279.44 Access to records.

The lender must permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency. In addition, the lender must cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee to ensure compliance with this subpart, subpart B of this part, and subpart B of part 4287 of this chapter. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders in accordance with subpart B of part 4287 of this chapter.

§§ 4279.45–4279.58 [Reserved]

§ 4279.59 Environmental requirements.

The Agency is responsible for ensuring that the requirements of the National Environmental Policy Act of 1969 (under 40 CFR part 1500) and related compliance actions, such as Section 106 of the National Historic Preservation Act (under 36 CFR part 800) and Section 7 of the Endangered Species Act, are met and will complete the appropriate level of environmental review in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' or successor regulation. Because development of the loan application occurs simultaneously with development of the environmental review, applicants, including lenders and borrowers, must not take any actions or incur any obligations that would either limit the range of alternatives to be considered in the environmental review or that would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to issuance of the Conditional Commitment to the lender.

§ 4279.60 Civil rights impact analysis.

Issuance of a Conditional Commitment is conditioned on the Agency being able to satisfactorily complete a civil rights impact analysis.

§ 4279.61 Equal Credit Opportunity Act.

In accordance with the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age (providing the applicant

has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender must comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202) prior to loan closing.

§§ 4279.62–4279.70 [Reserved]

§ 4279.71 Public bodies and nonprofit corporations.

Audits will be required of any public body, nonprofit corporation or Indian Tribe that receives a guaranteed loan that meets the thresholds established by 2 CFR part 200, subpart F. Any audit provided by a public body, nonprofit corporation, or Indian Tribe required by this paragraph will be considered adequate to meet the audit requirements of the B&I program for that year.

§ 4279.72 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. The provisions of this part and part 4287 of this chapter will apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and these regulations as they exist at the time the documents are executed, these regulations will control.

(a) *Full faith and credit.* A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable by the lender to the extent that any loss is occasioned by a provision for interest on interest or default or penalty interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, use of loan proceeds for unauthorized purposes, negligent loan origination, negligent loan servicing, or failure to obtain or maintain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable by the lender to the extent that loan funds were used for purposes other than those specifically approved by the Agency in its Conditional Commitment or amendment thereof in accordance with § 4279.173(b). The Agency may for cause terminate or reduce the Loan Note Guarantee at any time. The Agency will guarantee payment as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan it owns and on interest due on such portion less any outstanding servicing fee. For those loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual. The guarantee will not cover interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter.

(2) To the lender, subject to the provisions of this part and subpart B of part 4287 of this chapter, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest (for loans closed on or after August 2, 2016, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date) evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon. For loans closed on or after August 2, 2016, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date.

(b) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder will succeed to all rights of the lender under the Loan

Note Guarantee to the extent of the portion purchased. The full, legal interest in the note must remain with the lender, and the lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates in or condones. The lender will reimburse the Agency for any payments the Agency makes to a holder on the lender's guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

(c) *Payments.* A lender will receive all payments of principal and interest on account of the entire loan and must promptly remit to the holder its pro rata share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

[81 FR 35997, June 3, 2016, as amended at 83 FR 11634, Mar. 16, 2018]

§§ 4279.73–4279.74 [Reserved]

§ 4279.75 Sale or assignment of guaranteed loan.

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender must fully disburse and properly close a loan prior to sale of the note(s) on the secondary market. The lender cannot sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or its parent, subsidiary, or affiliate or to officers, directors, stockholders, other owners, or members of their immediate families. The lender cannot share any premium received from the sale of a guaranteed loan in the secondary market with a loan packager or other loan service provider. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Lenders may use either the single note or multi-note system as outlined in paragraphs (a) and (b) of this section. The lender may also obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the notes if any of them are unguaranteed and retain the lender's interest in the collateral.

(a) *Single note system.* The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The lender must retain title to the note, retain the lender's interest in the collateral, and retain the servicing responsibilities for the guaranteed loan. When the loan is evidenced by one note, the lender may not at a later date cause any additional notes to be issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using an Assignment Guarantee Agreement. The lender must complete and execute the Assignment Guarantee Agreement and return it to the Agency for execution prior to holder execution. In order to validate authenticity, holders are encouraged to consult with the Agency. Additionally, a Certificate of Incumbency and Signature may be requested. The holder, with written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, sold under the Assignment Guarantee Agreement. Holders may only reassign the entire guaranteed portion they have received and cannot subdivide or further split the guaranteed portion of a loan or retain an interest strip. Upon notification and completion of the Assignment Guarantee Agreement, the assignee shall succeed to all rights and obligations of the holder thereunder. Subsequent assignments require notice to the lender and Agency using any format, including that used by the Securities Industry and Financial Markets Association (formerly known as the Bond Market Association), together with the transfer of the original Assignment Guarantee Agreement. The

Agency will neither execute a new Assignment Guarantee Agreement to effect a subsequent reassignment nor reissue a duplicate Assignment Guarantee Agreement unless the original was lost, stolen, destroyed, mutilated, or defaced in accordance with § 4279.84. The Assignment Guarantee Agreement clearly states the percentage and corresponding amount of the guaranteed portion it represents and the lender's servicing fee. A servicing fee may be charged by the lender to a holder and is calculated as a percentage per annum of the unpaid balance of the guaranteed portion of the loan assigned by the Assignment Guarantee Agreement. The Agency is not and will not be a party to any contract between the lender and another party where the lender sells its servicing fee. The Agency will not acknowledge, approve, nor have any liability to any of the parties of this contract.

(b) *Multi-note system.* Under this option, the lender may provide one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. All promissory notes must reflect the same payment terms. The lender must retain its interest in the collateral and servicing responsibilities for the guaranteed loan. When the lender selects this option, the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to each note. An Assignment Guarantee Agreement will not be used when the multi-note option is utilized.

§ 4279.76 [Reserved]

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the original total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may enter into no agreement that reduces its exposure below the minimum 5 percent it is required to retain in its portfolio. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.

§ 4279.78 Repurchase from holder.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or when the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lender's receipt thereof. The repurchase by the lender must be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The lender must accept an assignment without recourse from the holder upon repurchase. For those loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual if the default is not cured. The guarantee will not cover interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter. If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency's written approval. If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve any loan problems, and prevent default, where and when reasonable. The benefit to the lender is that it may resell the guaranteed portion of the loan in order to continue

collection of its servicing fee if the default is cured. When the lender repurchases the guaranteed portion from the secondary market for servicing purposes, the lender must discontinue interest accrual if Federal or State regulators place the loan in non-accrual status if the default is not cured within 90 days. The lender will notify the holder and the Agency of its decision.

(b) *Agency repurchase.* (1) The lender's servicing fee will stop on the date that interest was last paid by the borrower when the Agency purchases the guaranteed portion of the loan from a holder. The lender cannot charge such servicing fee to the Agency and must apply all loan payments and collateral proceeds received to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(2) If the Agency repurchases 100 percent of the guaranteed portion of the loan and becomes the holder, interest accrual on the loan will cease, and the Agency will not continue collection of the annual renewal fee from the lender.

(3) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. For those loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual. The guarantee will not cover interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter. Once the holder makes demand upon the Agency, the request cannot be rescinded.

(4) When the guaranteed loan has been delinquent more than 60 days and no holder comes forward, the Agency may issue a letter to the holder(s) establishing the cutoff date for interest accrual. Accrued interest to be paid the holder will be calculated from the date interest was last paid on the loan with a cutoff date being no more than 90 days from the date of the most recent delinquency effective date as reported by the lender.

(5) When the lender has accelerated the account and holds all or a portion of the guaranteed loan, an estimated loss claim (loan in the liquidation process) must be filed by the lender with the Agency within 60 days. Accrued interest paid to the lender will be calculated from the date interest was last paid on the loan with a cutoff date being no more than 90 days from the most recent delinquency effective date as reported by the lender.

(6) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence must consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse, including all rights, title, and interest in the loan. When the single-note system is utilized and the initial holder has sold its interest, the current holder must present the original Assignment Guarantee Agreement and an original of each Agency-approved reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee. The holder must include in its demand the amount due, including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(7) Upon request by the Agency, the lender must promptly furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved

between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30-day payment requirement.

(8) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the program.

§§ 4279.79–4279.83 [Reserved]

§ 4279.84 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement that was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender must coordinate the activities of the party who seeks the replacement documents and submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement, including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and promissory note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (*e.g.*, order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency must accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The bond must be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1 million, verified by the lender in writing in a letter of certification of balance due. The surety must be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the Agency. The bond must be in an amount not less than the unpaid principal and interest. The bond must hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) The Agency will not attempt to obtain, or participate in the obtaining of, replacement notes from the borrower. The holder is responsible for bearing the costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated, or defaced, such evidence of

debt must be replaced before the Agency will replace any instruments.

§§ 4279.85–4279.99 [Reserved]

§ 4279.100 OMB control number.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this subpart have been submitted to the Office of Management and Budget (OMB) under OMB Control Number 0570–0069 for OMB approval.

Subpart B—Business and Industry Loans

SOURCE: 81 FR 36005, June 3, 2016, unless otherwise noted.

§ 4279.101 Introduction.

(a) *Content.* As of October 1, 2020, this subpart is specifically applicable to and only contains loan processing regulations for Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID–19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Some of the requirements of this subpart are waived or altered for B&I CARES Act Program Loans. The waivers and alterations are provided in § 4279.190 of this subpart. This subpart is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations. Other than the B&I CARES Act Program Loans, this subpart is no longer used for loan processing requirements for Business and Industry (B&I) loans guaranteed by the Agency. Requirements for regular B&I loans (other than the B&I CARES Act Program Loans) may be found at 7 CFR part 5001.

(b) *Purpose.* The purpose of the B&I Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of quality loans that will provide lasting community benefits. It is not intended that the guarantee authority will be used for marginal or substandard loans or for relief of lenders having such loans.

(c) *Documents.* Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms and regulations referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *http://www.rd.usda.gov/publications.* Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the Agency.

[81 FR 36005, June 3, 2016, as amended at 85 FR 31040, May 22, 2020; 85 FR 62196, Oct. 2, 2020]

§ 4279.102 Definitions and abbreviations.

The definitions and abbreviations in § 4279.2 are applicable to this subpart.

§ 4279.103 Exception authority.

Section 4279.15 applies to this subpart.

§ 4279.104 Appeals.

Section 4279.16 applies to this subpart.

§§ 4279.105–4279.107 [Reserved]

§ 4279.108 Eligible borrowers.

(a) *Type of entity.* A borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other federally recognized tribal group; a public body; or an individual. A borrower must be engaged in or proposing to engage in a business. A business may include manufacturing, wholesaling, retailing, providing services, or other activities that will provide employment and improve the economic or environmental climate.

(b) *Citizenship.* Individual borrowers must be citizens of the United States or reside in the United States after

being legally admitted for permanent residence. For purposes of this subpart, citizens and residents of the Republic of Palau, the Federated States of Micronesia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands are considered U.S. citizens. Individuals that reside in the United States after being legally admitted for permanent residence must provide a permanent green card as evidence of eligibility. Private entity borrowers must demonstrate, to the Agency's satisfaction, that loan funds will remain in the United States and the facility being financed will primarily create new or save existing jobs for rural U.S. residents.

(c) *Rural area.* The business financed with a guaranteed loan under this subpart must be located in a rural area, except for cooperative organizations financed in accordance with § 4279.113(j)(2) and local foods projects financed in accordance with § 4279.113(y)(2). Loans to borrowers with facilities located in both rural and nonrural areas will be limited to the amount necessary to finance the facility located in the eligible rural area, except for those cooperative organizations financed in accordance with § 4279.113(j)(2) and those local foods projects financed in accordance with § 4279.113(y)(2).

(1) Rural areas are any area of a State other than a city or town that has a population of greater than 50,000 inhabitants and any urbanized area contiguous and adjacent to such a city or town, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). In making this determination, the Agency will use the latest decennial census of the United States.

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

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

(4) For the State of Hawaii, all areas within the State are considered rural, except for the Honolulu CDP within the County of Honolulu.

(5) For the Republic of Palau, the Federated States of Micronesia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, the Agency will determine what constitutes a rural area based on available population data.

(6) Notwithstanding any other provision of this definition, in determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a rural area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

(7) The Under Secretary, whose authority may not be redelegated, may determine that an area is ''rural in character.'' Any determination made by the Under Secretary under this provision will be to areas that are determined to be ''rural in character'' and are within: An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such city or town; or an area within an urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within ¼ mile of a rural area.

(i) Units of local government may petition the Under Secretary for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition must document how the area meets the requirements of paragraph (c)(7) of this section and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density; demographics; topography; and how the

local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor and Rural Development State Director and request comments within 10 business days, unless those comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of notice in a local newspaper and notice on the applicable Rural Development State Office Web site. The Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. The public notice will appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary for reconsideration, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

(ii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is ''rural in character.'' A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements of paragraph (c)(7) of this section and discusses why the State Director believes the area is ''rural in character,'' including, but not limited to, the area's population density; demographics; topography; and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the ''rural in character'' provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in accordance with paragraph (c)(7)(i) of this section. There is no appeal process for requests made on the initiative of the State Director.

(d) *Other credit.* All applications for assistance will be accepted and processed without regard to the availability of credit from any other source.

(e) *Prohibition under Agency programs.* No loans guaranteed by the Agency will be conditioned on any requirement that the recipients of such assistance accept or receive electric or other services from any particular utility, supplier, or cooperative.

[81 FR 36005, June 3, 2016, as amended at 87 FR 38644, June 29, 2022]

§§ 4279.109–4279.112 [Reserved]

§ 4279.113 Eligible uses of funds.

Eligible uses of funds must be consistent with § 4279.101(b) and § 4279.108(a) and include, but are not limited to, the following:

(a) Purchase and development of land, buildings, and associated infrastructure for commercial or industrial properties, including expansion or modernization.

(b) Business acquisitions provided that jobs will be created or saved. A business acquisition is considered the acquisition of an entire business, not a partial stock acquisition in a business.

(c) Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair the use or value of the property as security for the loan. The term of the lease must be equal to or greater than the term of the loan.

(d) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations. Financing for mixed-use properties, involving both commercial business and residential space, is authorized provided that not less than 50 percent of the building's projected revenue will be generated from business use.

(e) Purchase of machinery and equipment.

(f) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan.

(g) Debt refinancing when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing

jobs. Debt being refinanced must be debt of the borrower reflected on its balance sheet. The lender's analysis must document that, except for the refinancing of lines of credit, the debt being refinanced was for an eligible loan purpose under this subpart. Except as provided for in paragraph (j)(3) of this section, existing lender debt may be included provided that, at the time of application, the loan being refinanced has been closed and current for at least the past 12 months (current status cannot be achieved by the lender forgiving the borrower's debt or servicing actions that impact the borrower's repayment schedule), and the lender is providing better rates or terms. Unless the amount to be refinanced is owed directly to the Federal government or is federally guaranteed, existing lender debt may not exceed 50 percent of the overall loan.

(h) Takeout of interim financing. Guaranteeing a loan that provides for permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application that proposes such interim financing prior to closing the interim loan. The borrower must take no action that would have an adverse impact on the environment or limit the range of alternatives to be considered by the Agency during the environmental review process. The Agency will not guarantee takeout of interim financing loans that prevent a meaningful environmental assessment prior to Agency loan approval. Even for projects with interim financing, the Agency cannot approve the loan and issue a Conditional Commitment until the environmental process is complete. The Agency assumes no responsibility or obligation for interim loans.

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided the purchase is required for all of their borrowers and is the minimum amount required.

(j) Loans to cooperative organizations.

(1) Guaranteed loans to eligible cooperative organizations may be made in principal amounts up to $40 million if the project is located in a rural area, the cooperative facility being financed provides for the value-added processing of agricultural commodities, and the total amount of loans exceeding $25 million does not exceed 10 percent of the funds available for the fiscal year.

(2) Guaranteed loans to eligible cooperative organizations may also be made in non-rural areas provided:

(i) The primary purpose of the loan is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(ii) The applicant satisfactorily demonstrates that the primary benefit of the loan will be to provide employment for rural residents;

(iii) The principal amount of the loan does not exceed $25 million; and

(iv) The total amount of loans guaranteed under this paragraph does not exceed 10 percent of the funds available for the fiscal year.

(3) An eligible cooperative organization may refinance an existing B&I loan provided the existing loan is current and performing; the existing loan is not and has not been in monetary default (more than 30 days late) or the collateral of which has not been converted; and there is adequate security or full collateral for the new guaranteed loan.

(k) The purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative or the purchase of transferable cooperative stock in accordance with § 4279.115(a); or the purchase of stock in a business by employees forming an Employee Stock Ownership Plan or worker cooperative in accordance with § 4279.115(c).

(l) The purchase of preferred stock or similar equity issued by a cooperative organization or a fund that invests primarily in cooperative organizations in accordance with § 4279.115(b).

(m) Taxable corporate bonds when the bonds are fully amortizing and comply with all provisions of § 4279.126, and the bond holder (lender) retains 5 percent of the bond in accordance with § 4279.77. The bonds must be fully secured with collateral in accordance with § 4279.131(b). The bonds must only provide for a trustee when the trustee

is totally under the control of the lender. The bonds must provide no rights to bond holders other than the right to receive the payments due under the bond. For instance, the bonds must not provide for bond holders replacing the trustee or directing the trustee to take servicing actions, such as accelerating the bonds. Convertible bonds are not eligible under this paragraph due to the potential conflict of interest of a lender having an ownership interest in the borrower.

(1) The bond issuer (borrower) must not issue more than 11 bonds, with no more than 10 of those bonds being guaranteed under this program. The bond issuer must obtain the services and opinion of an experienced bond counsel who must present a legal opinion stating that the bonds are legal, valid, and binding obligations of the issuer and that the issuer has adhered to all applicable laws.

(2) The bond holder must purchase all of the bonds and comply with all Agency regulations. There must be a bond purchase agreement between the issuer and the bond holder. The bond purchase agreement must contain similar language to what is required to be in a loan agreement in accordance with §4279.161(b)(11) and must not be in conflict with subparts A or B of part 4279 or subpart B of part 4287 of this chapter. The bond holder is responsible for all servicing of the loan (bond), although the bond holder may contract for servicing assistance, including contracting with a trustee who remains under the lender's total control.

(n) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(o) Fees and charges outlined in §4279.120(a), (c) and (d).

(p) Feasibility studies.

(q) Agricultural production, when not eligible for Farm Service Agency (FSA) farm loan programs assistance and when it is part of an integrated business also involved in the processing of agricultural products. Any agricultural production considered for guaranteed loan financing must be owned, operated, and maintained by the business receiving the loan for which a guarantee is provided. Except for cooperative stock purchase loans in accordance with §4279.115(a), independent agricultural production operations are not eligible, even if not eligible for FSA farm loan programs assistance.

(1) The agricultural-production portion of any loan must not exceed 50 percent of the total loan or $5 million, whichever is less.

(2) This paragraph does not preclude financing the following types of businesses:

(i) Commercial nurseries engaged in the production of ornamental plants, trees, and other nursery products, such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage; and forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities, such as reforestation.

(ii) The growing of mushrooms or hydroponics.

(iii) The boarding and/or training of animals.

(iv) Commercial fishing.

(v) Aquaculture, including conservation, development, and utilization of water for aquaculture.

(r) Educational or training facilities.

(s) Industries undergoing adjustment from terminated Federal agricultural price and income support programs or increased competition from foreign trade.

(t) Community facility projects that are not listed as an ineligible loan purpose in §4279.117.

(u) Nursing homes and assisted living facilities where constant medical care is provided and available onsite to the residents. Independent living facilities are considered residential in nature and are not eligible in accordance with §4279.117(d).

(v) Tourist and recreation facilities, including hotels, motels, bed and breakfast establishments, and resort trailer parks and campgrounds, except as prohibited under ineligible purposes in §4279.117.

(w) Pollution control and abatement.

(x) Energy projects that are not eligible for the Rural Energy for America

Program (REAP) (7 CFR part 4280, subpart B), unless sufficient funding is not available under REAP, and when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application. This does not preclude the guarantee of joint REAP/B&I projects. Eligible energy projects must be commercially available. Eligible energy projects also include those that reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems and anaerobic digesters for the purpose of energy generation), including the modification of existing systems in rural areas.

(1) Projects that produce renewable biomass or biofuel as an output must utilize commercially available technologies and have completed two operating cycles at design performance levels prior to issuance of a Loan Note Guarantee.

(2) Projects that produce steam or electricity as an output must have met acceptance test performance criteria acceptable to the Agency and be successfully interconnected with the purchaser of the output. An executed power purchase agreement acceptable to the Agency will be required prior to issuance of a Loan Note Guarantee.

(3) Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case-by-case basis.

(y) Projects that process, distribute, aggregate, store, and/or market locally or regionally produced agricultural food products to support community development and farm and ranch income, subject to each of the following:

(1) The term ''locally or regionally produced agricultural food product'' means any agricultural food product that is raised, produced, and distributed in the locality or region in which the final product is marketed, so that the distance the product is transported is less than 400 miles from the origin of the product, or within the State in which the product is produced. Food products could be raw, cooked, or a processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(2) Projects may be located in urban areas, as well as rural areas.

(3) A significant amount of the food product sold by the borrower is locally or regionally produced, and a significant amount of the locally or regionally produced food product is sold locally or regionally. The Agency is choosing not to set a threshold for ''significant'' but reserves the right to do so in periodic notices in the FEDERAL REGISTER.

(4) The borrower must include in an appropriate agreement, with retail and institutional facilities to which the borrower sells locally or regionally produced agricultural food products, a requirement to inform consumers of the retail or institutional facilities that the consumers are purchasing or consuming locally or regionally produced agricultural food products.

(5) The Agency will give funding priority to projects that provide a benefit to underserved communities in accordance with § 4279.166(b)(4)(i)(G). An underserved community is a community (including an urban or rural community and an Indian tribal community) that has limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer to consumer direct markets and that has either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency-approved census.

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

[81 FR 36005, June 3, 2016, as amended at 85 FR 57084, Sept. 15, 2020]

§ 4279.114 [Reserved]

§ 4279.115 Cooperative stock/cooperative equity.

(a) *Cooperative stock purchase program.* The Agency may guarantee loans for the purchase of cooperative stock by individual farmers or ranchers in a

farmer or rancher cooperative established for the purpose of processing an agricultural commodity. The cooperative may use the proceeds from the stock sale to recapitalize, to develop a new processing facility or product line, or to expand an existing production facility. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative. Loan proceeds must remain in the cooperative from which stock was purchased, and the cooperative must not reinvest those funds into another entity. The Agency may also guarantee loans for the purchase of transferable stock shares of any type of existing cooperative, which would primarily involve new or incoming members. Such stock may provide delivery or some form of participation rights and may only be traded among cooperative members. Paragraphs (5) through (7) of this section are not applicable for guaranteed loans for the purchase of transferable cooperative stock.

(1) The maximum loan amount is the threshold established in §4279.161(c), and all applications will be processed in accordance with §4279.161(c).

(2) The maximum term is 7 years.

(3) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default.

(4) The lender must complete a written credit analysis of each stock purchase loan and a complete credit analysis of the cooperative prior to making its first stock purchase loan.

(5) The borrower may provide financial information in the manner that is generally required by commercial agricultural lenders.

(6) A feasibility study of the cooperative is required for startup cooperatives and may be required by the Agency for existing cooperatives when the cooperative's operations will be significantly affected by the proceeds that were generated from the stock sale.

(7) The Agency will conduct an appropriate environmental assessment on the processing facility and will not process individual applications for the purchase of stock until the environmental assessment on the cooperative processing facility is completed. Typically, an individual loan for the purchase of cooperative stock is considered a categorical exclusion.

(b) *Cooperative equity security guarantees.* The Agency may guarantee loans for the purchase of preferred stock or similar equity issued by a cooperative organization or for a fund that invests primarily in cooperative organizations. In either case, the guarantee must significantly benefit one or more entities eligible for assistance under the B&I program.

(1) ''Similar equity'' is any special class of equity stock that is available for purchase by non-members and/or members and lacks voting and other governance rights.

(2) A fund that invests ''primarily'' in cooperative organizations is determined by its percentage share of investments in and loans to cooperatives. A fund portfolio must have at least 50 percent of its loans and investments in cooperatives to be considered eligible for loan guarantees for the purchase of preferred stock or similar equity.

(3) The principal amount of the loan will not exceed $10 million.

(4) The maximum term is 7 years or no longer than the specified holding period for redemption as stated by the stock offering, whichever is less.

(5) All borrowers purchasing preferred stock or similar equity must provide documentation of the terms of the offering that includes compliance with State and Federal securities laws and financial information about the issuer of the preferred stock to both the lender and the Agency.

(6) Issuer(s) of preferred stock must be a cooperative organization or a fund and must be able to issue preferred stock to the public that, if required, complies with State and Federal securities laws.

(7) A fund must use a loan guaranteed under this subpart to purchase

preferred stock that is issued by cooperatives.

(8) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default. For the purpose of recovering losses from loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from reinvestment of dividends.

(9) Shares of preferred stock that are purchased with guaranteed loan proceeds cannot be converted to common or voting stock.

(10) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a borrower defaults on a loan financed under the guaranteed loan program, the borrower waives any ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

(11) Guaranteed loans for the purchase of preferred stock must be prepaid in the event a cooperative or fund that issued the stock exercises an early redemption. If the cooperative enters into bankruptcy, to the extent the cooperative can redeem the preferred stock, the borrower is required to repay the loan from the redemption of the stock.

(c) *Employee ownership succession.* The Agency may guarantee loans for conversions of businesses to either cooperatives or Employee Stock Ownership Plans (ESOP) within 5 years from the date of initial transfer of stock.

(1) The maximum loan amount is the threshold established in § 4279.161(c), and all applications will be processed in accordance with § 4279.161(c).

(2) The maximum term is 7 years.

(3) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default.

(4) The lender must complete a written credit analysis of each stock purchase loan and a complete credit analysis of the cooperative or ESOP prior to making its first stock purchase loan.

(5) If a cooperative is organized, the selling owner(s) become members with special control rights to protect their stake in the business while a succession plan is implemented. At the completion of the stock transfer, selling owners may retain their membership in the cooperative provided that their control rights are the same as all other members. Any special covenants that selling owners may have held must be extinguished upon completion of the transfer.

(6) If an ESOP is organized for transferring ownership to employees, selling owner(s) may not retain ownership in the business after 5 years from the date of the initial transfer of stock.

§ 4279.116 New Markets Tax Credit program.

This section identifies the provisions specific to guaranteed loans involving projects that include new markets tax credits available under the New Markets Tax Credit (NMTC) program. Such applicants and applications must comply with the provisions in subparts A and B of this part, except as modified in this section.

(a) *Loan guarantees for Qualified Active Low Income Community Businesses (QALICB).* (1) To be an eligible lender for a loan guarantee that involves NMTCs, the organization must meet the applicable eligibility criteria in § 4279.29 as otherwise modified by paragraphs (a)(1)(i) and (ii) of this section.

(i) Sub-entities under the control of a non-regulated lender approved as a lender for this program do not need to separately meet the requirements of § 4279.29(b). An eligible non-regulated lender may modify its list of eligible sub-entities under its control at any time by notifying the Agency in writing.

(ii) In order to take advantage of the requirement exemption in paragraph

(a)(1)(i) of this section, the non-regulated lender must include in its application to be a lender each sub-entity under its control and must clearly define the multiple-entity organizational and control structure. In addition, the lender must include each such sub-entity in the audited financial statements, commercial loan portfolio, and commercial loan performance statistics.

(2) The provisions of §4279.117(q) notwithstanding, a lender that is a Department of Treasury certified Community Development Entity (CDE) or subsidiary of a CDE (sub-CDE) may have an ownership interest in the borrower provided that each of the conditions specified in paragraphs (a)(2)(i) through (iv) of this section is met.

(i) The lender does not have an ownership interest in the borrower prior to the guaranteed loan application.

(ii) The lender does not take a controlling interest in the borrower.

(iii) The lender cannot provide equity or take an ownership interest in a borrower at a level that would result in the lender owning 20 percent or more interest in the borrower.

(iv) In its guaranteed loan application, the lender provides an Agency-approved exit strategy when the NMTCs expire after the seventh year. The CDE's (or sub-CDE's) exit strategy must include a general plan to address the lender's equity in the project, and, if the lender will divest its equity interest, how this will be accomplished and the impact on the borrower.

(3) Notwithstanding §4279.117(p), a CDE's (or sub-CDE's) ownership interest in the borrower does not constitute a conflict of interest. The Agency will mitigate the potential for or appearance of a conflict of interest by requiring appropriate loan covenants regarding limitations on dividends and distributions of earnings be established, as well as other covenants in accordance with §4279.161(b)(11). The Agency will also ensure that the lender limits waivers of loan covenants and future modifications of loan documents.

(4) For purposes of calculating tangible balance sheet equity, the CDE's or sub-CDE's loan that is subordinated to the guaranteed loan will be considered equity when calculating tangible balance sheet equity. The QALICB's financial statements must be prepared in accordance with GAAP.

(b) *Loan guarantees for the leveraged lender.* The provisions of §4279.117(s) notwithstanding, an investor fund entity, such as an investor partnership or investor LLC, may be an eligible borrower as specified in paragraph (b)(1) of this section. Paragraphs (b)(2) through (13) of this section identify modifications to subpart B of this part that apply when the eligible borrower is an investor fund entity.

(1) To be an eligible borrower for a NMTC loan, each of the following conditions must be met:

(i) The investor fund entity must be established for a single specific NMTC investment;

(ii) The lender is not an affiliate of the investor fund entity;

(iii) One hundred percent of the guaranteed loan funds are or will be invested in one or more sub-CDEs that will then be loaned directly to a Qualified Active Low Income Community Business (QALICB), as defined by applicable regulations of the Internal Revenue Service and are or will be used by the QALICB in accordance with §§4279.113 and 4279.117. All of the B&I guaranteed loan funds must be ''passed through'' the sub-CDE to the QALICB through a direct tracing method. The QALICB's project must be the ultimate use of the B&I guaranteed loan funds; and

(iv) The QALICB meets the requirements of §4279.108.

(2) The provisions of §4279.119 apply except that the loan guarantee limits apply to the QALICB and not to the investor fund entity, who would otherwise be understood to be the ''borrower.''

(3) Section 4279.126 applies to both the borrower (investor fund entity) and the QALICB. The terms and payment schedule of the lender's loan to the investor fund entity must be at least equal to the terms and payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments may be used for a NMTC loan. The lender may require additional principal repayment by a co-borrower, such as an owner or principal of the QALICB. The lender or sub-CDE

may require a debt repayment reserve fund or sinking fund; however, such fund is not in lieu of a principal repayment schedule in accordance with § 4279.126 as amended by this paragraph.

(4) Except for § 4279.131(b), § 4279.131 applies to both the lender's loan to the investor fund entity and the sub-CDE's loan to the QALICB. Section 4279.131(b) applies only to the sub-CDE's loan to the QALICB. Section 4279.116(a)(4) also applies when calculating tangible balance sheet equity.

(5) The personal and corporate guarantee provisions of § 4279.132 and the insurance provisions of § 4279.136 apply only to the QALICB and the sub-CDE's loan to the QALICB.

(6) Section 4279.137 applies to both the borrower (investor fund entity) and the QALICB.

(7) Sections 4279.144 and 4279.150 apply to both the QALICB and the sub-CDE's loan to the QALICB.

(8) Section 4279.161 applies to both the borrower (investor fund entity) and the QALICB. As part of the application completed by the lender in accordance with § 4279.161, the application documentation must include comparable information for the loan (using the B&I guaranteed loan funds) between the sub-CDE and QALICB. The requirements of § 4279.161 apply to the loan application, application analysis and underwriting, and loan documents between the sub-CDE and QALICB. The lender must include these materials in its guaranteed loan application to the Agency.

(9) The environmental requirements specified in § 4279.165(b) apply to both the loan between the sub-CDE and QALICB and the QALICB's project.

(10) When assigning the priority score to a NMTC loan application under § 4279.166, the Agency will score the project based on the sub-CDE's loan to the QALICB, the QALICB, and the QALICB's project as the ultimate use of B&I guaranteed loan funds.

(11) When complying with the planning and performing development provisions in § 4279.167, the lender is responsible for ensuring that both the sub-CDE's loan to the QALICB and the QALICB's project comply with the provisions in § 4279.167.

(12) Section 4279.180 applies to both the borrower (investor fund entity) and the QALICB.

(13) Section 4279.181 applies to both the borrower (investor fund entity) and the QALICB.

[81 FR 36005, June 3, 2016, as amended at 82 FR 26335, June 7, 2017]

§ 4279.117 Ineligible purposes and entity types.

(a) Distribution or payment to an individual or entity that will retain an ownership interest in the borrower or distribution or payment to a beneficiary of the borrower. Distribution or payment to a member of the immediate family of an owner, partner, or stockholder will not be permitted, except for a change in ownership of the business where the selling immediate family member does not retain an ownership interest and the Agency determines the price paid to be reasonable. As this type of transaction is not an arm's length transaction, reasonableness of the price paid will be based upon an appraisal. In situations where there is common ownership or an otherwise closely-related company is being paid to do construction or installation work for a borrower, only documented costs associated with construction or installation can be paid with loan proceeds. Documented construction or installation costs may not include any profit or wages to a related person, and all work must be done at cost with no profit built into the cost. This paragraph does not apply to transfers of ownership for ESOPs or worker cooperatives, to cooperatives where the cooperative pays the member for product or services, or where member stock is transferred among members of the cooperative in accordance with § 4279.115.

(b) Projects in excess of $1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees. However, this limitation is not to be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the establishment of such branch, affiliate,

or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations, unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area or its original location or in any other area where it conducts such operations.

(c) Projects in excess of $1 million that would increase direct employment by more than 50 employees, which is calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(d) The financing of timeshares, residential trailer parks, housing development sites, apartments, duplexes, or other residential housing, except as authorized in §4279.113(d).

(e) Owner-occupied housing, such as bed and breakfasts, hotels and motels, storage facilities, etc., are only allowed when the pro rata value of the owner's living quarters, based on square footage, is deducted from the use of loan proceeds.

(f) Guaranteeing lease payments or any lines of credit.

(g) Guaranteeing loans made by other Federal agencies.

(h) Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations shall neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor shall an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project that involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part that is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(i) Guarantees supporting inherently religious activities, such as worship, religious instruction, proselytization, or to pay costs associated with acquisition, construction, or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted.

(j) Businesses that derive more than 10 percent of annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds.

(k) Businesses deriving income from activities of a prurient sexual nature or illegal activities.

(l) Racetracks or facilities for the conduct of races by animals, professional or amateur drivers, jockeys, etc.

(m) Golf courses and golf course infrastructure, including par 3 and executive golf courses.

(n) Cemeteries.

(o) Research and development projects and projects that involve technology that is not commercially available.

(p) Any project that the Agency determines creates a conflict of interest or an appearance thereof between any party related to the project.

(q) Guarantees where the lender or any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower or where the borrower or any of its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender. Any of the lender's directors, stockholders, or other owners that are officers, directors, stockholders, or other owners of the borrower must be recused from the decisionmaking process.

(r) Other than cooperative stock purchase loans and cooperative equity security guarantees in accordance with §4279.115, guarantees supporting investment or arbitrage or speculative real estate investment.

(s) Lending institutions, investment institutions, or insurance companies.

(t) Charitable or fraternal organizations. Businesses that derive more than 10 percent of annual gross revenue from tax deductible charitable donations, based on historical financial statements required by § 4279.161(b), are considered charitable organizations for the purpose of this paragraph. Fees for services rendered or that are otherwise ineligible for deduction under the Internal Revenue Code are not considered tax deductible charitable donations.

(u) Any business located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.*

(v) Any business located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(w) Any project that drains, dredges, fills, levels, or otherwise manipulates a wetland or engages in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands. This does not apply to loans for utility lines.

§ 4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

(a) *Loan amount.* The total amount of B&I loans to one borrower (including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing B&I guaranteed loans, and the new loan request) must not exceed $10 million, except as outlined in paragraphs (a)(1) and (2) of this section. In addition to the borrower loan limit, there is a guarantor loan limit of $50 million.

(1) The Administrator may, at the Administrator's discretion, grant an exception to the $10 million limit for loans of $25 million or less under the following circumstances:

(i) The project to be financed is a high-priority project as defined in § 4279.2. Priority points will be awarded in accordance with the criteria contained in § 4279.166;

(ii) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guaranteed loan is not approved; and

(iii) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding $10 million.

(2) The Secretary, whose authority may not be redelegated, may approve guaranteed loans in excess of $25 million, at the Secretary's discretion, for rural cooperative organizations that process value-added agricultural commodities in accordance with § 4279.113(j)(1).

(b) *Percentage of guarantee.* The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and the Agency. The maximum percentage of guarantee is 80 percent for loans of $5 million or less, 70 percent for loans between $5 and $10 million, and 60 percent for loans exceeding $10 million. For subsequent guaranteed loans, the maximum percentage of guarantee will be based on the cumulative amount of outstanding principal and interest of any existing B&I guaranteed loans and the new loan request. Notwithstanding the preceding, the Administrator may, at the Administrator's discretion, grant an exception allowing guarantees of up to 90 percent on loans of $5 million or less if the conditions of either paragraph (b)(1) or (b)(2) are met. Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with an increased percentage of guarantee. The Agency will publish a notice announcing this limit in the FEDERAL REGISTER.

(1) The project to be financed is a high-priority project as defined in § 4279.2. Priority points will be awarded in accordance with the criteria contained in § 4279.166; or

(2) The lender documents, to the satisfaction of the Agency, that the loan will not be made and the project will not be completed due to the bank's

legal or regulatory lending limit if the higher percentage of guarantee is not approved.

§4279.120 Fees and charges.

There are two types of non-refundable fees—the guarantee fee and the annual renewal fee. These fees are to be paid by the lender but may be passed on to the borrower.

(a) *Guarantee fee.* The guarantee fee is paid at the time the Loan Note Guarantee is issued and may be included as an eligible use of guaranteed loan proceeds. The amount of the guarantee fee is determined by multiplying the total loan amount by the guarantee fee rate by the percentage of guarantee. The rate of the guarantee fee is established by the Agency in an annual notice published in the FEDERAL REGISTER. Subject to annual limits set by the Agency in the published notice, the Agency may charge a reduced guarantee fee if requested by the lender for loans of $5 million or less when the borrower's business:

(1) Supports value-added agriculture and results in farmers benefiting financially,

(2) Promotes access to healthy foods, or

(3) Is a high impact business development investment as defined in §4279.2 and applied in accordance with §4279.166(b)(4) and is located in a rural community that:

(i) Is experiencing long-term population decline;

(ii) Has remained in poverty for the last 30 years;

(iii) Is experiencing trauma as a result of natural disaster;

(iv) Is located in a city or county with an unemployment rate 125 percent of the Statewide rate or greater; or

(v) Is located within the boundaries of a federally recognized Indian tribe's reservation or within tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.

(b) *Annual renewal fee.* The annual renewal fee is paid by the lender to the Agency once a year. Payment of the annual renewal fee is required in order to maintain the enforceability of the guarantee as to the lender.

(1) The Agency will establish the rate of the annual renewal fee in an annual notice published in the FEDERAL REGISTER. The amount of the annual renewal fee is determined by multiplying the outstanding principal loan balance as of December 31 of each year by the annual renewal fee rate by the percentage of guarantee. The rate that is in effect at the time the loan is obligated remains in effect for the life of the guarantee on the loan.

(2) Annual renewal fees are due on January 31. Payments not received by April 1 are considered delinquent and, at the Agency's discretion, may result in the Agency terminating the guarantee to the lender. The Agency will provide the lender 30 calendar days' notice that the annual renewal fee is delinquent before terminating the guarantee. Holders' rights will continue in effect as specified in Form RD 4279–5, ''Loan Note Guarantee,'' and Form RD 4279–6, ''Assignment Guarantee Agreement,'' unless the holder took possession of an interest in the Loan Note Guarantee knowing the annual renewal fee had not been paid. Until the Loan Note Guarantee is terminated by the Agency, any delinquent annual renewal fees will bear interest at the note rate, and any delinquent annual renewal fees, including any interest due thereon, will be deducted from any loss payment due the lender. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first annual renewal fee payment is due January 31 of the second year following the date the Loan Note Guarantee was issued.

(3) Lenders are prohibited from selling guaranteed loans on the secondary market if there are unpaid annual renewal fees.

(c) *Routine lender fees.* The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business, and these fees are an eligible use of loan proceeds. The lender must document such routine fees on Form RD 4279–1, ''Application for Loan Guarantee.'' The lender may charge prepayment penalties and late payment fees that are stipulated in the loan documents, as long as they are

reasonable and customary; however, the Loan Note Guarantee will not cover either prepayment penalties or late payment fees.

(d) *Professional services.* Professional services are those rendered by persons generally licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by loan packagers. The borrower may pay fees for professional services needed for planning and developing a project. Such fees are an eligible use of loan proceeds provided that the Agency agrees that the amounts are reasonable and customary. The lender must document these fees on Form RD 4279–1.

§§ 4279.121–4279.124 [Reserved]

§ 4279.125 Interest rates.

The interest rate for the guaranteed loan will be negotiated between the lender and the borrower and may be either fixed or variable, or a combination thereof, as long as it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers for loans without guarantees and are subject to Agency review and approval. Lenders are encouraged to utilize the secondary market and pass interest-rate savings on to the borrower.

(a) A variable interest rate must be a rate that is tied to a published base rate, published in a national or regional financial publication, agreed to by the lender and the Agency. The variable interest rate must be specified in the promissory note and may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly. The lender must incorporate, within the variable rate promissory note at loan closing, the provision for adjustment of payment installments. The lender must fully amortize the outstanding principal balance within the prescribed loan maturity in order to eliminate the possibility of a balloon payment at the end of the loan.

(b) It is permissible to have different interest rates on the guaranteed and unguaranteed portions of the loan provided that the rate of the guaranteed portion does not exceed the rate on the unguaranteed portion, except for situations where a fixed rate on the guaranteed portion becomes a higher rate than the variable rate on the unguaranteed portion due to the normal fluctuations in the approved variable interest rate.

(c) Any change in the base rate or fixed interest rate between issuance of Form RD 4279–3, ''Conditional Commitment,'' and Form RD 4279–5 must be approved in writing by the Agency. Approval of such change must be shown as an amendment to the Conditional Commitment in accordance with § 4279.173(b) and must be reflected on Form RD 1980–19, ''Guaranteed Loan Closing Report.''

(d) The lender's promissory note must not contain provisions for default or penalty interest nor will default or penalty interest, interest on interest, or late payment fees or charges be paid under the Loan Note Guarantee.

§ 4279.126 Loan terms.

(a) The length of the loan term must be the same for both the guaranteed and unguaranteed portions of the loan. The maximum repayment for loans for real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a debt refinancing loan may be based on the collateral the lender will take to secure the loan.

(b) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed and those used as collateral, and the borrower's ability to repay the loan.

(c) Only loans that require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment will be guaranteed.

(d) The first installment of principal and interest will, if possible, be scheduled for payment after the facility is operational and has begun to generate income. However, the first full installment must be due and payable within 3 years from the date of the promissory note and be paid at least annually thereafter. In cases where there is an interest-only period, interest will be

paid at least annually from the date of the note.

(e) There must be no ''due-on-demand'' clauses without cause. Regardless of any ''due-on-demand'' with cause provision in a lender's promissory note, the Agency must concur in any acceleration of the loan unless the basis for acceleration is monetary default.

§§ 4279.127–4279.130 [Reserved]

§ 4279.131 Credit quality.

The Agency will only guarantee loans that are sound and that have a reasonable assurance of repayment. The lender is responsible for conducting a financial analysis that involves the systematic examination and interpretation of information to assess a company's past performance, present condition, and future viability. The lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a comprehensive, written credit analysis, including capacity (sufficient cash flow to service the debt), collateral (assets to secure the loan), conditions (borrower, economy, and industry), capital (equity/net worth), and character (integrity of management), as further described in paragraphs (a) through (e) of this section. The lender's analysis is the central underwriting document and must be sufficiently detailed to describe the proposed loan and business situation and document that the proposed loan is sound. The lender's analysis must include a written discussion of repayment ability with a cash-flow analysis, history of debt repayment, borrower's management, necessity of any debt refinancing, and credit reports of the borrower, principals, and any parent, affiliate, or subsidiary. The lender's analysis must also include spreadsheets and discussion of the 3 years of historical balance sheets and income statements (for existing businesses) and 2 years of projected balance sheets, income statements, and cash flow statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or the Risk Management Association). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales.

(a) *Capacity/cash flow.* The lender must make all efforts to ensure the borrower has adequate working capital or operating capital and to structure or restructure debt so that the borrower has adequate debt coverage and the ability to accommodate expansion.

(b) *Collateral.* The lender must ensure that the collateral for the loan has a documented value sufficient to protect the interest of the lender and the Agency. The discounted collateral value must be at least equal to the loan amount.

(1) The lender must discount collateral consistent with the sound loan-to-discounted value policy outlined in paragraphs (b)(1)(i) through (iv) of this section. The type, quality, and location of collateral are relevant factors used to assess collateral adequacy and appropriate levels of discounting. Other factors to be considered in the discounted value of collateral must include the marketability and alternative uses of the collateral. That is, specialized buildings or equipment will be discounted greater than multi-purpose facilities or equipment. When using discounts other than those outlined in paragraphs (b)(1)(i) through (b)(1)(iv) and when in accordance with paragraph (b)(2), the lender must document why such discounts are appropriate.

(i) A maximum of 80 percent of current fair market value will be given to real estate. Special purpose real estate must be assigned less value.

(ii) A maximum of 70 percent of cost or current fair market value will be given to machinery, equipment, and furniture and fixtures and will be based on its marketability, mobility, useful life, specialization, and alternative uses, if any.

(iii) A maximum of 60 percent of book value will be assigned to acceptable inventory and accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts, and other accounts deemed

not to be acceptable collateral, as determined by the Agency, will be omitted. Calculations to determine the percentage to be applied in the analysis are to be based on the realizable value of the accounts receivable taken from a current aging of accounts receivable from the borrower's most recent financial statement. At a minimum, reviewed annual financial statements will be required when there is a predominant reliance on inventory and/or receivable collateral that exceeds $250,000. Except for working capital loans, term debt must not be dependent upon accounts receivable and inventory to meet collateral requirements.

(iv) No value will be assigned to unsecured personal, partnership, or corporate guarantees.

(2) Some businesses are predominantly cash-flow oriented, and where cash flow and profitability are strong, loan-to-value discounts may be adjusted accordingly with satisfactory documentation. A loan primarily based on cash flow must be supported by a successful and documented financial history. Under no circumstances must the loan-to-value of the collateral (loan-to-fair market value) ever be equal to or greater than 100 percent.

(3) Intangible assets cannot serve as primary collateral. For purposes of determining compliance with this requirement, leasehold improvements are considered tangible assets and can serve as primary collateral.

(4) A parity or junior lien position may be considered provided the loan-to-discounted value is adequate to secure the guaranteed loan in accordance with this section.

(5) The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion.

(c) *Conditions.* The lender must consider the current status of the borrower, overall economy, and industry for which credit is being extended. The regulatory environment surrounding the particular business or industry must also be considered. Businesses in areas of decline will be required to provide strong business plans that outline how they differ from the current trends. Local, regional, and national condition of the industry must be addressed.

(d) *Capital/equity.* (1) A minimum of 10 percent tangible balance sheet equity (or a maximum debt to tangible net worth ratio of 9:1) will be required at loan closing for borrowers that are existing businesses. A minimum of 20 percent tangible balance sheet equity (or a maximum debt to tangible net worth ratio of 4:1) will be required at loan closing for borrowers that are new businesses. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent (or a maximum debt to tangible net worth ratio between 3:1 and 1.5:1) at loan closing, considering whether the business is an existing business with a successful financial and management history or a new business; the value of personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study.

(2) Tangible balance sheet equity will be determined based upon financial statements prepared in accordance with GAAP except that, for the purposes of this subpart, leasehold improvements are to be considered tangible assets when making the tangible balance sheet equity calculation. The capital/equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the borrower's balance sheet. Transfers of assets at fair market value between related parties, which are not arm's length transactions, must be in accordance with GAAP and require evidence that the transaction was entered into at market terms. Tangible equity cannot include appraisal surplus, bargain purchase gains, or intangible assets (except for leasehold improvements). Owner subordinated debt may be included when the subordinated debt is in exchange for cash injected into the business that remains in the business for the life of the guaranteed loan. The note or other form of evidence must be submitted to the Agency in order for subordinated debt to count towards

meeting the tangible balance sheet equity requirement.

(3) The lender must certify, in accordance with §4279.181(a)(9)(i), that the capital/equity requirement was determined, based on a balance sheet prepared in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced. A copy of the loan closing balance sheet must be included with the lender's certification.

(4) In situations where a real estate holding company and an operating entity are dependent upon one another's operations and are effectively one business, they must be co-borrowers, unless waived by the Agency when the Agency determines that adequate justification exists to not require the entities to be co-borrowers. The capital/equity requirement will apply to all borrowing entities on a consolidated basis, and financial statements must be prepared both individually and on a consolidated basis.

(5) In situations where co-borrowers are independent operations, the capital/equity requirement will apply to all co-borrowers on an individual basis.

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

(7) Increases in the equity requirement may be imposed by the Agency. A reduction in the capital/equity requirement for existing businesses may be permitted by the Administrator under the following conditions:

(i) Collateralized personal and/or corporate guarantees, in accordance with §4279.132, when feasible and legally permissible, are obtained; and

(ii) All pro forma and historical financial statements indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt coverage ratio.

(e) *Character.* The lender must conduct a thorough review of key management personnel to ensure that the business has adequately trained and experienced managers. The borrower and all owners with a 20 percent or more ownership interest must have a good credit history, reflecting a record of meeting obligations in a timely manner. If there have been credit problems in the past, the lender must provide a satisfactory explanation to show that the problems are unlikely to recur.

[81 FR 36005, June 3, 2016, as amended at 83 FR 11634, Mar. 16, 2018]

§4279.132 Personal and corporate guarantees.

(a) Full, unconditional personal and/or corporate guarantees for the full term of the loan are required from those owning 20 percent or more interest in the borrower, where legally permissible, unless the Agency grants an exception. The Agency may grant an exception for existing businesses only when the lender requests it and documents to the Agency's satisfaction that collateral, equity, cash flow and profitability indicate an above-average ability to repay the loan. Partial guarantees for the full term of the loan at least equal to each owner's percentage of interest in the borrower times the loan amount may be required in lieu of full, unconditional guarantees when the guarantors' percentages equal 100 percent so that the loan is fully guaranteed.

(b) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

(1) Guarantees to be secured;

(2) Guarantees of parent, subsidiaries, or affiliated companies owning less than a 20 percent interest in the borrower; and

(3) Guarantees from persons whose ownership interest in the borrower is held indirectly through intermediate entities.

(c) All personal and corporate guarantors must execute Form RD 4279–14, ''Unconditional Guarantee,'' and any guarantee form required by the lender. The Agency will retain the original, executed Form RD 4279–14.

(1) Any amounts paid by the Agency on behalf of an Agency guaranteed loan

borrower will constitute a Federal debt owed to the Agency by the guaranteed loan borrower.

(2) Any amounts paid by the Agency pursuant to a claim by a guaranteed program lender will constitute a Federal debt owed to the Agency by a guarantor of the loan, to the extent of the amount of the guarantor's guarantee.

(3) In all instances under paragraphs (c)(1) and (2) of this section, interest charges will be assessed in accordance with 7 CFR 1951.133.

§§ 4279.133–4279.135 [Reserved]

§ 4279.136 Insurance.

The lender is responsible for ensuring that required insurance is maintained by the borrower.

(a) *Hazard.* Hazard insurance with a standard clause naming the lender as mortgagee or loss payee, as applicable, is required for the life of the guaranteed loan. The amount must be at least equal to the replacement value of the collateral or the outstanding balance of the loan, whichever is the greater amount.

(b) *Life.* The lender may require a collateral assignment of life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage must be in amounts necessary to provide for management succession or to protect the business. The Agency may require life insurance on key individuals for loans where the lender has not otherwise proposed such coverage. The cost of insurance and its effect on the applicant's working capital must be considered, as well as the amount of existing insurance that could be assigned without requiring additional expense.

(c) *Worker compensation.* Worker compensation insurance is required in accordance with State law.

(d) *Flood.* National flood insurance is required in accordance with applicable law.

(e) *Other.* The lender must consider whether public liability, business interruption, malpractice, and other insurance is appropriate to the borrower's particular business and circumstances and must require the borrower to obtain such insurance as is necessary to protect the interests of the borrower, the lender, or the Agency.

§ 4279.137 Financial statements.

Except for audited financial statements required by § 4279.71, the lender will determine the type and frequency of submission of financial statements by the borrower and any guarantors. At a minimum, annual financial statements prepared by an accountant in accordance with GAAP are required, except for personal financial statements and cooperative stock purchase loans in accordance with § 4279.115(a) that do not have to be prepared in accordance with GAAP. However, if the loan amount exceeds $10 million or if circumstances warrant, the Agency may require annual audited financial statements.

§§ 4279.138–4279.143 [Reserved]

§ 4279.144 Appraisals.

Lenders must obtain appraisals for real estate and chattel collateral when the value of the collateral exceeds $250,000, unless the chattel is newly-acquired equipment and the value is supported by a bill of sale. For collateral values under this threshold, lenders must follow their primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value. Lenders must use the fair market value as established by the appraisal and discounting policies outlined in § 4279.131(b) to meet the discounted collateral coverage requirements of this subpart. Lenders are responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. The Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question. Appraisals must not be more than 1 year old, and a more recent appraisal may be requested by the Agency in order to reflect more current market conditions. For loan servicing purposes, an appraisal may be updated in lieu of a complete new appraisal when the original appraisal is more than 1 year old but less than 2 years old. Failure by the lender to follow

these requirements will be considered not acting in a reasonably prudent manner.

(a) All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions must meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989, and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP) and be performed by a State Certified General Appraiser. Notwithstanding any exemption that may exist for transactions guaranteed by a Federal government agency, all appraisals obtained by the lender for loanmaking and servicing must conform to the Interagency Appraisal and Evaluations Guidelines established by the lender's primary Federal or State regulator. All appraisals must include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the fair market value of the collateral, if applicable. The lender must complete and submit its technical review of the appraisal. For construction projects, the lender must use the ''as-completed'' market value of the real estate to determine value of the real estate property.

(b) Values of both tangible and intangible assets, including values attributed to business valuation or as a going concern, must be reported individually/separately in the appraisal as values attributed to business valuation or as a going concern will be deducted from the reconciled fair market value of the hard assets for purposes of calculating collateral coverage.

(c) Chattels with values under the $250,000 threshold must be evaluated in accordance with the lender's primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value. Chattel appraisals must reflect the age, condition, and remaining useful life of the equipment. If the appraisal is completed by a State licensed/certified appraiser, the appraisal report must comply with USPAP Standards 7 and 8.

[81 FR 36005, June 3, 2016, as amended at 81 FR 54477, Aug. 16, 2016]

§§ 4279.145–4279.149 [Reserved]

§ 4279.150 Feasibility studies.

A feasibility study, by a qualified independent consultant acceptable to the Agency, is required for new businesses. The Agency may require a feasibility study for existing businesses when the project will significantly affect the borrower's operations, and cash flow from the existing facility is not sufficient to service the new debt. At a minimum, a feasibility study must include an evaluation of the economic, market, technical, financial, and management feasibility and an executive summary that reaches an overall conclusion as to the business' chance of success. The income approach of an appraisal is not an acceptable feasibility study.

§§ 4279.151–4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, borrowers and lenders may file a complete application without filing a preapplication. The Agency will neither accept nor process preapplications and applications unless a lender has agreed to finance the proposal. For borrowers other than individuals, a Unique Entity Identifier (UEI) is required. Instructions for obtaining the UEI are available at *https://sam.gov/*. Guaranteed loans exceeding $600,000 must be submitted under the requirements specified in paragraph (b) of this section. However, guaranteed loans of $600,000 and less may be submitted under the requirements of either paragraph (b) or (c) of this section.

(a) *Preapplications.* Lenders may file preapplications by submitting the following to the Agency:

(1) A letter or preliminary lender credit analysis, signed by the lender, containing the following:

(i) Name of the proposed borrower, organization type, address, contact person, Federal tax identification number, email address, and telephone number;

(ii) Name of the proposed lender, address, telephone number, contact person, email address, and lender's Internal Revenue Service (IRS) identification number;

(iii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms;

(iv) Description of collateral to be offered with estimated value(s) and the amount and source of equity to be contributed to the project;

(v) A brief description of the project, products or services provided, and availability of raw materials and supplies; and

(vi) The number of current full-time equivalent jobs, the number of jobs to be created as a result of the proposed loan, and the overall average wage rate.

(2) The borrower's current (not more than 90 days old) balance sheet and year-to-date income statement. For existing businesses, also include balance sheets and income statements for the last 3 years; and

(3) A completed Form RD 4279–2, ''Certification of Non-Relocation and Market Capacity Information Report,'' if the proposed loan is in excess of $1 million and will increase direct employment by more than 50 employees.

(b) *Applications.* Lenders must submit the information specified in paragraphs (b)(1) through (19) of this section when filing an application with the Agency.

(1) A completed Form RD 4279–1.

(2) A completed Form RD 4279–2, if the proposed loan is in excess of $1 million and will increase direct employment by more than 50 employees, unless already submitted in accordance with § 4279.161(a)(3).

(3) Environmental review documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' or successor regulation.

(4) A personal or commercial credit report from an acceptable credit reporting company for each individual or entity owning 20 percent or more interest in the borrower, except for those corporations listed on a major stock exchange. Credit reports are not required for elected and appointed officials when the applicant is a public body or non-profit corporation.

(5) Commercial credit reports for the borrower(s) and any parent, affiliate, and subsidiary companies.

(6) Current (not more than 90 days old) financial statements for any parent, affiliate, and subsidiary companies.

(7) Current (not more than 90 days old) personal and corporate financial statements of any guarantors.

(8) For all borrowers, a current (not more than 90 days old) balance sheet and year-to-date income statement, a pro forma balance sheet projected for loan closing, and projected balance sheets, income statements, and cash flow statements for the next 2 years. Projections must be prepared in line with GAAP standards and supported by a list of assumptions showing the basis for the projections. In the event processing of the loan is not complete within 90 days, a current set of financial statements will be required every 90 days.

(9) For borrowers that are existing businesses, balance sheets and income statements for the last 3 years. If the business has been in operation for less than 3 years, balance sheets and income statements for all years for which financial information is available.

(10) The lender's comprehensive, written credit analysis of the proposal, as described in § 4279.131.

(11) A draft loan agreement. A final loan agreement must be executed by the lender and borrower before the Agency issues a Loan Note Guarantee and must contain any additional requirements imposed by the Agency in its Conditional Commitment. The loan agreement must establish prudent, adequate controls to protect the interests of the lender and Agency. At a minimum, the following requirements must be included in the loan agreement:

(i) Type and frequency of borrower and guarantor financial statements to be required for the duration of the loan;

(ii) Prohibition against assuming liabilities or obligations of others;

(iii) Limitations on dividend payments and compensation of officers and owners;

(iv) Limitation on the purchase and sale of equipment and other fixed assets;

(v) Restrictions concerning consolidations, mergers, or other circumstances and a limitation on selling the business without the concurrence of the lender;

(vi) Maximum debt-to-net worth ratio; and

(vii) Minimum debt service coverage ratio.

(12) Intergovernmental consultation comments in accordance with 2 CFR part 415, subpart C, or successor regulation, unless exemptions have been granted by the State single point of contact.

(13) Appraisals, accompanied by a copy of the appropriate environmental site assessment, if available, and the technical review of the appraisals required by §4279.144(a).

(14) A business plan or similar document that must include a description of the business and project; management experience; sources of capital; products, services, and pricing; marketing plan; proposed use of funds; availability of labor, raw materials, and supplies; contracts in place; distribution channels; and the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship. A business plan may be omitted if the information is included in a feasibility study. A business plan may also be omitted when loan proceeds are used exclusively for debt refinancing and fees.

(15) Independent feasibility study, if required.

(16) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission regulations, a copy of SEC Form 10–K, ''Annual Report Pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.''

(17) For health care facilities, a certificate of need, if required by statute or State law.

(18) For guaranteed loan applications for five or more residential units, including nursing homes and assisted-living facilities, an Affirmative Fair Housing Marketing Plan that is in conformance with 7 CFR 1901.203(c)(3).

(19) Any additional information required by the Agency to make a decision, including any information needed to score the project in accordance with §4279.166.

(c) *Applications of $600,000 and less.* Guaranteed loan applications may be processed under this paragraph if the request does not exceed $600,000, provided the Agency determines that there is not a significant increased risk of a default on the loan. A lender may need to resubmit an application under paragraph (b) of this section if the application under this paragraph does not contain sufficient information for the Agency to make a decision to guarantee the loan. Applications submitted under this paragraph must include the information contained in paragraphs (b)(1) (with the short application box marked at the top of Form RD 4279–1), (b)(3), (b)(8) through (10), (b)(12), and (b)(13) of this section. The lender must have the documentation identified in paragraph (b) of this section, with the exception of paragraph (b)(2), available in its file for review.

[81 FR 36005, June 3, 2016, as amended at 89 FR 34958, May 1, 2024]

§4279.162 Strategic economic and community development.

Applicants with projects that support the implementation of Strategic Community Investment Plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of Strategic Community Investment Plans on a multi-jurisdictional and multi-sectoral basis.

[85 FR 59395, Sept. 22, 2020]

§§4279.163–4279.164 [Reserved]

§4279.165 Evaluation of application.

(a) *General review.* The Agency will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the

Agency determines it is unable to guarantee the loan, it will inform the lender in writing.

(b) *Environmental requirements.* The environmental review process must be completed, in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' or successor regulation, prior to loan approval.

§ 4279.166 Loan priority scoring.

The Agency will consider applications and preapplications in the order they are received by the Agency; however, for the purpose of assigning priority points as described in paragraph (b) of this section, the Agency will compare an application to other pending applications that are competing for funding. The Agency may establish a minimum loan priority score to fund projects from the National Office reserve and will publish any minimum loan priority score in a notice published in the FEDERAL REGISTER.

(a) When applications on hand otherwise have equal priority, the Agency will give preference to applications for loans from qualified veterans.

(b) The Agency will assign priority points on the basis of the point system contained in this section. The Agency will use the application and supporting information to determine an eligible proposed project's priority for available guarantee authority. To the extent possible, all lenders must consider Agency priorities when choosing projects for guarantee. The lender must provide necessary information related to determining the score, if requested.

(1) *Population priority.* Projects located in an unincorporated area or in a city with a population under 25,000 (10 points).

(2) *Demographics priority.* The priority score for demographics priority will be the total score for the following categories:

(i) Located in an eligible area of long-term population decline according to the last three decennial censuses (5 points);

(ii) Located in a rural county that has had 20 percent or more of its population living in poverty based on the last three decennial censuses (10 points);

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster (5 points);

(iv) Located in a city or county with an unemployment rate 125 percent of the Statewide rate or greater (5 points);

(v) Located within the boundaries of a Federally recognized Indian tribe's reservation, within tribal trust lands, or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act (5 points); and

(vi) Business is owned by a qualified veteran as defined by § 4279.2 (5 points).

(3) *Loan features.* The priority score for loan features will be the total score for each of the following categories:

(i) Lender will price the guaranteed loan at an interest rate equal to or less than the equivalent of the Wall Street Journal published Prime Rate plus 1.5 percent (5 points);

(ii) Lender will price the guaranteed loan at an interest rate equal to or less than the equivalent of the Wall Street Journal published Prime Rate plus 1 percent (5 points);

(iii) The Agency guaranteed loan is less than 60 percent of project cost (5 points);

(iv) The Agency guaranteed loan is less than 50 percent of project cost (5 points);

(v) The Agency guaranteed loan is less than 40 percent of project cost (5 points); and

(vi) For loans not requesting an exception under § 4279.119(b), the percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(4) *High impact business investment priorities.* The priority score for high impact business investment will be the total score for the following categories:

(i) *Business/industry.* The priority score for business/industry will be the total score for the following:

(A) Industry that is not already present in the community (5 points);

(B) Business that has 20 percent or more of its sales in international markets (5 points);

(C) Business that offers high value, specialized products and/or services that command high prices (5 points);

(D) Business that provides an additional market for existing local businesses (5 points);

(E) Business that is locally owned and managed (5 points);

(F) Business that will produce a natural resource value-added product (5 points); and

(G) Business that processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products to underserved communities in accordance with §4279.113(y)(5) (10 points).

(ii) *Occupations.* The priority score for occupations will be the total score for the following:

(A) Business that creates or saves jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points);

(B) Business that creates or saves jobs with an average wage exceeding 150 percent of the Federal minimum wage (5 points); and

(C) Business that offers a healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer (5 points).

(5) *Administrative points.* The State Director may assign up to 10 additional points to an application to account for Statewide distribution of funds, natural disasters or economic emergency conditions, community economic development strategies, State strategic plans, fundamental structural changes in a community's economic base, or projects that will fulfill an Agency initiative. In addition to the State Director assigned points, if an application is considered in the National Office, the Administrator may assign up to an additional 10 points to account for geographic distribution of funds, emergency conditions caused by economic problems or natural disasters, or projects that will fulfill an Agency initiative.

§4279.167 Planning and performing development.

(a) *Design policy.* The lender must ensure that all facilities constructed with program funds are designed, and costs estimated, by an independent professional, utilizing accepted architectural, engineering, and design practices. The Agency may require an independent professional architect on complex projects. The lender must ensure the design conforms to applicable Federal, State, and local codes and requirements. The lender must also ensure that the project will be completed with available funds and, once completed, will be used for its intended purpose and produce in the quality and quantity proposed in the completed application approved by the Agency. Once construction is completed, the lender must provide the Agency with a copy of the Notice of Completion or similar document issued by the relevant building jurisdiction.

(b) *Issuing the Loan Note Guarantee prior to project completion.* If the lender requests that the Loan Note Guarantee be issued prior to construction or completion of a project, the lender must have a construction monitoring plan acceptable to the Agency and undertake the added responsibilities set forth in this paragraph. The lender must monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, State, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(1) In cases of takeout of interim financing where the Loan Note Guarantee is issued prior to construction or completion of a project, the promissory note must contain the terms and conditions of the interim financing and the permanent financing and convert the interim financing to the permanent note as the Loan Note Guarantee can only be placed on one note.

(2) Prior to disbursement of construction funds, the lender must have:

(i) A complete set of plans and specifications for the project on file;

(ii) A detailed timetable for the project with a corresponding budget of costs setting forth the parties responsible for payment. The timetable and budget must be agreed to by the borrower;

(iii) A person, who may be the project architect or engineer, with demonstrated experience relating to the project's industry, confirm that the budget is adequate for the planned development;

(iv) A firm, fixed-price construction contract with an independent general contractor with costs and provisions for change order approvals, a retainage percentage, and a disbursement schedule; a 100 percent performance/payment bond on the borrower's contractor; or a contract with an independent disbursement and monitoring firm where project construction and completion are guaranteed. A bonding agent must be listed on Treasury Circular 570; and

(v) Contingencies in place to handle unforeseen cost overruns without seeking additional guaranteed assistance. These are to be agreed to by the borrower.

(3) Once construction begins, the lender is to:

(i) Use any borrower funds in the project first;

(ii) Ensure that the project is built to support the functions at the level and quality contemplated by the borrower through the use of accepted architectural and engineering practices. There is no absolute requirement that the goal be achieved by the use of a professional inspection. However, if after careful review, it appears that the use of a professional inspector is the only method that ensures the project is built to support the functions at the level and quality contemplated by the borrower through the use of accepted architectural and engineering practices, one may be required by the Agency. If one is required, inspections must be made by a qualified, independent inspector prior to any progress payment. If other less expensive or rigorous methods will achieve the same result, they may be utilized. The decision will be made on a case-by-case basis and must be reasonable under the specific circumstances of the case;

(iii) Obtain lien waivers from all contractors and materialmen prior to any disbursement; and

(iv) Provide at least monthly, written reports to the Agency on fund disbursement and project status.

(4) Once construction is completed, the lender is to provide the Agency with a copy of the Notice of Completion or similar document issued by the relevant building jurisdiction.

(c) *Compliance with other Federal laws.* Lenders must comply with other applicable Federal laws, including Equal Employment Opportunities, the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

(d) *Environmental responsibilities.* The lender must ensure that the borrower has:

(1) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' or successor regulation, including the provision of all required Federal, State, and local permits;

(2) Complied with any mitigation measures required by the Agency; and

(3) Not taken any actions or incurred any obligations with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or that would have an adverse effect on the environment.

§ 4279.168 Timeframe for processing applications.

All complete guaranteed loan applications will be approved or disapproved within 60 days, unless approval is prevented by a lack of guarantee authority or there are delays resulting from public comment requirements of the environmental assessment or outstanding DOL clearance issues.

§§ 4279.169–4279.172 [Reserved]

§ 4279.173 Loan approval and obligating funds.

(a) Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment to the lender, containing conditions under which a Loan Note Guarantee will be issued. No Conditional Commitment can be issued until the loan is obligated. If a Loan Note Guarantee is not issued by the Conditional Commitment expiration date, the Conditional Commitment may be extended at the request of the lender and only if there has been no material adverse change in the borrower or the borrower's financial condition since issuance of the Conditional Commitment. If the Conditional Commitment is not accepted, the Conditional Commitment may be withdrawn and funds may be deobligated. Likewise, if the Conditional Commitment expires, funds may be deobligated.

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and borrower may request changes to the Conditional Commitment. Within the requirements of the applicable regulations and prudent lending practices, the Agency may negotiate with the lender and the borrower regarding any proposed changes to the Conditional Commitment. Any changes to the Conditional Commitment must be documented by written amendment to the Conditional Commitment.

(c) The borrower must comply with all Federal requirements then in effect for receiving Federal assistance.

§ 4279.174 Transfer of lenders.

(a) The Agency may approve the substitution of a new eligible lender in place of a former lender who has been issued and has accepted an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued, provided that there are no changes in the borrower's ownership or control, loan purposes, or scope of project, and the loan terms and conditions in the Conditional Commitment and the loan agreement remain the same. Any request for a transfer of lender must be submitted in writing by the current lender, the proposed lender, and the borrower. The original lender must state the reason(s) it no longer desires to be the lender for the project.

(b) Unless the new lender is already an approved lender, the Agency will analyze the new lender's servicing capability, eligibility, and experience prior to approving the substitution. The substituted lender must execute a new part B of Form 4279–1, ''Application for Loan Guarantee;'' Form RD 4279–4, ''Lender's Agreement'' (unless a valid Lender's Agreement with the Agency already exists); and complete a new lender's analysis in accordance with § 4279.131. The new lender may also be required to provide other updated application items outlined in § 4279.161(b).

§§ 4279.175–4279.179 [Reserved]

§ 4279.180 Changes in borrower.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the program and be approved by the Agency.

§ 4279.181 Conditions precedent to issuance of the Loan Note Guarantee.

(a) The lender must not close the loan until all conditions of the Conditional Commitment are met. When loan closing plans are established, the lender must notify the Agency. Coincident with, or immediately after loan closing, the lender must provide the following to the Agency:

(1) An executed Form RD 4279–4, unless a valid Lender's Agreement exists that was issued after August 2, 2016;

(2) Form RD 1980–19 and appropriate guarantee fee;

(3) Copy of the executed promissory note(s);

(4) Copy of the executed loan agreement;

(5) Copy of the executed settlement statement;

(6) Original, executed Forms RD 4279–14, as required;

(7) Any other documents required to comply with applicable law or required by the Conditional Commitment.

(8) Borrower's loan closing balance sheet, supporting paragraph (a)(9)(i) of the lender certification, demonstrating

required tangible balance sheet equity; and

(9) The lender's certification to each of the following certifications:

(i) The capital/equity requirement was determined, based on a balance sheet prepared in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced.

(ii) All requirements of the Conditional Commitment have been met.

(iii) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency in writing.

(iv) There is a reasonable prospect that the guaranteed loan and other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application for loan guarantee.

(v) All planned property acquisition has been or will be completed, all development has been or will be substantially completed in accordance with plans and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(vi) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.

(vii) The loan has been properly closed, and the required security instruments have been properly executed or will be obtained on any acquired property that cannot be covered initially under State law.

(viii) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, materialmen, or other parties have been filed against the collateral, and no suits are pending or threatened that would adversely affect the collateral.

(ix) When required, personal and/or corporate guarantees have been obtained in accordance with § 4279.132.

(x) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment (or Agency-approved amendment thereof) and the application submitted to the Agency. When applicable, the entire amount of the loan for working capital has been disbursed to the borrower, except in cases where the Agency has approved disbursement over an extended period of time and funds are escrowed so that the settlement statement reflects the full amount to be disbursed.

(xi) All truth-in-lending and equal credit opportunity requirements have been met.

(xii) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to the issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender must address any assumptions or reservations in the requirement and must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(xiii) Neither the lender nor any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender.

(xiv) The loan agreement includes all measures identified in the Agency's environmental impact analysis for this proposal with which the borrower must comply for the purpose of avoiding or reducing adverse environmental impacts of the project's construction or operation.

(xv) If required, hazard, flood, liability, workers compensation, and life insurance are in effect.

(b) The Agency may, at its discretion, request copies of additional loan documents for its file.

(c) When the Agency is satisfied that all conditions for the guarantee have been met, the Agency will issue the Loan Note Guarantee and the following documents, as appropriate.

(1) *Assignment Guarantee Agreement.* In the event the lender uses the single note option and assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency will execute Form RD 4279–6 in accordance with §4279.75(a); and

(2) *Certificate of Incumbency.* If requested by the lender, the Agency will provide the lender with a certification on Form RD 4279–7, ''Certificate of Incumbency and Signature,'' of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.

§§4279.182–4279.186 [Reserved]

§4279.187 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the Agency will issue the Loan Note Guarantee. If the lender requests additional time in writing and within the period allowed, the Agency may grant the request.

§§4279.188–4279.189 [Reserved]

§4279.190 Business and Industry national COVID–19 Public Health Emergency Loans.

(a) *Introduction.* This section contains regulations for the Business and Industry National COVID–19 Public Health Emergency loan program (B&I CARES Act Program Loans). The purpose of the program is to provide loan guarantees under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136). These B&I CARES Act Program Loans cover costs to prevent, prepare for, and respond to the coronavirus limited to the amount necessary to address the borrower's financial needs related to the COVID–19 Public Health Emergency. Consistent with the purposes of the CARES Act, the Agency has determined that the most effective use of these program funds is to support the cost of guaranteed loans to rural businesses to respond to the coronavirus. No B&I CARES Act Program Loan guarantee will be approved after September 30, 2021. All provisions of subparts A and B of this part and subpart B of part 4287 of this chapter apply to B&I CARES Act Program Loans, except as provided in this section. All forms used in connection with a B&I CARES Act Program Loan will be those used with other Business and Industry (B&I) loans, except as provided in this section.

(b) *Eligible borrowers.* Section 4279.108 of this subpart applies to B&I CARES Act Program Loans. In addition, borrowers must have been in operation on February 15, 2020.

(c) *Eligible use of funds.* (1) *Purpose.* The purpose of any B&I CARES Act Program Loan must be to cover costs to prevent, prepare for, and respond to the coronavirus pandemic, limited to the amount necessary to address the borrower's financial needs related to the COVID–19 Public Health Emergency, in accordance with paragraph (a) of this section. B&I CARES Act Program Loans should not exceed the amount needed to overcome the financial distress or related challenges caused by the COVID–19 Public Health Emergency.

(2) *Use of loan proceeds.* Notwithstanding the provisions of §4279.113, B&I CARES Act Program guaranteed loans will be limited to loans for working capital loan purposes in accordance with paragraph (c)(3) of this section. Loan proceeds may be used only to support facilities and business operations in rural areas and the Borrower must have been in operation on February 15, 2020. Loan proceeds must be disbursed through multiple draws on an as-needed monthly basis. Loan proceeds issued in full at loan closing must be evidenced by documented need provided by the lender and with concurrence of the Agency.

(3) *Eligible working capital uses.* Eligible working capital uses of B&I CARES

Act Program Loan funds are limited to:

(i) Wages, salaries, sales commissions to employees, group healthcare benefits, and other employee benefits; owner's wages and salaries may be considered if these costs are verifiable and constitute historical working capital costs;

(ii) Administrative expenses and administrative service contracts;

(iii) Property insurance, hazard insurance, and other business insurance;

(iv) Principal and interest payments on outstanding debt excluding owner/stockholder debt and related-party debts; payments may include existing Business & Industry loan payments to bring loans current as loan payments to a creditor are a working capital expense;

(v) Rent, payments on leases, and routine maintenance;

(vi) Utilities;

(vii) Inventory, feed, seed, fertilizer and chemicals, livestock (excluding livestock for breeding) and supplies;

(viii) Marketing, shipping, and other expenses incurred through normal business operations or such additional expenses due to challenges directly related to the national COVID–19 Public Health Emergency;

(ix) Taxes; and

(x) Loan costs and essential loan-related expenses.

(4) *Ineligible purposes.* Notwithstanding the provisions of § 4279.113, the following purposes are ineligible for B&I CARES Act Program guaranteed loans:

(i) Purchase and development of land, buildings, and associated infrastructure for commercial or industrial properties, including expansion or modernization;

(ii) Business acquisitions;

(iii) Leasehold improvements;

(iv) Constructing or equipping facilities;

(v) Purchase of machinery and equipment; and

(vi) Debt refinancing unless such debt refinancing is for debts incurred subsequent to February 15, 2020 for eligible purposes listed in paragraph (c)(3) of this section.

(5) *Agricultural production.* The provisions of § 4279.113(q) do not apply to B&I CARES Act Program Loans. Loans for working capital to support agricultural production, including independent agricultural production, is an eligible use of funds when the applicant's loan request exceeds the maximum loan available through FSA guaranteed loan programs or the applicant's request is otherwise ineligible for FSA loans. The Agency should verify ineligibility for FSA loan programs. Agricultural producers must be located in a rural area as defined in 7 CFR 4279.108(c) unless they meet the requirements provided for under 7 CFR 4279.113(y).

(d) *Loan amount limits.* (1) The provisions of § 4279.119(a) do not apply to B&I CARES Act Program Loans. The total amount of B&I and B&I CARES Act Program Loans to one borrower (including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing B&I guaranteed loans, and the new loan request) cannot exceed $25 million. There is no minimum threshold for B&I CARES Act Program loans.

(2) The amount of the B&I CARES Act Program Loan shall be based on a cash flow analysis and must not be greater than the amount needed to address challenges caused by the COVID–19 emergency, including those related to inventory and production costs, so that the business is reestablished on a successful basis. Losses and business operating expenses that were adequately paid by insurance or by loans or grants from other sources will not be covered by B&I CARES Act Program Loans. The B&I CARES Act Program Loans may be used to supplement insurance payments or assistance from other sources when the insurance coverage or other assistance is insufficient. The amount of the B&I CARES Act Program loan will be reduced by any SBA Paycheck Protection Program (PPP) loans received by the borrower.

(3) The maximum loan amount of the B&I CARES Act Program Loan for working capital purposes may not exceed 12 times the borrower's total average monthly costs of eligible working capital loan purposes less the total amount of covered loans received under the provisions of sections 1102 and

1110(a)(2) of the CARES Act and other Federal emergency assistance received. Annual tax returns may be utilized to calculate the maximum loan amount under the B&I CARES Act Program. It is the Agency's preference to review the last three full years of operations to calculate average working capital expenses for the borrower. If three years of financial information is not available, then actual working capital expenses for the business duration may be evaluated. Borrowers, who have not been in operation for a full year may estimate an average monthly cost of eligible working capital based on available historical months as long as they were in operation as of February 15, 2020.

(4) Borrowers receiving B&I CARES Act Program Loans in an amount less than the maximum loan amount in accordance with paragraph (d)(3) of this section, may apply for subsequent loans under this section up to an accumulative amount of B&I CARES Act Program loans not to exceed the maximum loan amount.

(e) *Percentage of guarantee.* The provisions of §4279.119(b) do not apply to B&I CARES Act Program Loans. The percentage of guarantee is 90 percent.

(f) *Guarantee fee.* The provisions of §4279.120(a) do not apply to B&I CARES Act Program Loans. The guarantee fee for the B&I CARES Act Program Loans shall be two (2) percent. The guarantee fee is paid at the time the Loan Note Guarantee is issued and may be included as an eligible use of guaranteed loan proceeds. The amount of the guarantee fee is determined by multiplying the total loan amount by the guarantee fee rate by the percentage of guarantee.

(g) *Annual renewal fee.* Notwithstanding the provisions of §4279.120(b), the annual renewal fee for B&I CARES Act Program Loans shall be one half of one (0.5) percent (50 basis points.)

(h) *Loan terms.* Notwithstanding the provisions of §4279.126, the maximum allowable repayment term of loans for working capital purposes is 10 years. Loan repayment may defer principal payments or principal and interest payments for a period up to 12 months from loan closing and may extend deferral of principal payments up to a total of three years with a maximum repayment term of 10 years from the date of loan closing. B&I CARES Act Program Loans must be paid in full since the B&I CARES Act Program provides no loan forgiveness.

(i) *Credit quality.* Notwithstanding the provisions of §4279.131(a), the lender's evaluation of the borrower's repayment ability shall include an emphasis on the borrower's successful financial history and on the borrower's 2019 financial performance, present condition, and future viability.

(j) *Collateral.* B&I CARES Act Program loans must be adequately secured. Notwithstanding the provisions of §4279.131(b), loan-to-value discounting by the lender is not required for B&I CARES Act Program Loans for working capital purposes. The value of the collateral (fair market value) must be equal to or greater than the loan amount.

(k) *Capital/equity.* Notwithstanding the provisions of §4279.131(d), the business must meet one of the following requirements at loan closing:

(1) A minimum of 10 percent balance sheet equity or tangible balance sheet equity (including subordinated debt when subject to a standstill agreement); or a maximum debt-to-balance sheet equity ratio of 9 to 1.

(2) A Borrower investment of equity or other funds into the project equal to 10 percent or more of total eligible project costs, (such investment may include grants or subordinated debt when subject to a standstill agreement). Additional sources of matching funds may be derived from other loan funds; however, such funds must be in the form of cash. In-kind contributions are not eligible to meet equity requirements; or

(3) The balance sheet equity or tangible balance sheet equity includes owner-contributed capital of 10 percent or more of total fixed assets (net total fixed assets plus depreciation).

(l) *Appraisals.* Notwithstanding the provisions of §4279.144, appraisals of real estate and chattel collateral are required when the amount of the loan exceeds $1,000,000, unless the chattel is newly acquired equipment and the value is supported by a bill of sale. The Agency will accept appraisals older than 1 year but completed within 2

years of the application date. Lenders may provide an updated appraisal in lieu of a new complete appraisal when the original appraisal is more than 2 years old. All appraisals of real estate must be compliant with Uniform Standards of Professional Appraisal Practices (USPAP) requirements and reflect the current market value of the collateral as required by §4279.144(a). To protect lenders, appraisers and Agency staff during the COVID–19 pandemic, an interior or on-site inspection of the collateral is not required if an assumption can be made by the appraiser on a reasonable basis or is based on previous inspections and condition reports completed by the lender or third party for the collateral.

(m) *Filing preapplications and applications.* Applications are to be received and processed in the State Office in the State where the business is located. Funds will be maintained in a National Office Reserve account. The Agency will consider applications in the order they are received by the Agency on a first come, first served basis. Priority scoring will not be needed initially, however towards the end of the funding period the Agency will need to assign priority points for the limited remaining funds and for this purpose the Agency will score and compare an application to other pending applications that are competing for funding in accordance with 7 CFR 4279.166.

(1) B&I CARES Act Program Loan borrowers with existing B&I loans do not need to resubmit their historical financial statements that have been previously submitted through routine loan servicing actions.

(2) Loans for working capital are classified as categorical exclusions for purposes of the Agency's environmental review policies and procedures in accordance with 7 CFR part 1970. These actions normally do not require an applicant to submit environmental documentation with the application. However, based on the review of the project description, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist.

(3) Notwithstanding the provisions of §4279.161(b), a draft loan agreement is not required, a business plan or feasibility study is not required, and lenders may substitute and rely on the borrower's tax returns when financial statements prepared in accordance with GAAP are not available from the borrower. Agricultural producers' financial records must meet the industry's standard accounting practices.

(4) A lender or borrower may combine applications for a B&I CARES Act Program loan for working capital with an application for B&I appropriated fiscal year funds. State Offices are allowed to use the same lender's analysis for each request. The existing Conditional Commitment template can be used for B&I CARES Act Program loans and deletion of certain provisions that do not impact the borrower or credit quality can be removed. Business Program Directors are encouraged to contact the National Office Program Processing Division with any questions regarding borrower eligibility, use of B&I loan proceeds, calculations of the loan amount or borrower equity, and any other questions related to a specific project. The provisions of this section do not apply to applications for B&I appropriated fiscal year funds.

[85 FR 31040, May 22, 2020, as amended at 88 FR 82228, Nov. 24, 2023; 88 FR 86566, Dec. 14, 2023]

§§ 4279.191–4279.199 [Reserved]

§ 4279.200 OMB control number.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under OMB Control Number 0570–0069 for OMB approval.

Subpart C—Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Loans

SOURCE: 80 FR 36425, June 24, 2015, unless otherwise noted.

GENERAL

§ 4279.201 Purpose and scope.

The purpose of the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Program is to assist in the development of new and emerging technologies for the development of Advanced Biofuels, Renewable Chemicals, and Biobased Product Manufacturing. This is achieved through guarantees for loans made to fund the development, construction, and Retrofitting of Commercial-Scale Biorefineries using Eligible Technology and of Biobased Product Manufacturing facilities that use Technologically New Commercial-Scale processing and manufacturing equipment and required facilities to convert Renewable Chemicals and other biobased outputs of Biorefineries into end-user products on a Commercial Scale.

(a) This subpart and subpart D of part 4287 of this chapter contain the regulations for this Program.

(b) The Lender is responsible for ascertaining that all requirements for making, securing, servicing, and collecting the loan are complied with.

(c) Whether specifically stated or not, whenever Agency approval is required, it must be in writing.

(d) Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office and from the USDA Rural Development Web site at *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program* . Whenever a form is designated in this subpart, it is initially capitalized and its reference includes predecessor and successor forms, if applicable.

§ 4279.202 Definitions and abbreviations.

Terms used in this subpart are defined in this section. Terms used in this subpart that have the same meaning as the terms defined in this section have been capitalized in this subpart.

Administrator. The Administrator of Rural Business-Cooperative Service within the Rural Development mission area of the U.S. Department of Agriculture.

Advanced biofuel. Fuel derived from Renewable Biomass, other than corn kernel starch, to include:

(1) Biofuel derived from cellulose, hemicellulose, or lignin;

(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(4) Diesel-equivalent fuel derived from Renewable Biomass, including vegetable oil and animal fat;

(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from Renewable Biomass;

(6) Butanol or other alcohols produced through the conversion of organic matter from Renewable Biomass; and

(7) Other fuel derived from cellulosic biomass.

Affiliate. An entity that is related to another entity by owning shares or having an interest in the entity, by common ownership, or by any means of control.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the Program. References to the National or State Office should be read as prefaced by ''Agency'' or ''Rural Development'' as applicable.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Annual renewal fee. A fee that is paid once a year by the Lender and is required to maintain the enforceability of the Loan Note Guarantee.

Arm's length transaction. A transaction between ready, willing, and able disinterested parties that are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other.

Assignment Guarantee Agreement. Form RD 4279–6, ''Assignment Guarantee Agreement,'' is the signed agreement between the Agency, the Lender, and the Holder containing the terms and conditions of an assignment of a

guaranteed portion of a loan, using the single Promissory Note system.

Association of Agricultural Producers. An organization that represents Agricultural Producers and whose mission includes working on behalf of such producers and the majority of whose membership and board of directors is comprised of Agricultural Producers.

BAP. Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program.

Biobased product. A product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is either:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) An intermediate ingredient or feedstock.

Biobased product manufacturing. The use of Technologically New Commercial-Scale processing and manufacturing equipment and required facilities to convert Renewable Chemicals and other biobased outputs of Biorefineries into end-user products on a Commercial Scale.

Biofuel. A fuel derived from Renewable Biomass.

Biogas. Renewable Biomass converted to gaseous fuel.

Biorefinery. A facility (including equipment and processes) that converts Renewable biomass or an intermediate ingredient or feedstock of Renewable biomass into any one or more, or a combination, of Biofuels, Renewable chemicals or Biobased products, and may produce electricity.

Bond. A form of debt security in which the authorized issuer (Borrower) owes the Bond holder (Lender) a debt and is obligated to repay the principal and Interest (coupon) at a later date(s) (maturity). An explanation of the type of Bond and other Bond stipulations must be attached to the Bond issuance.

Borrower. The Person that borrows, or seeks to borrow, money from the Lender, including any party liable for the loan except for guarantors.

Byproduct. An incidental or secondary product generated under normal operations of the proposed Project that can be reasonably measured and monitored other than: Advanced Biofuel, Program-eligible Biobased Products including Renewable Chemicals, and Program-eligible end-user products produced by Biobased Product Manufacturing facilities. Byproducts may or may not have a readily identifiable commercial use or value.

Calendar quarter. Four three-month periods in each calendar year as follows:

(1) Quarter 1 begins on January 1 and ends on March 31;

(2) Quarter 2 begins on April 1 and ends on June 30;

(3) Quarter 3 begins on July 1 and ends on September 30; and

(4) Quarter 4 begins on October 1 and ends on December 31.

Collateral. The asset(s) pledged by the Borrower to secure the loan.

Commercial-scale (commercial scale). An operation is considered to be a Commercial-Scale operation if it demonstrates that its sole or chief emphasis is on salability and profit and:

(1) Its revenue will be sufficient to recover the full cost of the Project over its expected life and result in an anticipated annual rate of return sufficient to encourage investors or Lenders to provide funding for the Project;

(2) It will be able to operate profitably without public and private sector subsidies upon completion of construction (volumetric excise tax is not included as a subsidy);

(3) Contracts for feedstock are adequate to address proposed off-take; and

(4) It has the ability to achieve market entry, suitable infrastructure to transport product to its market is available, and the technology and related products are generally competitive in the market.

Conditional Commitment. Form RD 4279–3, ''Conditional Commitment,'' is the Agency's notice to the Lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the attachment to the Conditional Commitment.

Conflict of interest. A situation in which a Person has competing personal, professional, or financial interests that prevents the Person from acting impartially.

Default. The condition that exists when a Borrower is not in compliance with the Promissory Note, the Loan Agreement, security documents, or other documents evidencing the loan. Default could be a monetary or nonmonetary Default.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all Collateral securing the loan.

Delinquency. A loan for which a scheduled loan payment is more than 30 days past due and cannot be cured within 30 days.

Eligible project costs. Those expenses approved by the Agency for the Project as set forth in § 4279.210(d) and do not include the costs set forth in § 4279.210(e).

Eligible technology. The term ''Eligible technology'' means, as determined by the Secretary:

(1) A technology that is being adopted in a viable Commercial-scale operation of a Biorefinery that produces any one or more, or a combination, of an Advanced biofuel; a Renewable chemical; or a Biobased product; and

(2) A technology not described in paragraph (1) of this definition that has been demonstrated to have technical and economic potential for commercial application in a Biorefinery that produces any one or more, or a combination, of an Advanced biofuel, a Renewable chemical or a Biobased product.

Fair market value. The price that could reasonably be expected for an asset in an Arm's-Length Transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Farm cooperative. A business owned and controlled by Agricultural Producers that is incorporated, or otherwise recognized by the State in which it operates, as a cooperatively-operated business.

Farmer Cooperative Organization. An organization whose membership is composed of Farm Cooperatives.

Feasibility study. An analysis by an independent qualified consultant or consultants of the economic, market, technical, financial, and management feasibility of a proposed Project or business in terms of its expectation for success.

Federal debt. Debt owed to the Federal government that is subject to collection under the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.* Once the Agency determines a debt is Federal Debt and provides notice to the Lender, that Federal Debt is excluded from Future Recovery.

Future recovery. Funds anticipated to be collected by the Lender after a final loss claim is processed.

Good cause. A justification representing a reasonable approach given:

(1) The reasonably available alternatives;

(2) All known relevant factors;

(3) Program requirements; and

(4) The best interests of the government. Good cause must be approved by the Agency. Without prior approval by the Agency, alternatives that require the Agency to increase its guarantee, in either the Conditional Commitment or Loan Note Guarantee (including an increase of its subsidy costs under the Credit Reform Act of 1990), or provide additional assistance, will not be considered reasonable available alternatives under paragraph (1) of this definition or in the best interests of the government under paragraph (4) of this definition.

Grossly negligent loan origination. A serious carelessness in originating the loan which is so great as to appear to be conscious. The term includes not only the concept of a failure to act, but also not acting in a timely manner.

Grossly negligent loan servicing. A serious carelessness in servicing the loan which is so great as to appear to be conscious. The term includes not only the concept of a failure to act, but also not acting in a timely manner.

Guaranteed Loan Report of Loss. Form RD 449–30, ''Guaranteed Loan Report of Loss,'' used by Lenders when reporting a financial loss under an Agency guarantee.

Holder. A Person, other than the Lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities.

Immediate family(ies). Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic

partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or cousin.

Indian tribe. This term has the meaning as defined in 25 U.S.C. 450b.

In-house expenses. Expenses associated with activities that are routinely the responsibility of a Lender's internal staff or its agents. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

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

Interest. A fee paid by a Borrower to a Lender as a form of compensation for the use of money. When money is borrowed, Interest is typically paid as a fee over a certain period of time (typically months or years) to the Lender as percentage of the principal amount owed. The term Interest does not include Default or penalty Interest or late payment fees or charges.

Interest Termination Date. The date on which no further interest will be payable under the Loan Note Guarantee.

(1) If the Lender owns all or a portion of the guaranteed interest in the guaranteed loan or makes a Protective Advance, then the Loan Note Guarantee will not cover Interest to the Lender accruing after 90 days from the most recent Delinquency effective date as reported by the Lender.

(2) If the guaranteed loan has a Holder(s), the Lender, or the Agency, at its sole discretion, will issue an interest termination letter to the Holder(s) establishing the termination date for Interest accrual. The Loan Note Guarantee will not cover Interest to the Holder(s) accruing after the greater of:

(i) 90 days from the date of the most recent Delinquency effective date as reported by the Lender or

(ii) 30 days from the date of the interest termination letter.

Lender. The entity approved, or seeking to be approved, by the Agency to make, service, and collect the Agency guaranteed loan that is subject to this subpart.

Lender's Agreement. Form RD 4279–4, ''Lender's Agreement,'' or predecessor form, between the Agency and the Lender setting forth the Lender's loan responsibilities.

Liquidation expenses. Costs directly associated with the liquidation of Collateral, including preparing Collateral for sale (*e.g.*, repairs and transport) and conducting the sale (*e.g.*, advertising, public notices, auctioneer expenses, and foreclosure fees). Liquidation Expenses do not include In-House Expenses. Legal/attorney fees are considered Liquidation Expenses provided that the fees are reasonable, as determined by the Agency, and cover legal issues pertaining to the liquidation that could not be properly handled by the Lender and its in-house counsel.

Loan agreement. The agreement between the Borrower and Lender containing the terms and conditions of the loan and the responsibilities of the Borrower and Lender.

Loan classification. The process by which loans are examined and categorized by degree of potential loss in the event of Default.

Loan Note Guarantee. Form RD 4279–5, ''Loan Note Guarantee,'' or predecessor form, issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan packager. A Person, other than the applicant Borrower or Lender, that prepares a loan application package.

Loan service provider. A Person, other than the Lender of record, that provides loan servicing activities to the Lender.

Local government. A county, municipality, town, township, village, or other unit of general government below the State level, or Indian Tribe governments.

Local owner. An individual who owns any portion of an eligible Biorefinery and whose primary residence is located within a certain distance from the Biorefinery as specified by the Agency in a Notice published in the FEDERAL REGISTER.

Market value. The amount for which a property will sell for its highest and best use at a voluntary sale in an Arm's Length Transaction.

Material adverse change. Any change in circumstance associated with a guaranteed loan, including the Borrower's financial condition or Collateral that could be reasonably expected to jeopardize loan performance.

NAD. National Appeals Division, or successor agency, in the United States Department of Agriculture.

Negligent Loan Origination. The failure to perform those actions which a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent Loan Servicing. The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Off-take agreement. The terms and conditions governing the sale and transportation of Biofuels, Biobased Products including Renewable Chemicals, Biobased Product Manufacturing end-user products, and electricity produced by the Borrower to another party.

Parity. A lien position whereby two or more Lenders share a security interest of equal priority in Collateral.

Participate. Sale of an interest in a loan by the lead Lender to one or more Lenders wherein the lead Lender retains the Promissory Note, Collateral securing the Promissory Note, and all responsibility for managing and servicing the loan. Participants are dependent upon the lead Lender for protection of their interests in the loan.

Person. An individual or entity.

Program. Biorefinery Renewable Chemical, and Biobased Product Manufacturing Assistance Program often abbreviated as BAP.

Project. The facility or portion of a facility receiving funding under this subpart.

Pro rata. On a proportional basis.

Promissory note. Evidence of debt with stipulated repayment terms. ''Note'' or ''Promissory Note'' shall also be construed to include ''Bond'' or other evidence of debt, where appropriate.

Protective advance. An advance made by the Lender for the purpose of preserving and protecting the Collateral where the Borrower has failed to, and will not or cannot, meet its obligations to protect or preserve Collateral. Protective advances include, but are not limited to, advances affecting the Collateral made for property taxes, rent, hazard and flood insurance premiums, and annual assessments. Legal/attorney fees are not a Protective Advance. Holders do not have an interest in Protective Advances.

Public body. A municipality, county, or other political subdivision of a State; a special purpose district; or an Indian Tribe on a Federal or State reservation or other Federally-recognized Indian Tribe; or an organization controlled by any of the above. A Local Government would also be a Public Body.

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

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

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

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

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

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

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

Renewable chemical. A monomer, polymer, plastic, formulated product, or chemical substance produced from Renewable Biomass.

Retrofitting. The modification of a building or equipment to incorporate functions not included in the original design.

Rural Development. The mission area of USDA that is comprised of the Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service and is under the policy direction and operational oversight of the Under Secretary for Rural Development.

Rural or rural area. As described in 7 U.S.C. 1991(a)(13)(A), (D), (H) and (I).

Secretary. The Secretary of the Department of the Agriculture.

Semi-work scale. A facility operating on a limited scale to provide final tests of a product or process.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains Spreadsheets for balance sheet and income statement items and includes a cash flow analysis and commonly used ratios. The Spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

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

Subordination. The reduction of the Lender's lien priority on certain assets pledged to secure payment of the guaranteed loan to a position junior to, or on Parity with, the lien position of another loan in order for the Borrower to obtain additional financing, not guaranteed by the Agency, from the Lender or a third party.

Technologically New. New or significantly improved equipment, process or production method to deliver a product, or adoption of equipment, process or production method to deliver a new or significantly improved product, of which the first Commercial-Scale use in the United States is within the last five years and is used in not more than three Commercial-Scale facilities in the United States.

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

Transfer and assumption. The conveyance by a Borrower to an assuming Borrower of the assets, Collateral, and liabilities of the loan in return for the assuming Borrower's binding promise to pay the outstanding loan debt approved by the Agency.

USDA Lender Interactive Network Connection (LINC). The portal Web site currently at *https://usdalinc.sc.egov.usda.gov/* used by Lenders to update loan data in the Agency's Guaranteed Loan System. Current capabilities include loan closing and status reporting.

Well capitalized. Federal Deposit Insurance Corporation (FDIC) requirements used to determine if a lending institution has enough capital on hand to withstand negative effects in the market, and which the Agency uses to determine Lender eligibility. The criteria are specified in the Federal Deposit Insurance Act, and are currently at 12 CFR 325.103, or subsequent regulation.

Working capital. Current assets available to support a business's operations. Working Capital is calculated as current assets less current liabilities.

[80 FR 36425, June 24, 2015, as amended at 85 FR 29595, May 18, 2020; 87 FR 38644, June 29, 2022]

§ 4279.203 Exception authority.

The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§ 4279.204 Appeals.

Borrowers, Lenders, and Holders have appeal or review rights for adverse Agency decisions made under this subpart. Adverse programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The Borrower, Lender, and Holder can appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the Borrower, the Lender and Borrower must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the Lender may be appealed by the Lender only. An adverse decision that only impacts the Holder may be appealed by the Holder only. A decision by a Lender adverse to the interest of the Borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

§ 4279.205 Prohibition under Agency programs.

(a) No loan guaranteed by the Agency under this subpart will be conditioned on any requirement that the recipient(s) of such assistance accept or receive electric service from any particular utility, supplier, or cooperative.

(b) No loan guaranteed by the Agency may be made with the proceeds of any obligation the Interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as Collateral for a tax-exempt issue. The Agency may guarantee a loan for a Project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the Project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a Parity security position with the tax-exempt obligation.

(c) The Agency may not issue a guarantee for a loan where there may be, directly or indirectly, a Conflict of Interest or an appearance of a Conflict of Interest involving any action by the Agency.

(d) The Agency may not guarantee lease payments.

(e) The Agency may not guarantee loans made by other Federal agencies.

§ 4279.206 Agency representation.

Notwithstanding any other provision of this subpart and 7 CFR part 4287, subpart D, the Agency reserves the right to be represented by the U.S. Department of Justice in any litigation where the Agency is named as a party.

§ 4279.207 [Reserved]

ELIGIBILITY REQUIREMENTS

§ 4279.208 Lender eligibility requirements.

(a) An eligible Lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, and Bank for Cooperatives. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Credit unions subject to credit examination and supervision by either the National Credit Union Administration or a State agency are eligible Lenders. The National Rural Utilities Cooperative Finance Corporation is also an eligible Lender. Savings and loan associations, mortgage companies, insurance companies, and other lenders not meeting the above criteria are not eligible.

(b) The Lender must demonstrate that it meets the FDIC definition of Well Capitalized at the time of application and at time of issuance of the Loan Note Guarantee. This information may be identified in FDIC Call Reports and Thrift Financial Reports. If the information is not identified in the Call Reports or Thrift Financial Reports, the Lender will be required to calculate its levels and provide them to the Agency.

(c) The Lender must not be debarred or suspended by the Federal government.

(d) If the Lender is under a cease-and-desist order, or similar constraint, from a Federal or State agency, the Lender must inform the Agency. The Agency will evaluate the Lender's eligibility on a case-by-case basis given the risk of loss posed by the cease-and-desist order or similar constraint, as applicable.

(e) The Agency will only approve loan guarantees for Lenders with adequate experience and expertise, from similar projects, to make, secure, service, and collect loans approved under this subpart.

§ 4279.209 Borrower eligibility requirements.

(a) *Eligible entities.* To be eligible, a Borrower must meet the requirements specified in paragraphs (a)(1) and (2) of this section.

(1) *Type of Borrower.* A Borrower must be an individual; an entity; an Indian Tribe; or a unit of State or Local Government, including a corporation; a Farm Cooperative; a Farmer Cooperative Organization; an Association of Agricultural Producers; a National Laboratory; an Institution of Higher Education; a rural electric cooperative; a public power entity; or a consortium of any of the above entities.

(2) *Legal authority and responsibility.* Each Borrower must have, or obtain before loan closing, the legal authority necessary to construct, operate, and maintain the proposed Project and services and to obtain, give security for, and repay the proposed loan.

(b) *Ineligible entities.* A Borrower will be considered ineligible for a guarantee if the Borrower, any owner with more than 20 percent ownership interest in the Borrower, or any owner with more than 3 percent ownership interest in the Borrower if there is no owner with more than 20 percent ownership interest in the Borrower:

(1) Has an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court);

(2) Is delinquent on the payment of Federal income taxes;

(3) Is delinquent on a Federal Debt; or

(4) Is debarred or suspended from receiving Federal assistance.

§ 4279.210 Project eligibility requirements.

(a) The Project must be located in a State.

(b) The Project must be for either:

(1) The development, construction, and Retrofitting of Technologically New Commercial-Scale processing and manufacturing equipment and required facilities that will be used to convert Renewable Chemicals and other biobased outputs of Biorefineries into end-user products on a Commercial Scale; or

(2) The development, construction, or Retrofitting of a Commercial-Scale Biorefinery using Eligible Technology.

(c) The Borrower and other principals involved in the Project must make a significant equity investment in the Project in the form of cash contribution. Equity does not include loans to the Project. The Agency will evaluate the adequacy of equity in its credit evaluation in accordance with § 4279.215(b).

(d) Eligible Project Costs are only those costs associated with the items listed in paragraphs (d)(1) through (9) of this section, as long as the items are assets owned by the Borrower or expenses incurred by the Borrower and the items are an integral and necessary part of the Project, as determined by the Agency. A Project may consist of multiple facilities or components located at multiple locations.

(1) Purchase and installation of equipment (new, refurbished, or remanufactured), including an integrated demonstration unit if the integrated demonstration unit will be used by the Borrower in the Project after the Project is developed and in operation.

(2) New construction or Retrofitting of existing facilities including reasonable contingency reserves, land acquisition, site improvements and development, and associated costs such as surveys, title insurance, title fees, and recording or transfer fees.

(3) Permit and license fees and fees and charges for professional services. Professional services are those rendered by entities generally licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by Loan

Packagers (excluding finders fees). The Borrower may pay fees for professional services needed for planning and developing a Project provided that the amounts are reasonable and customary in the area. Professional fees may be included as an eligible use of loan proceeds.

(4) Working Capital.

(5) Cost of necessary insurance and bonds.

(6) Cost of financing, including capitalized Interest during construction period, legal fees, transaction costs, and customary fees charged by the lender, excluding the guaranteed loan fee and annual renewal fees.

(7) Cash reserve accounts required by the Lender or Agency, such as a debt service reserve account.

(8) Any other item identified by the Agency in a notice published in the FEDERAL REGISTER.

(9) The Agency will consider refinancing only under either of the two conditions specified in paragraphs (d)(9)(i) and (ii) of this section.

(i) Permanent financing used to refinance interim construction financing of the proposed Project only if the application for the guaranteed loan under this subpart was approved prior to closing the interim loan for the construction of the Project.

(ii) Refinancing that is no more than 20 percent of the loan for which the Agency is guaranteeing and the purpose of the refinance is to enable the Agency to establish a first lien position with respect to pre-existing Collateral subject to a pre-existing lien and the refinancing would be in the best financial interests of the Federal Government.

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

(e) Ineligible Project costs include:

(1) Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the Borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the Borrower;

(2) Any line of credit;

(3) Any equipment, processes, and related costs of such equipment used for processing corn kernel starch into biofuel, including as an incidental or secondary product; and

(4) Payment in excess of actual costs (such as profit, overhead, and indirect costs) incurred by the contractor or other service provider on a contract or agreement that has been entered into at less than an Arm's Length Transaction or with an appearance of or a potential for Conflict of Interest.

[80 FR 36425, June 24, 2015, as amended at 85 FR 57085, Sept. 15, 2020]

§§ 4279.211–4279.213 [Reserved]

LENDER FUNCTIONS AND RESPONSIBILITIES

§ 4279.214 General functions and responsibilities.

(a) The Lender has the primary responsibility for loan origination and servicing. Any action or inaction on the part of the Agency does not relieve the Lender of its responsibilities to originate and service the loan guaranteed under this subpart. The Lender may contract for services and may rely on certain written materials (including, but not limited to, certifications, evaluations, appraisals, financial statements and other reports) to be provided by the Borrower or other qualified third parties (including, among others, one or more independent engineers, appraisers, accountants, consultants or other experts.) The Lender is ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations.

(b) Agents and Persons are prohibited from acting as both Loan Packager and Loan Service Provider on the same guaranteed loan.

(c) All Lenders obtaining or requesting a Program loan guarantee are responsible for:

(1) Processing applications for guaranteed loans. The Lender is responsible for submitting a complete application for each guaranteed loan requested;

(2) Developing and maintaining adequately documented loan files, which

must be maintained for at least 3 years after the final loss has been paid;

(3) Recommending only loan proposals that are eligible and financially feasible;

(4) Properly closing the loan and obtaining valid evidence of debt and Collateral in accordance with sound lending practices prior to disbursing loan proceeds;

(5) Keeping an inventory accounting of all Collateral items and reconciling the inventory of all Collateral sold during loan servicing, including liquidation;

(6) Supervising construction;

(7) Distributing loan funds;

(8) Servicing guaranteed loans in a reasonable manner, including liquidation if necessary;

(9) Following Agency regulations and agreements;

(10) Obtaining Agency approvals or concurrence as required; and

(11) Reporting all Conflicts of Interest, or appearances thereof, to the Agency.

§ 4279.215 Credit evaluation.

(a) Lenders must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, to ensure loan repayment. The Lender must have an adequate underwriting process to ensure that loans are reviewed by someone other than the originating officer. The Agency will only guarantee loans that are financially sound and feasible with reasonable assurance of repayment.

(b) In its credit evaluation, the Agency will consider the following factors:

(1) The feasibility of the Project and Borrower and likelihood that the Project and Borrower will produce sufficient revenues to service the Project's debt obligations over the life of the loan guarantee and result in sufficient returns to investors;

(2) Project and Borrower debt structure and characteristics and debt repayment ability;

(3) Revenues of the Project and Borrower, strength and duration of offtake contracts and counterparty agreements, market demand and competitive position;

(4) Technical feasibility, demonstrated performance of the technology and readiness to commercialize the technology;

(5) Ownership structure of the Project and Borrower, strength of ownership and sponsors, commitment and amount of equity investment from ownership, sponsors and other equity investors;

(6) Operational management and experience;

(7) Complexity of construction/completion, terms of construction contracts, experience and financial strength of the construction contractor or engineering, procurement, and construction (EPC) contractor;

(8) Availability and depth of resource/feedstock market, strength and duration of purchase agreements, and availability of substitutes;

(9) Contracts and intellectual property rights, and state and local regulations;

(10) Energy, infrastructure and environmental considerations;

(11) The extent to which Project Costs are funded by the guaranteed loan or other Federal and non-Federal governmental assistance such as grants, tax credits, or other loan guarantees;

(12) Economic safeguards of the Project including contingency reserve funds and protections and safeguards provided to the Agency and Lender in the event of default through loan collateral and ownership and sponsorship guarantors, and;

(13) Other criteria that the Agency deems relevant.

§ 4279.216 Environmental responsibilities.

Lenders are responsible for becoming familiar with Federal environmental requirements; considering, in consultation with the prospective Borrower, the potential environmental impacts of their proposals at the earliest planning stages; and developing proposals that minimize the potential to adversely impact the environment.

(a) Lenders must alert the Agency to any environmental issues related to a proposed Project or items that may require extensive environmental review.

(b) Lenders must ensure that the Borrower has:

(1) Provided the necessary environmental documentation to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, including the provision of all required Federal, State, and local permits.

(2) Complied with any mitigation measures required by the Agency; and

(3) Not taken any actions or incurred any obligations with respect to the proposed Project that will either limit the range of alternatives to be considered during the Agency's environmental review process or which will have an adverse effect on the environment.

(c) Lenders must assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal and assist in the resolution of environmental issues.

[61 FR 67633, Dec. 23, 1996, as amended at 81 FR 11051, Mar. 2, 2016]

§ 4279.217 Oversight and monitoring.

The Lender must permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the Lender pertaining to Program guaranteed loans during regular office hours of the Lender or at any other time upon agreement between the Lender and the Agency. In addition, the Lender must cooperate fully with Agency oversight and monitoring of all Lenders involved in any manner with any loan guarantee under this Program to ensure compliance with this subpart. Such oversight and monitoring will include, but is not limited to, reviewing Lender records and meeting with Lenders (in accordance with § 4287.307(d) of this chapter).

§§ 4279.218–4279.219 [Reserved]

CONDITIONS OF GUARANTEE

§ 4279.220 General conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each Lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee. The provisions of this part and 7 CFR part 4287, subpart D will apply to all outstanding guarantees. In the event of a conflict between the guaranteed loan documents and these regulations as they exist at the time the documents are executed, the regulations will control.

(a) *Full faith and credit.* (1) A guarantee under this subpart constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a Lender or Holder has actual knowledge at the time it becomes such Lender or Holder or which a Lender or Holder participates in or condones.

(2) The guarantee will be unenforceable to the extent that any loss is occasioned by:

(i) A provision for Interest on Interest, Default or penalty Interest, or late payment fees;

(ii) The violation of usury laws;

(iii) Use of loan proceeds for unauthorized purposes or to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment;

(iv) Failure to obtain or maintain the required security regardless of the time at which the Agency acquires knowledge thereof; and

(v) Negligent Loan Origination or Negligent Loan Servicing unless otherwise determined under paragraph (d) of this section.

(3) The Agency will guarantee payment as follows:

(i) To any Holder, 100 percent of any loss sustained by the Holder on the guaranteed portion of the loan it owns and Interest through the Interest Termination Date due on such portion.

(ii) To the Lender, subject to the provisions of this part and subpart D of part 4287 of this chapter, the lesser of:

(A) Any loss sustained by the Lender on the guaranteed portion, including principal and Interest, through the Interest Termination Date, evidenced by the notes or assumption agreements and secured advances for protection

and preservation of Collateral made with the Agency's authorization; or

(B) The guaranteed principal advanced to or assumed by the Borrower and any Interest due thereon through the Interest Termination Date.

(b) *Credit quality of Borrower.* The Agency will provide guarantees only after consideration is given to the Borrower's overall credit quality and to the terms and conditions of any applicable subsidies, tax credits, and other such incentives.

(c) *Quality of loan.* All loans guaranteed under this subpart must be financially sound and feasible, with reasonable assurance of repayment.

(d) *Gross negligence.* Upon written request of the Lender, the Agency will consider changing the negligence standard to Grossly Negligent Loan Origination and Grossly Negligent Loan Servicing on a case-by-case basis. The Lender must establish to the Agency's satisfaction that changing to the gross negligence standard does not materially impair the Agency's interests, solely at the Agency's discretion, subject to:

(1) The lender has demonstrated capacity and experience in making and servicing loans of similar amounts and for transactions of comparable complexity;

(2) The Agency's review of the Lender's underwriting, loan approval and loan servicing policies and procedures, and;

(3) The Agency's review of the Lender's loan servicing plan.

§ 4279.221 Rights and liabilities.

When a guaranteed portion of a loan is sold to a Holder, the Holder will succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the portion purchased.

(a) The Lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency Program regulations.

(b) A guarantee and right to require purchase will be directly enforceable by a Holder notwithstanding any fraud or misrepresentation by the Lender or any unenforceability of the guarantee by the Lender, except for fraud or misrepresentation of which the Holder had actual knowledge at the time it became the Holder or in which the Holder participates or condones.

(c) The Lender must reimburse the Agency for any payments the Agency makes to a Holder of Lender's guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the Lender had the Lender retained the entire interest in the guaranteed loan and not conveyed an interest to a Holder.

§ 4279.222 Payments.

A Lender will receive all payments of principal and Interest on account of the entire loan and must promptly remit to the Holder its Pro Rata share of any payment within 30 days of the Lender's receipt thereof from the Borrower, determined according to its respective interest in the loan, less only the Lender's servicing fee.

§ 4279.223 Sale or assignment of guaranteed loan.

The Lender may Participate or sell all or part of the guaranteed portion of the loan or retain the entire loan. The Lender must fully disburse and properly close a loan prior to sale of any portion of the Promissory Note(s). The Lender cannot Participate or sell any amount of the guaranteed or unguaranteed portion of the loan to the Borrower or its parent, subsidiary or Affiliate or to officers, directors, stockholders, other owners, or members of their Immediate Families. The Lender cannot share any premium received from the sale of a guaranteed loan in the secondary market with a Loan Packager or other Loan Service Provider. The participating Lenders and Holders and the Borrower can have no rights or obligations to one another. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in Default. Lenders may use either the single Promissory Note or multi-note system as outlined in paragraphs (a) and (b) of this section.

(a) *Single note system.* The entire loan is evidenced by one Promissory Note, and one Loan Note Guarantee is issued. When the loan is evidenced by one Promissory Note, the Lender may not

at a later date cause any additional notes to be issued.

(1) The Lender may assign all or part of the guaranteed portion of the loan to one or more Holders by using the Assignment Guarantee Agreement. The Lender must retain title to the Promissory Note. The Lender must complete and execute the Assignment Guarantee Agreement and return it to the Agency for execution prior to Holder execution.

(2) A Holder, upon written notice to the Lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, sold under the Assignment Guarantee Agreement. Holders may only reassign the guaranteed portion in the complete block they have received and cannot subdivide or further split the guaranteed portion of a loan or retain an Interest strip.

(3) Upon notification and completion of the assignment through the use of the Assignment Guarantee Agreement, the assignee shall succeed to all rights and obligations of the Holder thereunder. Subsequent assignments require notice to the Lender and Agency using any format, including that used by the Bond Market Association, together with the transfer of the original Assignment Guarantee Agreement.

(4) The Agency will neither execute a new Assignment Guarantee Agreement to effect a subsequent reassignment nor reissue a duplicate Assignment Guarantee Agreement unless:

(i) The original was lost, stolen, destroyed, mutilated, or defaced; and

(ii) The reissue is in accordance with § 4279.226.

(5) The Assignment Guarantee Agreement clearly states the percentage and corresponding amount of the guaranteed portion it represents and the Lender's servicing fee. A servicing fee may be charged by the Lender to a Holder and is calculated as a percentage per annum of the unpaid balance of the guaranteed portion of the loan assigned by the Assignment Guarantee Agreement. The Agency is not and will not be a party to any contract between the Lender and another party where the Lender sells its servicing fee in an Arm's Length Transaction. The Agency will not acknowledge, approve, or have any liability to any of the parties of such contract.

(b) *Multi-note system.* Under this option, the Lender may provide multiple Promissory Notes for the unguaranteed and the guaranteed portions of the loan. All Promissory Notes must reflect the same payment terms. When the Lender selects this option, the Holder will receive one of the Borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each Promissory Note, including the unguaranteed Promissory Note(s), to be attached to the Promissory Note(s). An Assignment Guarantee Agreement will not be used when the multi-note option is utilized.

§ 4279.224 Minimum retention.

The Lender is required to hold a minimum of 7.5 percent of the total loan amount. The amount required to be held must be of the unguaranteed portion of the loan and cannot be Participated to another Person. The Agency may reduce the minimum retention below 7.5 percent on a case by case basis when the Lender establishes to the Secretary's satisfaction that reduction of the minimum retention percentage is to meet compliance with the Lender's regulatory authority. The Lender must retain interest in the Collateral, and retain the servicing responsibilities for the guaranteed loan.

§ 4279.225 Repurchase from Holder.

(a) *Repurchase by Lender.* A Lender has the option to repurchase the unpaid guaranteed portion of the loan from a Holder within 30 days of written demand by the Holder when the Borrower is in Default not less than 60 days on principal or Interest due on the loan; or when the Lender has failed to remit to the Holder its Pro Rata share of any payment within 30 days of the Lender's receipt thereof from the Borrower. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued Interest less the Lender's servicing fee. The Holder must concurrently send a copy of the demand letter to the Agency. The Lender must accept an assignment without recourse from

the Holder upon repurchase. The Lender is encouraged to repurchase the loan, upon written demand from the Holder, to facilitate the accounting of funds, resolve any loan problem, and resolve the Default, where and when reasonable. The benefit to the Lender is that it may re-sell the guaranteed portion of the loan in order to continue collection of its servicing fee if the Default is cured. The Lender must notify, in writing, the Holder and the Agency of its decision.

(b) *Agency repurchase.* (1) The Lender's servicing fee will stop on the date that Interest was last paid by the Borrower when the Agency purchases the guaranteed portion of the loan from a Holder. The Lender cannot charge such servicing fee to the Agency and must apply all loan payments and Collateral proceeds received to the guaranteed and unguaranteed portions of the loan on a Pro Rata basis.

(2) If the Agency repurchases 100 percent of the guaranteed portion of the loan, the Agency will not continue collection of the Annual Renewal Fee from the Lender.

(3) If the Lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the Holder the unpaid principal balance of the guaranteed portion together with accrued Interest to date of repurchase or the Interest Termination Date, whichever is sooner, less the Lender's servicing fee, within 30 days after written demand to the Agency from the Holder.

(4) When Lender has accelerated the account, and subject to the expiration of any forbearance or workout agreement, the Lender, or the Agency at its sole discretion, must issue a letter to the Holder(s) establishing the Interest Termination Date. Accrued Interest to be paid to the Holder(s) will be calculated from the date Interest was last paid on the loan with a termination date not to exceed the Interest Termination Date.

(5) When the Lender has accelerated the account and the Lender holds all or a portion of the guaranteed loan, an estimated loss claim (loan in the liquidation process) must be filed by the Lender with the Agency within 60 days. Accrued Interest paid to the Lender will be calculated from the date Interest was last paid on the loan to the Interest Termination Date.

(6) The Holder's demand to the Agency must include a copy of the written demand made upon the Lender. The Holder must also include evidence of its right to require payment from the Agency. Such evidence must consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. When the single-note system is utilized and the initial Holder has sold its interest, the current Holder must present the original Assignment Guarantee Agreement and an original of each Agency approved reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee. The Holder must include in its demand the amount due including unpaid principal, unpaid Interest to date of demand, and Interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the Holder.

(7) Upon request by the Agency, the Lender must furnish within 30 days of such request a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and Interest then owed by the Borrower on the loan and the amount then owed to any Holder, along with the information necessary for the Agency to determine the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved between the Lender and the Holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(8) Purchase by the Agency neither changes, alters, nor modifies any of the Lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the Lender. The Agency will have the right to set-off against the

Lender all rights inuring to the Agency as the Holder of the instrument against the Agency's obligation to the Lender under the guarantee.

(c) *Repurchase for servicing.* If the Lender, Borrower, and Holder are unable to agree to restructuring of loan repayment, Interest rate, or loan terms to resolve any loan problem or resolve the Default and repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder must sell the guaranteed portion of the loan to the Lender for an amount equal to the unpaid principal and Interest on such portion less the Lender's servicing fee. The Lender must not repurchase from the Holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the Lender obtains the Agency's written approval. If the Lender does not repurchase the guaranteed portion from the Holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§4279.226 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which was lost, stolen, destroyed, mutilated, or defaced to the Lender or Holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the Lender or Holder, the Lender must coordinate the activities of the party who seeks the replacement documents and must submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the Lender of record;

(iii) Capacity of Person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the Borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named Holder and the percentage of the guaranteed portion of the loan assigned to that Holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the Holder, evidence demonstrating current ownership of the Loan Note Guarantee and Promissory Note or the Assignment Guarantee Agreement. If the present Holder is not the same as the original Holder, a copy of the endorsement of each successive Holder in the chain of transfer from the initial Holder to present Holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (*e.g.*, order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency must accompany the request for replacement except when the Holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The indemnity bond must be with surety except when the outstanding principal balance and accrued Interest due the present Holder is less than $1 million verified by the Lender in writing in a letter of certification of balance due. The surety must be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the Agency. The bond must be in an amount not less than the unpaid principal and Interest. The bond must hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provision of the multi-note system, the Agency will not attempt to obtain, or participate in the obtaining of, replacement Promissory Notes from the Borrower. The Holder is responsible for bearing the costs of Promissory Note replacement if the Borrower agrees to issue a replacement instrument. Should such Promissory Note be replaced, the terms of the Promissory Note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before the Agency will replace any instruments.

§ 4279.227 Equal Credit Opportunity Act.

In accordance with the Equal Credit Opportunity Act (15 U.S.C. 1691, *et seq.*), with respect to any aspect of a credit transaction, neither the Lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The Lender must comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202) prior to loan closing.

§§ 4279.228–4279.230 [Reserved]

LOAN PROCESSING

§ 4279.231 Fees.

(a) *Guarantee fee.* The guarantee fee is paid to the Agency by the Lender and is nonrefundable. The fee may be passed on to the Borrower. Issuance of the Loan Note Guarantee is conditioned on payment of the guarantee fee by closing. The guarantee fee will be the percentage specified in paragraphs (a)(1) or (2) of this section, as applicable, unless otherwise specified by the Agency in a notice published in the FEDERAL REGISTER, multiplied by the principal loan amount multiplied by the percent of guarantee and will be paid one time only at the time the Loan Note Guarantee is issued.

(1) For loans receiving a 90 percent guarantee, the guarantee fee is three percent.

(2) For loans receiving less than a 90 percent guarantee, the guarantee fee is:

(i) Two percent for guarantees on loans greater than 75 percent of total Eligible Project Costs.

(ii) One and one-half percent for guarantees on loans of greater than 65 percent but less than or equal to 75 percent of total Eligible Project Costs.

(iii) One percent for guarantees on loans of 65 percent or less of total Eligible Project Costs.

(b) *Annual Renewal Fee.* The Annual Renewal Fee, which may be passed on to the Borrower, is paid by the Lender to the Agency for as long as the guarantee is outstanding and is payable during the construction period.

(1) The amount of the annual renewal fee is calculated by the outstanding principal loan balance as of December 31 of each year multiplied by the Annual Renewal Fee rate, multiplied by the percent of guarantee. The rate is the rate in effect at the time the loan is obligated, and will remain in effect for the life of the loan.

(2) The Annual Renewal Fee is paid once a year and is required to maintain the enforceability of the guarantee as to the lender. Annual Renewal Rees are due on January 31. Payments not received by April 1 are considered delinquent and, at the Agency's discretion, may result in cancellation of the guarantee to the lender. Holders' rights will continue in effect as specified in the Loan Note Guarantee and Assignment Guarantee Agreement. Any delinquent Annual Renewal Fees will bear interest at the note rate and will be deducted from any loss payment due the lender. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first Annual Renewal Fee payment will be due January 31 of the second year following the date the Loan Note Guarantee was issued.

(3) When the Agency repurchases 100 percent of the guaranteed portion of the loan, the Agency will not continue collection of the Annual Renewal Fee.

(4) Unless otherwise specified by the Agency in a notice published in the FEDERAL REGISTER, the Annual Renewal Fee rate will be as follows:

(i) One hundred basis points (1 percent) for guarantees on loans that were originally greater than 75 percent of total Eligible Project Costs.

(ii) Seventy five basis points (0.75 percent) for guarantees on loans that were originally greater than 65 percent but less than or equal to 75 percent of total Eligible Project Costs.

(iii) Fifty basis points (0.50 percent) for guarantees on loans that were originally for 65 percent or less of Total Eligible Project Costs.

(c) *Routine Lender fees.* The Lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business, and these fees are an eligible use of loan proceeds. The Lender must document such routine fees on Form RD 4279–1, ''Application for Loan Guarantee.'' The Lender may charge prepayment penalties and late payment fees that are stipulated in the loan documents, as long as they are reasonable and customary; however, the Loan Note Guarantee will not cover either prepayment penalties or late payment fees.

§ 4279.232 Guaranteed loan funding.

(a) The amount of a loan guaranteed for a Project under this subpart will not exceed 80 percent of total Eligible Project Costs. Total Federal participation will not exceed 80 percent of total Eligible Project Costs. The Borrower needs to provide the remaining 20 percent from non-Federal sources to complete the Project. Eligible Project Costs are specified in § 4279.210(d). If an eligible Borrower receives other direct Federal funding (*i.e.*, direct loans or grants) for a Project, the maximum amount of the loan that the Agency will guarantee under this subpart must be reduced by the same amount of the other direct Federal funding that the eligible Borrower received for the Project. For example, an eligible Borrower is applying for a loan guarantee on a $100,000,000 Project. If the Borrower receives no other direct Federal funding for this Project and requests an $80,000,000 guaranteed loan, the Agency will consider a guarantee on the $80,000,000. However, if this Borrower receives $10,000,000 in other direct Federal funding for this Project, the Agency will only consider a guarantee on $70,000,000.

(b) The maximum principal amount of a loan guaranteed under this subpart is $250 million to one Borrower; there is no minimum amount.

(c) The maximum guarantee on the principal and Interest due on a loan guaranteed under this subpart will be determined as specified in paragraphs (c)(1) through (4) of this section.

(1) If the loan amount is equal to or less than $125 million, 80 percent for the entire loan amount unless all of the conditions specified in paragraphs (c)(1)(i) through (iii) of this section are met, in which case 90 percent for the entire loan amount.

(i) Total Federal participation, sum of the amount of the loan requested and other direct Federal funding, must not be greater than 60 percent of total Eligible Project Costs;

(ii) Feedstock and Off-Take Agreements of at least 1 year in duration; and

(iii) Total of revenues from tax credits, carbon credits, or other Federal or State subsidies cannot be greater than 10 percent of the Project's total revenues on an annual basis, in the Borrower's base case of financial projections.

(2) If the loan amount is more than $125 million and less than $150 million, 80 percent for the entire loan amount.

(3) If the loan amount is equal to or more than $150 million but less than $200 million, 70 percent on the entire loan amount.

(4) If the loan amount is $200 million up to and including $250 million, 60 percent on the entire loan amount.

§ 4279.233 Interest rates.

The Interest rate for the guaranteed loan will be negotiated between the Lender and the Borrower and may be either fixed or variable, or a combination thereof, as long as it is a legal rate. Interest rates will not be more than those rates the Lender customarily charges Borrowers for non-guaranteed loans in similar circumstances

in the ordinary course of business and are subject to Agency review and approval. Lenders are encouraged to utilize the secondary market and pass Interest-rate savings on to the Borrower.

(a) A variable Interest rate must be a rate that is tied to a published base rate. The variable Interest rate must be specified in the Promissory Note and may be adjusted at specified intervals during the term of the loan, but the adjustments may not be more often than once each Calendar Quarter. The Lender must incorporate, within the variable rate Promissory Note at loan closing, the provision for adjustment of payment installments. The Lender must properly amortize the outstanding principal balance within the prescribed loan maturity in order to eliminate the possibility of a balloon payment at the end of the loan.

(b) Any change in the base rate or fixed Interest rate between issuance of the Conditional Commitment and the issuance of the Loan Note Guarantee must be approved by the Agency. Approval of such a change must be shown as an amendment to the Conditional Commitment and must be reflected on the Guaranteed Loan Closing Report.

(c) It is permissible to have different Interest rates on the guaranteed and unguaranteed portions of the loan.

§ 4279.234 Terms of loan.

The loan terms, other than Interest, must be the same for both the guaranteed and unguaranteed portions of the loan.

(a) The repayment term for a loan under this subpart will be no greater than the lesser of 20 years from the date of loan closing or the useful life of the Project, as determined by the Lender and confirmed by the Agency. Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term.

(b) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the Borrower's ability to repay the loan.

(c) The first installment of principal and Interest will, if possible, be scheduled for payment after the Project is operational and has begun to generate income. However, the first full installment must be due and payable within three years from the date of the Promissory Note and be paid at least annually thereafter. In cases where there is an Interest-only period, Interest will be paid at least annually from the date of the Promissory Note.

(d) Only loans that require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment will be guaranteed except the final payment may be the funds held in the debt service reserve account.

§ 4279.235 Collateral.

The Lender is responsible for obtaining and maintaining proper and adequate Collateral to protect the interest of the Lender, the Holder, and the Agency. Collateral must be of such a nature that repayment of the loan is reasonably ensured when considered with the integrity and ability of Project management, soundness of the Project, and the Borrower's prospective earnings. The Collateral may include, but is not limited to, the following: Revenue, land, easements, rights-of-way, buildings, machinery, equipment, inventory, accounts receivable, contracts, cash, or other accounts, licenses and assignments of leases or leasehold interest.

(a) The entire loan, the guaranteed and unguaranteed portions, must be secured by a first lien on all assets of the Project including all assets in the Project budget. The Agency may consider a subordinate lien position on inventory and accounts receivable to Working Capital loans including revolving lines of credit provided the Agency determines the Working Capital is necessary for the operation and with the Subordination, the loan remains adequately secured.

(b) The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion.

§§ 4279.236–4279.242 [Reserved]

§ 4279.243 Insurance.

The Lender is responsible for ensuring that required insurance is maintained by the Borrower. The Lender must be shown as an additional insured on insurance policies (or other risk sharing instruments) that benefit the Project and must be able to assume any contracts that are material to the Project, including any feedstock or Off-Take Agreements, as may be applicable.

(a) *Hazard*. Hazard insurance with a standard clause naming the Lender as mortgagee or loss payee, as applicable, is required for the life of the guaranteed loan. The amount must be at least equal to the replacement value of the Collateral or the outstanding balance of the loan, whichever is the greater amount.

(b) *Life*. The Lender may require as Collateral an assignment of life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage must be in amounts necessary to provide for management succession or to protect the business. The Agency may require life insurance on key individuals for loans where the Lender has not otherwise proposed such coverage. The cost of insurance and its effect on the applicant's Working Capital must be considered as well as the amount of existing insurance that could be assigned without requiring additional expense.

(c) *Worker compensation*. Worker compensation insurance is required in accordance with State law.

(d) *Flood*. National flood insurance is required in accordance with applicable law.

(e) *Other*. The Lender must consider whether public liability, business interruption, malpractice, and other insurance is appropriate to the Borrower's particular business and must require the Borrower to obtain such insurance as is necessary to protect the interests of the Borrower, the Lender, or the Agency.

§ 4279.244 Appraisals.

(a) Lenders must obtain appraisals for real estate when the value of the Collateral exceeds $250,000. Each appraisal must be reported in a manner that summarizes all of the information necessary for the intended users to understand the report and contain all information pertinent to the appraiser's opinions and conclusions.

(1) Appraisals must not be more than one year old, and a more recent appraisal may be requested by the Agency in order to reflect more current market conditions. For loan servicing purposes, an appraisal may be updated in lieu of a complete new appraisal when the original appraisal is more than one year old, but less than two years old.

(2) Specialized appraisers will be required to complete appraisals under this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry. The Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question.

(3) All real property appraisals associated with Agency guaranteed loan origination and servicing transactions must meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP) and be performed by a State Certified General Appraiser. Notwithstanding any exemption that may exist for transactions guaranteed by a Federal Government agency, all appraisals obtained by the Lender for origination and servicing must conform to the Interagency Appraisal and Evaluations Guidelines established by the Lender's primary Federal or State regulator.

(4) All appraisals must include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the Market Value of the Collateral. The Lender must complete and submit its technical review of the appraisal. For construction Projects, the Lender must use the ''as-completed'' Market Value of the real estate to determine value of the real estate property. For all proposals,

Lenders must obtain a Phase I Environmental Site Assessment in accordance with ASTM International Standards, which should be provided to the appraiser for completion of the appraisal. For additional guidance and information refer to ''Phase I Environmental Site Assessment,'' published by the American Society of Testing and Materials.

(b) Chattels must be evaluated in accordance with normal banking practices and generally accepted methods of determining value. Chattel appraisals must reflect the age, condition, and remaining useful life of the equipment. If the appraisal is completed by a State licensed/certified appraiser, the appraisal report must comply with USPAP Standards 7 and 8.

§ 4279.245 Personal and corporate guarantees.

(a) Unconditional personal and corporate guarantees are required for the full term of the loan from Persons owning 20 percent or greater interest in the borrower.

(b) When warranted by an Agency assessment and its credit evaluation, guarantees may also be required of parent, subsidiaries, affiliated companies, Persons owning less than a 20 percent interest in the borrower, or Persons whose ownership interest in the Borrower is held indirectly through intermediate entities.

(c) The Agency may require the guarantees to be secured.

(d) Partial guarantees and exemptions to the requirement for guarantees may be requested by the Lender and are subject to concurrence by the Agency approval official on a case-by-case basis when warranted by an Agency assessment and its credit evaluation in accordance with § 4279.215(b). If partial guarantees are required, the partial guarantee will be at least equal to each owner's percentage of interest in the Borrower multiplied by the loan amount.

(e) All personal and corporate guarantors must execute Form RD 4279–14, ''Unconditional Guarantee,'' and any guarantee form required by the Lender. The Agency will retain the original, executed Form RD 4279–14.

(1) Any amounts paid by the Agency on behalf of an Agency Borrower will constitute a Federal Debt owed to the Agency by the Borrower.

(2) Any amounts paid by the Agency pursuant to a claim by a Lender will constitute a Federal Debt owed to the Agency by a guarantor of the loan, to the extent of the amount of the guarantor's guarantee.

(3) In all instances under paragraphs (c)(1) and (2) of this section, Interest charges will be assessed at the Promissory Note Interest rate on the date a loss claim is paid.

§§ 4279.246–4279.255 [Reserved]

§ 4279.256 Construction planning and performing development.

The Lender and Borrower must comply with paragraphs (a) through (i) of this section. The Lender may contract for services and may rely on certain written materials and other reports to be provided by an independent engineer and other qualified third parties.

(a) *Design policy.* The Lender must monitor and require the Borrower ensure that all facilities constructed with Program funds are designed, and costs estimated, by an independent professional utilizing accepted architectural, engineering, and design practices and conform to applicable Federal, State, and local codes and requirements.

(b) *Project control.* (1) The Lender must monitor the progress of construction and confirm the reviews and inspections necessary to ensure that construction conforms to applicable Federal, State, and local code requirements have been performed; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that loan funds are used for Eligible Project Costs in accordance with the purposes approved by the Agency in its Conditional Commitment. The Lender must expeditiously report any problems in Project development to the Agency.

(2) The Lender must ensure an onsite Project inspector or independent engineer monitors the Project.

(3) The Lender must monitor the Project to confirm that the Project will be completed with available funds and, once completed, will be used for

its intended purpose and produce products in the quality and quantity proposed in the completed application approved by the Agency. Once construction is completed, the Lender must provide the Agency with a copy of the notice of completion.

(4) Prior to the disbursement of construction funds, the Lender shall:

(i) Have on file the major drawings issued for construction and major equipment specifications issued for procurement;

(ii) Have a detailed timetable for the Project with a corresponding budget of costs, setting forth the parties responsible for payment;

(iii) Ensure that the independent engineer confirms that the budget is adequate for the Project;

(iv) Require the Borrower to have a firm fixed-price engineering, procurement and construction (EPC) contract in place which includes performance guarantees customary and reasonable for a project of this nature or engineering, construction, and procurement contracts in place with vendors and construction contractors for the construction of the Project, each on customary terms and conditions;

(v) Require provisions for change order approvals, a retainage percentage, and a disbursement schedule;

(vi) Require the Borrower to have contingencies in place to handle unforeseeable cost overruns without seeking additional Agency assistance. These contingencies must be agreed to by the Agency.

(c) *Changes and cost overruns.* The Borrower is responsible for any changes or cost overruns. If any such change or cost overrun occurs, then any change order must be expressly approved by the Agency, which approval shall not be unreasonably withheld, and neither the Lender nor Borrower will divert funds from purposes identified in the guaranteed loan application approved by the Agency to pay for any such change or cost overrun without the express written approval of the Agency. In no event will the current loan be modified or a subsequent guaranteed loan be approved to cover any such changes or costs. In the event of any of the aforementioned increases in cost or expenses, the Borrower must provide for such increases in a manner that does not diminish the Borrower's operating capital. Failure to comply with the terms of this paragraph (c) will be considered a Material Adverse Change in the Borrower's financial condition, and the Lender must address this matter, in writing, to the Agency's satisfaction.

(d) *New draw certifications.* The following three certifications are required for each new draw:

(1) Certification by the Project engineer to the Lender that the work referred to in the draw has been successfully completed;

(2) Certification that all debts have been paid and all mechanics' liens have been waived; and

(3) Certification that the Borrower is complying with the Davis-Bacon Act (see paragraph (h) of this section).

(e) *Surety.* Surety, as the term is commonly used in the industry, will be required. The Borrower must have either 100 percent performance/payment bonds on the contractors or a guarantee from a creditworthy parent entity or an alternative acceptable to the Lender and the Agency and must be secured. The bonding agent must be listed on Treasury Circular 570.

(f) *Equal opportunity.* For all construction contracts in excess of $10,000, the contractor must comply with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The Borrower and Lender are responsible for ensuring that the contractor complies with these requirements.

(g) *Americans with Disabilities Act (ADA).* Construction of or addition to facilities that accommodate the public or commercial facilities, as defined by the ADA, must comply with the ADA.

(h) *Wage rates.* As a condition of receiving a loan guaranteed under this subpart, each Borrower shall ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this subpart shall be paid wages at rates not less than those prevailing on similar

construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40, U.S.C. Awards under this subpart are further subject to the relevant regulations contained in 29 CFR part 5.

(i) *Reporting during construction.* Lenders must submit monthly construction and quarterly progress reports to the Agency, as specified in paragraphs (i)(1) and (2), respectively, of this section and the Borrower information specified in paragraph (i)(3) of this section.

(1) Monthly construction reports documenting the use of the Project funding until construction is completed. The reports must include the following:

(i) Certifications for each draw request:

(A) Certification by the independent engineer to the Lender that the work referred to in the draw has been successfully completed;

(B) Certification from the Borrower and independent engineer or that the proceeds of the prior draw have been applied to Eligible Project Costs in accordance with the draw request and that the contractors have delivered mechanics' lien waivers in connection with such draw; and

(C) Certification from the Borrower as to its compliance with the Davis-Bacon Act confirmed by the independent engineer;

(ii) List of invoices;

(iii) Detail of equity and Guaranteed Loan funds paid to date;

(iv) Status of construction and inspection reports; and

(v) Concerns, potential problems, cost overruns, etc.

(2) Quarterly progress reports by the end of each Calendar Quarter, unless more frequent ones are needed as determined by the Agency, through the time when the facility is producing at its designed capacity at a steady state. These reports must contain, at a minimum, planned and completed construction milestones, loan advances, and personnel hiring, training, and retention and commissioning and ramp-up milestones and performance reports. This requirement applies to both the development and construction of Commercial-Scale Biorefineries and to the Retrofitting of existing facilities using Eligible Technology for the development of Advanced Biofuels and Biobased Products including Renewable Chemicals. The Lender must expeditiously report any problems in Project development to the Agency.

(3) Once construction is completed, the Lender must provide the Agency with:

(i) A copy of all required material building permits, with sign-offs;

(ii) Notice of Completion or an Agency approved equivalent; and

(iii) Final accounting of sources and uses of all Project funds.

§§ 4279.257–4279.258 [Reserved]

§ 4279.259 Borrower responsibilities.

(a) *Federal, State, and local regulations.* Borrowers must comply with all Federal, State, and local laws and rules that are in existence and that affect the Project including, but not limited to:

(1) Land use zoning;

(2) Health, safety, and sanitation standards as well as design and installation standards; and

(3) Protection of the environment and consumer affairs.

(b) *Permits, agreements, and licenses.* Borrowers must obtain all permits, agreements, and licenses that are applicable to the Project.

(c) *Insurance.* The Borrower is responsible for maintaining all hazard, flood, liability, worker compensation, and personal life insurance, when required, for the Project.

(d) *Access to Borrower's records.* Except as provided by law, upon request by the Agency, the Borrower will permit representatives of the Agency (or other Federal agencies as authorized by the Agency) to inspect and make copies of any of the records of the Borrower's Project. Such inspection and copying may be made during regular office hours of the Borrower or at any other time agreed upon between the Borrower and the Agency.

(e) *Access to the Project.* The Borrower must allow the Agency access to the Project and its performance information until the loan is repaid in full and permit periodic inspections of the

Project by a representative of the Agency.

APPLICATIONS

§ 4279.260 Guarantee applications—general.

(a) *Application submittal.* (1) For each guarantee request, the Lender or the Borrower must submit to the Agency a non-binding letter of intent to apply for loan guarantee not less than 30 calendar days prior to the application deadline as provided in paragraph (b) of this section. The letter must identify the Borrower, the Lender and Project sponsors; describe the Project and Project location; describe the proposed feedstock, primary technologies of the facility and primary products produced; estimate the Total Project Cost and amount of loan requested; and any additional information specified in the annual FEDERAL REGISTER notice, if any. Applications that do not submit a letter of intent may be accepted by the Agency at the Agency's discretion.

(2) For each guarantee request, the Lender must submit to the Agency an application that is in conformance with § 4279.261. The methods of application submittal will be specified in the annual FEDERAL REGISTER notice.

(b) *Application deadline.* Unless otherwise specified by the Agency in a notice published in the FEDERAL REGISTER, application deadlines are October 1 and April 1 of each year. Complete applications must be received by the Agency on or before April 1 of each year to be considered for funding for that fiscal year. If the application deadline falls on a weekend or an observed holiday, the deadline will be the next Federal business day. The deadlines in this paragraph (b) relate to Phase 1 applications in accordance with § 4279.261.

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

(d) *Application withdrawal.* During the period between the submission of an application and closing, the Lender must notify the Agency, in writing, if the Project is no longer viable or the Borrower is no longer requesting financial assistance for the Project. When the Lender so notifies the Agency, the Agency will rescind the selection or withdraw the application.

(e) *Application revisions and updates.* During the period between the submission of an application and closing, the Lender must notify the Agency, in writing, of revisions to the Project including but not limited to revisions to technology utilized in the Project, feedstock, Off-Take Agreements, ownership structure, and Project financing. The Agency may require submittal of updated application and supporting materials. The Agency will complete the application priority scoring in accordance with § 4279.266 based on the application materials received by the Agency prior to the application deadline. Subsequent changes to an application that result in a lower priority score could result in the Agency discontinuing processing of the application.

§ 4279.261 Application for loan guarantee content.

Lenders must submit a complete application for each loan guarantee sought under this subpart. Components of an application are submitted in two phases. Phase I applications, which are the initial application submissions, must contain the information specified in paragraphs (a) through (j) of this section, organized pursuant to a table of contents in a chapter format. Phase 2 application components may be submitted after the Agency invites the Lender and Borrower to make the phase 2 submittal and must contain the information specified in paragraph (k) of this section.

(a) *Project Summary*. Provide a concise summary of the proposed Project and application information, Project purpose and need, and Project goals, including the following:

(1) *Title.* Provide a descriptive title of the Project.

(2) *Borrower eligibility*. Describe how the Borrower meets the eligibility criteria identified in § 4279.209.

(3) *Project eligibility*. Describe how the Project meets the eligibility criteria

identified in § 4279.210. Clearly state whether the application is for the construction and development of a Biorefinery or for the Retrofitting of an existing facility. Additional Project description information will be needed later in the application process.

(4) *Project funds.* Submit a Spreadsheet identifying sources, amounts, and availability of funds. The Spreadsheet must also include a directory of funds source contact information. Attach any applications, correspondence, or other written communication between Borrower and fund source.

(5) *Project timeline.* A projected timeline detailing the timeline commencing with the loan application phase 1, including the loan application phase 2, final Project planning and engineering, obtaining required permits, loan closing, plant construction, commissioning and ramp up through stabilized state of operation.

(b) *Application form.* Form RD 4279–1 or other Agency-approved application form if specified in a FEDERAL REGISTER notice.

(c) *Financial statements.* (1) The most recent audited financial statements of the Borrower, unless alternative financial statements are authorized by the Agency; and

(2) A current (not more than 90 days old) balance sheet and a pro forma balance sheet at startup.

(d) *Financial model.* Submit a financial model for the Project in the form of a financial modeling software program in an active electronic format which includes, but is not limited to, a projected Project budget and projected balance sheets, income and expense statements, cash flow statements, and Working Capital and capital expense projections for not less than the term of the loan. The projections must be displayed in a monthly format for a period of three years after stabilized operation and annually thereafter. Projections should be supported by a list of assumptions showing the basis for the projections. Depending on the complexity of the Project and the financial condition of the Borrower, the Agency may require additional financial statements and additional related information.

(e) *Feasibility Study.* The Feasibility Study should be prepared by a qualified, independent third party using information gathered from other qualified parties and documents such as: independent engineer reports, marketing studies, feedstock studies, business plans and financial statements prepared by a certified public accountant. Any information used to prepare the Feasibility Study should be submitted as attachments. Elements in an acceptable Feasibility Study include, but are not limited to, the elements outlined in Table 1 of this section.

TABLE 1—FEASIBILITY STUDY COMPONENTS

(A) Executive summary

- Introduction/Project Overview (Brief general overview of Project location, size, etc.).
- Economic feasibility determination.
- Market feasibility determination.
- Technical feasibility determination.
- Financial feasibility determination.
- Management feasibility determination.
- Recommendations for implementation.

(B) Economic Feasibility

- Description of feedstock and confirmation that the feedstock is not used elsewhere in the production of Advanced Biofuels or Biobased Products including Renewable Chemicals.
- Feedstock:
  - Feedstock source management,
  - Estimates of feedstock volumes and costs,
  - Collection, pre-treatment, transportation, and storage, and
  - Feedstock risks.

TABLE 1—FEASIBILITY STUDY COMPONENTS—Continued

Documentation that woody biomass feedstock from National Forest system lands or public lands cannot be used for a higher-value product.
Impacts on any other similar Biorefineries in the area in which the Borrower proposes to place the Project, defined as the area that will supply the feedstock to the proposed Project, if any.
Impacts on existing manufacturing plants or other facilities that use similar feedstock if the Borrower's proposed production technology is adopted.
Projected impact on resource conservation, public health, and the environment.
Information regarding Project site.
Availability of trained or trainable labor.
Availability of infrastructure, including utilities, and rail, air and road service to the site.
Overall economic impact of the Project, including direct jobs, indirect jobs, additional markets created for agricultural and forestry products and agricultural waste material and the potential for Rural economic development.
Feasibility/plans of Project to work with producer associations or cooperatives and the estimated amount of annual feedstock purchased from or sold to producer associations and cooperatives.

(C) Market Feasibility

Information on the sales organization and management.
Nature and extent of market and market area.
Marketing plans for sale of projected output—principal products and Byproducts.
Extent of competition, including other similar facilities in the market area.
Commitments from purchasers of off-take—principal products and secondary products, degree of commitment, duration or terms of Off-Take Agreements, and financial strength of counterparties.
Risks related to the industry, including:
- Industry status;
- Specific market risks; and
- Competitive threats and advantages.

(D) Technical Feasibility

Suitability of the selected site for the intended use.
Scale of development for which the process technology has been proven (*i.e.,* pilot, demonstration, or Semi-Work Scale Facility). Provide results from pilot, demonstration, or Semi-Work Scale Facilities that prove that the technology proposed to be used is feasible and stands a good chance of being successful. The proposed technology must meet the definition of Eligible technology.
The degree of integration of all processes should be detailed and a summary of any integrated demonstration unit test results should be submitted.
Specific volume produced from the technology of the process (expressed either as volume of feedstock processed [tons per unit of time] or as product [gallons per unit of time]).
Identification and estimation of Project operation and development costs. Specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. Detailed analysis of Project costs including: Project management and professional services; resource assessment; Project design and permitting; land agreements and site preparation; equipment requirements and system installation; startup and shakedown; and warranties, insurance, financing and operation and maintenance costs.
A projected timeline detailing Borrower plans from the time of loan application through plant construction, commissioning and ramp up should be included.
Ability of the proposed system to be commercially replicated.
Risks related to:
- Construction of the Biorefinery;
- Production of the Advanced Biofuel and Biobased Product including Renewable Chemical;
- Regulation and governmental action;

TABLE 1—FEASIBILITY STUDY COMPONENTS—Continued

Design-related factors that may affect Project success; and Technology scale up risk.
(E) Financial Feasibility
Reliability of the financial projections and the assumptions on which the financial statements are based, including all sources and uses of Project capital, private or public Federal and non-Federal funds. Provide detailed analysis and description of projected balance sheets, income and expense statements, and cash flow statements over the useful life of the Project.
A detailed description of and the degree financial feasibility is dependent on: Investment incentives; Productivity incentives; Loans and grants; and Other Project authorities RINs value, tax credits, other credits, and subsidies that affect the Project.
Any constraints or limitations in the financial projections.
Ability of the business to achieve the projected income and cash flow.
Assessment of the cost accounting system.
Availability of short-term credit or other means to meet seasonal business costs.
Adequacy of raw materials and supplies.
Sensitivity analysis, including feedstock and energy costs and product and Byproduct prices.
Risks related to: The Project; Borrower financing plan; The operational units; and Tax issues.
(F) Management Feasibility
Borrower and/or management's previous experience concerning: Production of Advanced Biofuel, and Biobased Product including Renewable Chemicals, as applicable; Acquisition of feedstock; Marketing and sale of off-take; and The receipt of Federal financial assistance, including amount of funding, date received, purpose, and outcome.
Management plan for procurement of feedstock and labor, marketing of the off-take, and management succession.
Risks related to: Borrower as a company (*e.g.,* development-stage); Conflicts of Interest; and Management strengths and weaknesses.
(G) Qualifications
A resume or statement of qualifications of the author and contributors of the Feasibility Study, including prior experience, must be submitted.

(f) *Business Plan.* The Lender must submit the Borrower's business plan that includes the information specified in paragraphs (f)(1) through (10) of this section. Any or all of this information may be omitted if it is included in the Feasibility Study specified in paragraph (e) of this section.

(1) Describe or provide an organizational chart of the Borrower's ownership structure and affiliation with other entities, if any. The names and a description of the relationship of the Borrower's parent, Affiliates, and subsidiaries. Identify local ownership.

(2) The Borrower's succession planning, addressing both ownership and management.

(3) The Borrower's experience and management experience.

(4) The products and services to be provided and the Borrower's business strategy.

(5) Possible vendors and models of major system components.

(6) The availability of the resources (*e.g.*, labor, raw materials, supplies) necessary to provide the planned products and services.

(7) Site location and its relation to product distribution (*e.g.*, rail lines or highways) and any land use or other permits necessary to operate the facility.

(8) The market for the product and its competition, including any and all competitive threats and advantages.

(9) Projected balance sheets, income and expense statements, and cash flow statements for a period of not less than three years of stabilized operation.

(10) A description of the proposed use of funds.

(g) *Scoring information.* The application must contain information in a format that is responsive to the scoring criteria specified in §4279.266.

(h) *Intergovernmental consultation.* Intergovernmental consultation comments in accordance with 2 CFR part 415, subpart C or successor regulation.

(i) *Unique Entity Identifier (UEI).* For Borrowers other than individuals, a UEI, which can be obtained online at *https://sam.gov/.*

(j) *Other information.* Any other information determined by the Agency to be necessary to evaluate the application.

(k) *Phase 2 application contents.* (1) Updates, as appropriate, to contents of application materials submitted in application phase 1.

(2) An appraisal conducted as specified under §4279.244.

(3) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions as specified in paragraphs (k)(3)(i) through (ix) of this section.

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restriction on dividend payments.

(iii) Limitation on the purchase or sale of equipment and fixed assets.

(iv) Limitation on compensation of officers and owners.

(v) Minimum Working Capital or current ratio requirement.

(vi) Maximum debt-to-net worth ratio.

(vii) Restrictions concerning consolidations, mergers, or other circumstances.

(viii) Limitations on selling the business without the concurrence of the Lender.

(ix) Repayment and amortization of the loan.

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

(5) Under the direction of the Agency, an evaluation and rating of the total Project's indebtedness, without consideration for a government guarantee, from a nationally-recognized statistical rating organization (NRSRO), as defined by the U.S. Security and Exchange Commission, for all Projects with total Eligible Project Costs of $25 million or more unless as otherwise specified by the Agency in a notice published in the FEDERAL REGISTER. The evaluation and rating must be in the form of an indicative private rating, private credit analysis, or comparable analysis report and include a rating in accordance with the NRSRO's credit rating scales and include a recovery analysis. An updated rating may be required at the Agency's discretion if changes are subsequently made to the Project including changes to any contracts and agreements or changes to loan terms and conditions.

(6) Lender's analysis and credit evaluation that conforms to §4279.215 and must include the information specified in paragraphs (k)(6)(i) and (ii) of this section.

(i) The credit reports of the Borrower, its principals, and any parent, Affiliate, or subsidiary as follows:

(A) Unless otherwise determined by the Agency, a personal credit report from an Agency-approved credit reporting company for individuals who are key employees of the Borrower, as determined by the Agency, and for individuals owning 20 percent or more interest in the Borrower or any owner with more than 10 percent ownership interest in the Borrower if there is no owner with more than 20 percent ownership interest in the Borrower, except

for when the Borrower is a corporation listed on a major stock exchange; and

(B) Commercial credit reports on the Borrower and any parent, Affiliate, and subsidiary firms.

(ii) Financial and sensitivity review using a financial modeling software program or a banking industry software analysis program with industry standards, when appropriate.

(7) Whether the Loan Note Guarantee is requested prior to construction or after completion of construction of the Project.

(8) The technical assessment must be completed by a qualified independent engineer and must demonstrate that the design, procurement, installation, startup, operation and maintenance of the Project will permit it to operate or perform as specified over its useful life in a reliable and a cost effective manner, and must identify what the useful life of the Project is. The technical assessment must also identify all necessary Project agreements, demonstrate that those agreements will be in place at or before the time of loan closing, and demonstrate that necessary Project equipment and services will be available over the useful life of the Project. The technical assessment must be based upon verifiable data and contain sufficient information and analysis so that a determination can be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. All technical information provided must follow the format specified in paragraphs (k)(8)(i) through (ix) of this section. Supporting information may be submitted in other formats. Design drawings and process flow charts are required as exhibits. A discussion of a topic identified in paragraphs (k)(8)(i) through (ix) of this section is not necessary if the topic is not applicable to the specific Project. Questions identified in the Agency's technical review of the Project must be answered to the Agency's satisfaction before the application will be approved. All Projects require the services of an independent, third-party professional engineer.

(i) *Qualifications of Project team.* The Project team will vary according to the complexity and scale of the Project. The Project team must have demonstrated expertise in similar Advanced Biofuel and Biobased Product including Renewable Chemical, as applicable, technology development, engineering, installation, and maintenance. Identify Borrower's, including its principals', prior experience in bioenergy projects and the receipt of Federal financial assistance, including the amount of funding, date received, purpose, and outcome, for such projects. Authoritative evidence that Project team service providers have the necessary professional credentials or relevant experience to perform the required services for the development, construction, and Retrofitting, as applicable, of technology for producing Advanced Biofuels and Biobased Products including Renewable Chemicals, if applicable, must be provided. In addition, authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the facility to operate over its useful life must be provided. The application must:

(A) Discuss the proposed Project delivery method. Such methods include a design-bid-build method, where a separate engineering firm may design the Project and prepare a request for bids and the successful bidder constructs the Project at the Borrower's risk, and a design -build method, often referred to as ''turnkey,'' where the Borrower establishes the specifications for the Project and secures the services of a developer who will design and build the Project at the developer's risk;

(B) Discuss the manufacturers of major components of Advanced Biofuels and Biobased Product including Renewable Chemical technology equipment being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(C) Discuss the Project team members' qualifications for engineering, designing, and installing similar projects, including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating, with references if available; and

(D) Describe the facility operator's qualifications and experience for servicing, operating, and maintaining such equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating, with references if available.

(ii) *Agreements and permits.* The application must identify all necessary agreements and permits required for the Project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (k)(8)(ii)(A) through (F) of this section.

(A) All facilities funded under this subpart must be installed in accordance with applicable local, State, and national codes and applicable local, State, and Federal regulations. Identify zoning and code requirements and necessary permits and the schedule for meeting those requirements and securing those permits.

(B) Identify licenses where required and the schedule for obtaining those licenses.

(C) Identify land use agreements required for the Project, the schedule for securing those agreements, and the term of those agreements.

(D) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(E) Identify available component warranties for the specific Project location and size.

(F) Identify all environmental issues, including environmental compliance issues, associated with the Project.

(iii) *Resource assessment.* The application must provide adequate and appropriate evidence of the availability of the feedstocks required for the facility to operate as designed. Indicate the type and quantity of the feedstock, and discuss storage of the feedstock, where applicable, and competing uses for the feedstock. Indicate shipping or receiving methods and required infrastructure for shipping, and other appropriate transportation mechanisms including methods and systems to prevent the spread of invasive species. For proposed Projects with an established resource, provide a summary of the resource.

(iv) *Design and engineering.* The application must provide authoritative evidence that the facility will be designed and engineered so as to meet its intended purposes, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Each facility must be engineered as a complete, integrated facility. The engineering must be comprehensive, including site selection, systems and component selection, and systems monitoring equipment. All Projects funded under this subpart must be constructed by a qualified entity.

(A) The application must include a concise but complete description of the Project, including location of the Project; resource characteristics, including the kind and amount of feedstocks; facility specifications; kind, amount, and quality of the output; and monitoring equipment. Address performance on a monthly and annual basis. Describe the uses of or the market for the Advanced Biofuels and Biobased Product including Renewable Chemical produced by the facility. Discuss the impact of reduced or interrupted feedstock availability on the facility's operations.

(B) The application must include:

(*1*) A description of the Project site that addresses issues such as site access, foundations, and backup equipment when applicable;

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

(*3*) Identification of any unique construction and installation issues.

(C) Sites must be controlled by the eligible Borrower for at least the financing term of the Loan Note Guarantee.

(v) *Project development schedule.* The application must describe each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the Project through startup and shakedown. Provide a detailed description of the Project timeline including resource assessment, Project and site design, permits and agreements, equipment procurement, and Project construction from excavation through startup and shakedown.

(vi) *Equipment procurement*. The application must demonstrate that equipment required by the facility is available and can be procured and delivered within the proposed Project development schedule. Projects funded under this subpart may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory.

(vii) *Equipment installation*. The application must provide a full description of the management of and plan for site development and systems installation, details regarding the scheduling of major installation equipment needed for Project construction, and a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the facility as a whole.

(viii) *Operations and maintenance*. The application must provide the operations and maintenance requirements of the facility necessary for the facility to operate as designed over its useful life. The application must also include:

(A) Information regarding available facility and component warranties and availability of spare parts;

(B) A description of the routine operations and maintenance requirements of the proposed facility, including maintenance schedules for the mechanical, piping, and electrical systems and system monitoring and control requirements, as well as provision of information that supports expected useful life of the facility and timing of major component replacement or rebuilds;

(C) A discussion of the costs and labor associated with operating and maintaining the facility and plans for in-sourcing or outsourcing. A description of the opportunities for technology transfer for long-term Project operations and maintenance by a local entity or owner/operator; and

(D) Provision and discussion of the risk management plan for handling large, unanticipated failures of major components.

(ix) *Decommissioning*. A description of the decommissioning process, when the Project must be uninstalled or removed. A description of any issues, requirements, and costs for removal and disposal of the facility.

[80 FR 36425, June 24, 2015, as amended at 81 FR 11051, Mar. 2, 2016; 89 FR 34959, May 1, 2024]

§§ 4279.262–4279.264 [Reserved]

§ 4279.265 Guarantee application processing.

(a) *Eligibility determination*. Upon receipt of a complete Phase 1 application, the Agency will determine if the Borrower, Lender, and Project are eligible and if the Project is technically and economically feasible, as provided under paragraph (b) of this section.

(1) If the Borrower, Lender, or the Project is determined to be ineligible for any reason, the Agency will inform the Lender, in writing, of the reasons. No further evaluation of the application will occur.

(2) If the Agency determines it is unable to guarantee the loan, the Agency will inform the Lender in writing. Such notification will include the reasons for denial of the guarantee.

(b) *Technical and economic feasibility*. (1) The Agency's determination of a Project's technical and economic feasibility will be based on:

(i) The Agency's analysis of the technical report and Feasibility Study submitted in the application conducted by qualified independent third parties;

(ii) The Lenders credit evaluation; and

(iii) Other application materials.

(2) The Agency's determination of a Project's technical feasibility will be based on the technical report. In addition, prior to the issuance of the Conditional Commitment for a Project utilizing technology that does not have a history of successful utilization in a Commercial-scale operation of a Biorefinery that produces an Advanced biofuel, Renewable chemical, or Biobased product, evidence demonstrating 120 days of continuous, steady state production from an integrated demonstration unit must be provided by the Borrower to the Lender

and the Agency for review and determination of technical feasibility. Authoritative demonstration campaign results must be provided in 30-day intervals. The integrated demonstration unit must prove out the Project's ability to utilize Project-relevant biomass and produce Advanced biofuel at a yield and quality consistent with the design basis of the Project. The Borrower must provide to the Agency, for review and approval, sufficient information on the integrated campaign design so as to ensure operation duration, quality, and quantity specifications are met and incorporated into the final design criteria for the commercial facility.

(3) Projects determined by the Agency to be without technical or economic feasibility will not be selected for funding.

[80 FR 36425, June 24, 2015, as amended at 85 FR 29596, May 18, 2020]

§ 4279.266 Guarantee application scoring.

Using the evaluation criteria identified in this section, the Agency will score each eligible Biorefinery application that meets the minimum requirements for technical and economic feasibility. A maximum of 125 points is possible. The Agency will award points based on its review and analysis of all application materials. Clarifications for the scoring on Biobased Product Manufacturing applications will be made available by a notice published in the FEDERAL REGISTER.

(a) Whether the Borrower has established a market for the Advanced Biofuel and the Biobased Products including Renewable Chemicals, as applicable. A maximum of 20 points can be awarded. Points to be awarded will be determined as follows:

(1) *Degree of commitment of Off-Take Agreements.* A maximum of 6 points will be awarded.

(i) If the Borrower has signed Off-Take Agreements for purchase for greater than 50 percent of the dollar value of off-take, 6 points will be awarded.

(ii) If the Borrower has signed letters of intent to enter into Off-Take Agreements, or comparable documentation, for the purchase for greater than 50 percent of the dollar value of off-take, or combination of signed contracts or agreements and letters of intent or comparable documentation, 4 points will be awarded.

(iii) If the Borrower has signed letters of interest to enter into Off-Take Agreements, or comparable documentation, for the purchase for greater than 50 percent of the dollar value of off-take, or combination of signed Off-Take Agreements, letters of intent, letters of intent or comparable documentation, 2 points will be awarded.

(2) *Duration of Off-Take Agreements.* A maximum of 6 points will be awarded.

(i) If the Borrower commits to enter into Off-Take Agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of off-take for the period not less than the loan term, 6 points will be awarded.

(ii) If the Borrower commits to enter into Off-Take Agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of off-take for the period not less than five years but less than the term of the loan, 4 points will be awarded.

(iii) If the Borrower commits to enter into Off-Take Agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of off-take for the period not less than one year but less than five years, 2 points will be awarded.

(3) *Financial strength of the off-take counterparty.* A maximum of 4 points will be awarded.

(i) If the Borrower commits to enter into Off-Take Agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of off-take with an off-take counterparty with a corporate credit rating not less than AA, Aa2, or equivalent, 4 points will be awarded.

(ii) If the Borrower commits to enter into Off-Take Agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of off-take with an off-take counterparty with a corporate credit rating less than AA, Aa2, or equivalent, but not less than A-, or A3, or equivalent, 2 points will be awarded.

(iii) If the Borrower commits to enter into Off-Take Agreements prior to loan closing for purchase for greater than or

equal to 50 percent of the dollar value of off-take with an off-take counterparty with a corporate credit rating less than A-, or A3, or equivalent, but not less than BBB-, or Baa3, or equivalent, 1 point will be awarded.

(4) *Revenue dependency on tax credits, carbon credits, or other Federal or State subsidies.* A maximum of 4 points will be awarded.

(i) If total of revenues from tax credits, carbon credits, or other Federal or State subsidies is less than or equal to 10 percent of the Project's total revenues on an annual basis, in the Borrower's base case of financial projections, 4 points will be awarded.

(ii) If total of revenues from tax credits, carbon credits, or other Federal or State subsidies is greater than 10 percent but less than or equal to 20 percent of the Project's total revenues on an annual basis, in the Borrower's base case of financial projections, 2 points will be awarded.

(iii) If total of revenues from tax credits, carbon credits, or other Federal or State subsidies is greater than 20 percent but less than or equal to 30 percent of the Project's total revenues on an annual basis, in the Borrower's base case of financial projections, 1 point will be awarded.

(b) Whether the area in which the Borrower proposes to place the Project, defined as the area that will supply the feedstock to the proposed Project, has any other similar facilities. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If the area that will supply the feedstock to the proposed Project does not have any other similar facilities, 5 points will be awarded.

(2) If there are other similar facilities located within the area that will supply the feedstock to the proposed Project, 0 points will be awarded.

(c) Whether the Borrower is proposing to use a feedstock or biobased output of Biorefineries not previously used in the production of Advanced Biofuels or Biobased Products including Renewable Chemicals. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Borrower proposes to use a feedstock previously used in the production of Advanced Biofuels and Biobased Product including Renewable Chemicals in a commercial facility, 0 points will be awarded.

(2) If the Borrower proposes to use a feedstock not previously used in production of Advanced Biofuels and Biobased Product including Renewable Chemicals in a commercial facility, 10 points will be awarded.

(d) Whether the Borrower is proposing to work with producer associations or cooperatives. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If at least 50 percent of the dollar value of feedstock to be used by the proposed Project will be supplied by producer associations and cooperatives, 5 points will be awarded.

(2) If at least 30 percent of the dollar value of feedstock to be used by the proposed Project will be supplied by producer associations and cooperatives, 3 points will be awarded.

(e) The level of financial participation by the Borrower, including support from non-Federal government sources and private sources. A maximum of 20 points can be awarded. Points to be awarded will be determined as follows:

(1) If the sum of the loan amount requested and other direct Federal funding is less than or equal to 50 percent of total Eligible Project Cost, 20 points will be awarded.

(2) If the sum of the loan amount requested and other direct Federal funding is greater than 50 percent but less than or equal to 55 percent of total Eligible Project Cost, 16 points will be awarded.

(3) If the sum of the loan amount requested and other direct Federal funding is greater than 55 percent but less than or equal to 60 percent of total Eligible Project Cost, 12 points will be awarded.

(4) If the sum of the loan amount and other direct Federal funding is greater than 60 percent but less than or equal to 65 percent of total Eligible Project Cost, 8 points will be awarded.

(5) If the sum of the loan amount and other direct Federal funding is greater than 65 percent but less than or equal

to 70 percent of total Eligible Project Cost, 4 points will be awarded.

(f) Whether the Borrower has established that the adoption of the process proposed in the application will have a positive effect on three impact areas: resource conservation (*e.g.*, water, soil, forest), public health (*e.g.*, potable water, air quality), and the environment (*e.g.*, compliance with an applicable renewable fuel standard, greenhouse gases, emissions, particulate matter). A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(1) If process adoption will have a positive impact on any one of the three impact areas (resource conservation, public health, or the environment), 3 points will be awarded.

(2) If process adoption will have a positive impact on two of the three impact areas, 6 points will be awarded.

(3) If process adoption will have a positive impact on all three impact areas, 10 points will be awarded.

(4) If the Project proposes to use a feedstock that can be used for human or animal consumption, 5 points will be deducted from the score.

(g) Whether the Borrower can establish that, if adopted, the technology proposed in the application will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks or biobased outputs of Biorefineries. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Borrower has failed to establish, through an independent third-party Feasibility Study, that the production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks, 0 points will be awarded.

(2) If the Borrower has established, through an independent third-party Feasibility Study, that the production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks, 5 points will be awarded.

(3) If the feedstock is wood pellets, no points will be awarded under this criterion.

(h) The potential for Rural economic development. A maximum of 20 points will be awarded. Points to be awarded will be determined as follows:

(1) If the Project is located in a Rural Area, 5 points will be awarded.

(2) If the Project creates jobs through direct employment with an average wage that exceeds the County median household wages where the Project will be located, 5 points will be awarded.

(3) If the majority of feedstock to be utilized by the Project, on an annual basis, is harvested from the land, 10 points will be awarded.

(i) The level of local ownership of the facility proposed in the application. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If Local Owners have an ownership interest in the facility of more than 20 percent but less than or equal to 50 percent, 3 points will be awarded.

(2) If Local Owners have an ownership interest in the facility of more than 50 percent, 5 points will be awarded.

(j) Whether the Project can be replicated. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Project can be commercially replicated regionally (*e.g.*, Northeast, Southwest, etc.), 5 points will be awarded.

(2) If the Project can be commercially replicated nationally, 10 points will be awarded.

(k) If the Project uses a particular technology, system, or process that is not currently operating at Commercial Scale as of October 1 of the fiscal year for which the funding is available, 5 points will be awarded.

(l) The Administrator can award up to a maximum of 10 bonus points:

(1) To ensure, to the extent practical, there is diversity in the types of Projects approved for loan guarantees to ensure as wide a range as possible technologies, products, and approaches are assisted in the Program portfolio; and

(2) To applications that promote partnerships and other activities that

assist in the development of new and emerging technologies for the development of Advanced Biofuels and Biobased Products including Renewable Chemicals, so as to, as applicable, increase the energy independence of the United States or reduce our dependence on petroleum-based chemicals and products; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; and create jobs and enhance the economic development of the Rural economy. These partnerships and other activities will be identified in a FEDERAL REGISTER notice each fiscal year.

§ 4279.267 Selecting guarantee applications.

(a) *Allocation of budget authority.* In administering this Program's budgetary authority each fiscal year, the Agency will allocate up to, but no more, than 50 percent of its budgetary authority, excluding funding for Biobased Product Manufacturing Projects, to fund applications received by the end of the first application window, including those carried over from the previous application period. Any funds not obligated to support applications submitted by the end of the first application window will be available to support applications received by the end of the second window, including those carried over from the previous application period. The Agency, therefore, will have a minimum of 50 percent of each fiscal year's budgetary authority for this Program available to support applications received by the end of the second application window. Administrative procedures for the funding of Biobased Product Manufacturing Projects will be made available by a Notice published in the FEDERAL REGISTER.

(b) *Ranking of applications.* The Agency will rank all complete eligible applications to create a priority list of scored Phase 1 applications for the Program. Unless otherwise specified in a notice published in the FEDERAL REGISTER, the Agency will rank applications by approximately October 31 for complete and eligible applications received on or before October 1 and by approximately April 30 for complete and eligible applications received on or before April 1. All Phase 1 applications received on or before October 1 and April 1 will be ranked by the Agency and will be competed against the other applications received on or before such date.

(c) *Selection of applications for funding.* The Agency will invite applicants to submit Phase 2 applications based on the criteria specified in paragraphs (c)(1) through (3) of this section. The Agency will notify, in writing, Lenders whose applications have been selected.

(1) *Ranking.* The Agency will consider the score an application has received compared to the scores of other applications in the priority list created under paragraph (b) of this section, with highest scoring applications receiving first consideration for invitation to the phase 2 submittal. A minimum score of 55 points is required in order to be considered for a guarantee.

(2) *Availability of budgetary authority.* The Agency will consider the size of the request relative to the budgetary authority that remains available to the Program during the fiscal year.

(i) If there is insufficient budgetary authority during a particular funding period to select a higher scoring application, the Agency may elect to select the next highest scoring application for further processing. Before this occurs, the Agency will provide the Borrower of the higher scoring application the opportunity to reduce the amount of its request to the amount of budgetary authority available. If the Borrower agrees to lower its request, it must certify that the purposes of the Project can be met, and the Agency must determine the Project is financially feasible at the lower amount.

(ii) If the amount of funding required is greater than 25 percent of the Program's outstanding budgetary authority, the Agency may elect to select the next highest scoring application for further processing, provided the higher scoring Borrower is notified of this action and given an opportunity to revise their application and resubmit it for an amount less than or equal to 25 percent of the Program's outstanding budgetary authority.

(3) *Availability of other funding sources.* If other financial assistance is needed for the Project, the Agency will consider the availability of other funding sources. If the Lender cannot demonstrate that funds from these sources are available at the time of selecting applications for funding or potential funding, the Agency may instead select the next highest scoring application for further processing ahead of the higher scoring application.

(d) *Ranked applications not selected for phase 2.* A ranked application that is not invited to submit phase 2 in the application cycle in which it was submitted will be carried forward one additional application cycle, which may be in the next fiscal year. The Agency will notify the Lender in writing.

§§ 4279.268–4279.277 [Reserved]

§ 4279.278 Loan approval and obligating funds.

(a) Applications for loan guarantees may be approved as their Phase 2 applications are completed and approved. If an application has been selected for phase 2, but has not been approved because additional information is needed, the Agency will notify, in writing, the Lender of what information is needed, including a timeframe for the Lender to provide the information. If the Lender does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the Lender in writing.

(b) Upon approval of a loan guarantee application, the Agency will issue a Conditional Commitment to the Lender containing conditions under which a Loan Note Guarantee will be issued. The Agency will not issue a Conditional Commitment until the Agency has satisfactorily completed a Civil Rights Impact Analysis. The Conditional Commitment becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from the date of issuance by USDA. If the conditions are not met or the Loan Note Guarantee is not issued by the Conditional Commitment expiration date, the Agency may extend the Conditional Commitment expiration date when requested by the Lender and only if there has been no Material Adverse Change in the Borrower's or Borrowers' financial condition since issuance of the Conditional Commitment.

(c) The Lender and Borrower may request changes to the Conditional Commitment. The Agency may negotiate with the Lender and the Borrower regarding any proposed changes to the Conditional Commitment. Any changes to the Conditional Commitment must be documented by written amendment to the Conditional Commitment. The changes must be for Good Cause and the Agency may deny, solely at is discretion, changes to the Conditional Commitment even if the change is otherwise in compliance with this subpart.

(d) The Borrower must comply with all Federal requirements then in effect for receiving Federal assistance.

§ 4279.279 Transfer of Lenders.

(a) The Agency may approve the substitution of a new eligible Lender in place of a former Lender who has been issued an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued provided that there are no changes in the:

(1) Borrower's ownership or control, loan purposes, or scope of Project;

(2) Loan terms and conditions in the Conditional Commitment; and

(3) Loan Agreement.

(b) The Agency must determine that the new Lender is eligible in accordance with § 4279.208 prior to approving the substitution. The original Lender must provide the Agency with a letter stating the reasons it no longer desires to be a Lender for the Project. The substituted Lender must execute a new part B of Form 4279–1 and Lender's Agreement (unless a valid Lender's Agreement with the Agency already exists), and must complete a new Lender's analysis in accordance with § 4279.215. The new Lender may also be required to provide other updated application items outlined in § 4279.261(k).

§ 4279.280 Changes in Borrowers.

Any changes in Borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the Program and be approved by the Agency.

§ 4279.281 Conditions precedent to issuance of Loan Note Guarantee.

The Lender must not close the loan until all conditions of the Conditional Commitment are met or can be met. When loan closing plans are established, the Lender must notify the Agency in writing.

(a) Coincident with, or immediately after loan closing, the Lender must provide the following forms and documents to the Agency:

(1) An executed Lender's Agreement;

(2) Form RD 1980–19, ''Guaranteed Loan Closing Report,'' and appropriate guarantee fee;

(3) Copy of the executed Promissory Note(s);

(4) Copy of the executed Loan Agreement;

(5) Copy of the executed settlement statement and updated source and use statement including all Project funding;

(6) Original, executed Forms RD 4279–14, as appropriate;

(7) Borrower's loan closing balance sheet; and

(8) Any other documents required to comply with applicable law or required by the Conditional Commitment or the Agency.

(b) The Lender must provide their certification to each condition specified in paragraphs (b)(1) through (16) of this section. The Lender may rely on certain written materials (including but not limited to certifications, evaluations, appraisals, financial statements and other reports) to be provided by the Borrower or other qualified third parties (including, among others, one or more independent engineers, appraisers, accountants, attorneys, consultants or other experts.) If the Lender is unable to provide any of the certifications required under this section, the Lender must provide an explanation satisfactory to the Agency as to why the Lender is unable to provide the certification. The Lender can request the guarantee prior to construction, but must still certify to all conditions in paragraphs (b)(1) through (16) of this section.

(1) If required, hazard, flood, liability, worker compensation, and life insurance are in effect.

(2) All truth-in-lending and equal credit opportunity requirements have been met.

(3) The loan has been properly closed, and the required security instruments have been properly executed, or will be promptly obtained on any property that cannot be immediately secured under State law.

(4) The Borrower has or will have marketable title to the Collateral, subject to the guaranteed loan and to any other exceptions approved in writing by the Agency.

(5) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and the application submitted to the Agency.

(6) When required, personal or corporate guarantees have been obtained in accordance with § 4279.245.

(7) All requirements of the Conditional Commitment have been met.

(8) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, materialmen, or other parties have been filed against the Collateral and no suits are pending or threatened that would adversely affect the Collateral when the security instruments are filed.

(9) There has been neither any Material Adverse Change in the Borrower's financial condition nor any other Material Adverse Change in the Borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the Lender's or Borrower's control. The Lender must address any assumptions or reservations in this certification and must address all Material Adverse Changes of the Borrower, any parent, Affiliate, or subsidiary of the Borrower, and guarantors.

(10) Neither the Lender nor any of the Lender's officers has an ownership interest in the Borrower or is an officer or director of the Borrower, and neither the Borrower nor its officers, directors, stockholders, or other owners

have more than a 5 percent ownership interest in the Lender.

(11) The Loan Agreement includes all Borrower compliance measures identified in the Agency's environmental review process for avoiding or reducing adverse environmental impacts of the Project's construction or operation.

(12) For loans exceeding $150,000, the Lender has certified its compliance with the Anti-Lobby Act (18 U.S.C. 1913). Also, if any funds have been, or will be, paid to any Person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this commitment providing for the United States to guarantee a loan, the Lender must completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(13) Where applicable, the Lender must certify that the Borrower has obtained:

(i) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that Borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation and maintenance of a facility; and

(ii) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the Lender to ensure that the Borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation and maintenance of the facility and to provide the required security. For example, when a site is for utility-type facilities (such as a gas distribution system) and the Lender and Borrower are able to obtain only a right-of-way or easement on such site rather than a fee simple title, such a title opinion must be provided.

(14) Each Borrower shall certify to the Lender that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this subpart shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with 40 U.S.C. 3141 through 3144, 3146, and 3147. Awards under this subpart are further subject to the relevant regulations contained in Title 29 of the CFR.

(15) The Lender certifies that it has reviewed all contract documents and verified compliance with 40 U.S.C. 3141 through 3144, 3146, and 3147 and Title 29 of the CFR. The Lender will certify that the same process will be completed for all future contracts and any changes to existing contracts.

(16) The Lender certifies that the proposed facility complies with all Federal, State, and local laws and regulatory rules that are in existence and that affect the Project, the Borrower, or Lender activities.

(c) The Agency may, at its discretion, request copies of loan documents for its file.

(d) When the Agency is satisfied that all conditions for the guarantee have been met, the Agency will issue the Loan Note Guarantee(s) and the documents identified in paragraphs (d)(1) and (2) of this section, as appropriate.

(1) *Assignment Guarantee Agreement.* In the event the Lender uses the single Promissory Note option and assigns the guaranteed portion of the loan to a Holder, the Lender, Holder, and the Agency will execute the Assignment Guarantee Agreement.

(2) *Certificate of Incumbency.* If requested by the Lender, the Agency will provide the Lender with a certification on Form 4279–7, ''Certificate of Incumbency and Signature,'' of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.

§4279.282 [Reserved]

§4279.283 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will inform the Lender, in writing, of the reasons and give the Lender a reasonable period within

which to satisfy the objections. If the Lender satisfies the objections within the time allowed, the Agency will issue the Loan Note Guarantee. If the Lender requests additional time in writing and within the period allowed, the Agency may grant the request.

§§ 4279.284–4279.289 [Reserved]

§ 4279.290 Requirements after Project construction.

Once the Project has been constructed, the Lender must meet the requirements specified in paragraphs (a) and (b) of this section.

(a) Provide the Agency annual reports from the Borrower commencing the first full calendar year following the year in which Project construction was completed and continuing for the life of the guaranteed loan. The Borrower's reports will include, but not be limited to, the information specified in paragraphs (a)(1) through (8), as applicable, of this section.

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

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

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

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

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

(6) The number of jobs created.

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

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

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

§§ 4279.291–4279.299 [Reserved]

§ 4279.300 OMB control number.

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

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

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

Subpart A—Rural Economic Development Loan and Grant Programs

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

§ 4280.1 Purpose.

The Rural Economic Development Loan (REDL) and Grant (REDG) Programs provide financing to eligible Rural Utilities Service (RUS) electric or telecommunications borrowers (Intermediaries) to promote rural economic development and job creation projects.

§ 4280.2 Policy.

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

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

§ 4280.3 Definitions.

The following definitions are applicable to this subpart:

Advanced Telecommunications. Using communications equipment for purposes, such as the simultaneous transmission of images and voice or the

electronic transmission of data between multiple sites that do not consist primarily of providing local exchange voice or other routine communications.

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

Business Incubator. A facility in which small businesses can share premises, support staff, computers, software or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other overhead expenses, and where such businesses can receive Technical Assistance, financial advice, business planning services or other support.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REDG. The Rural Economic Development Grant Program.

REDL. The Rural Economic Development Loan Program.

Revolving Loan Fund (or Fund). A revolving loan fund that is created with

Grant funds and the Intermediary's supplemental contribution under the REDG Program that makes loans and uses the loan repayments and interest earnings to make subsequent loans until the Fund is terminated.

Revolving Loan Fund Plan. A plan developed by the Intermediary and approved by Rural Development that governs the use of the Revolving Loan Fund. The plan must at least include a detailed explanation of the Intermediary's Fund administration policies and procedures and planned Fund use after the funds in the Revolving Loan Fund have revolved. Fund administration policies and procedures must at least include information regarding the review and approval of loans from the Fund.

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

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

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

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

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

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

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

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

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

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

Technical Assistance. Managerial, financial and operational analysis and consultation by Independent Providers to assist Project owners in identifying and evaluating problems or potential problems and to provide training that enables Project owners to successfully implement, manage, operate and maintain viable Projects.

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

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

USDA. The United States Department of Agriculture.

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

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

§§ 4280.4–4280.12 [Reserved]

§ 4280.13 Applicant eligibility.

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

§ 4280.14 [Reserved]

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

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

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

(b) Business expansion;

(c) Business Incubators;

(d) Technical Assistance;

(e) Project feasibility studies;

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

(g) Other Projects eligible under § 4280.21; or

(h) Community Facilities Projects.

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

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

§ 4280.16 REDL and REDG Loan terms.

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

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

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

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

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

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

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

§ 4280.17 Additional REDL terms.

(a) The Intermediary is responsible for fully repaying the Zero-Interest Loan to RBS even if the Ultimate Recipient does not repay the Intermediary.

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

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

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

§ 4280.18 [Reserved]

§ 4280.19 REDG Grants.

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

[79 FR 76015, Dec. 19, 2014]

§ 4280.20 [Reserved]

§ 4280.21 Eligible REDG Ultimate Recipients and Projects.

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

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

(1) Community development or Community Facility Projects that:

(i) will create or save employment; and

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

(2) Business Incubators;

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

(4) Facilities and equipment to provide medical care to residents of Rural Areas. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

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

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

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

§ 4280.22 [Reserved]

§ 4280.23 Requirements for lending from Revolving Loan Fund.

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

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

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

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

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

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

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

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

(f) *Termination for cause.* Rural Development will terminate the Fund and require repayment of the Grant funds if Rural Development determines that the Fund is not being operated according to the approved Revolving Loan

Fund Plan, this subpart, or for other good cause determined by Rural Development, such as questionable prepayment of initial loans. As applicable, Rural Development will follow remedies for noncompliance, closeout and post-closeout adjustments and continuing responsibilities in accordance with 2 CFR 200.338–200.344 as codified by 2 CFR 400.1.

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

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

§ 4280.24 Revolved funds.

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

§ 4280.25 Revolving Loan Fund Plan.

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

(a) The initial loan made from the Fund will be at zero percent interest and have a maximum term of 10 years;

(b) Loans made from loan repayments may carry an interest rate less than, or equal to, the prevailing prime rate. The Intermediary determines repayment terms and security arrangements on these loans.

(c) Loans made from repayments of REDG loans must be for eligible Program purposes;

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

(e) No changes will be made to a Rural Development-approved Revolving Loan Fund Plan without the prior written approval of Rural Development.

§ 4280.26 Administration and operation of the Revolving Loan Fund.

(a) The Intermediary will operate and administer the Revolving Loan Fund. The Intermediary may contract with a third party for administrative services regarding the Fund. However, the Intermediary must permanently retain all Project review, approval, and monitoring authority and responsibility. This authority and responsibility cannot be delegated to any other person or entity.

(b) Up to 10 percent of Rural Development Grant funds may be applied toward operating expenses over the life of the Fund. Operating expenses include the costs of administering the Fund and Technical Assistance provided to Project owners by Independent Providers.

(c) In cases where the Intermediary uses its supplemental contribution to the Revolving Loan Fund for a Project other than the Project that resulted in the Intermediary being awarded the Grant, the loan terms must not exceed 10 years and the interest rate must be less than, or equal to, the prevailing prime rate.

§ 4280.27 Ineligible purposes.

Zero-Interest Loans may not be used:

(a) For activities that would adversely affect the environment, or activities that limit the choice of reasonable alternatives prior to satisfying Rural Development environmental requirements;

(b) To pay off or refinance any existing indebtedness or costs of the Project that were incurred prior to Rural Development receipt of the Intermediary's completed application;

(c) For any electric or telecommunications purpose or for the Intermediary's electric or telecommunications operations, for affiliated operations of the Intermediary, or for the benefit of other Intermediaries or their affiliated operations, except those purposes contained in § 4280.15(f);

(d) To pay the salaries of any employee or owner of the Intermediary, its subsidiaries, or affiliates, except for salaries incurred in administering a Revolving Loan Fund established under the REDG Program;

(e) For community antenna or cable television systems or facilities;

(f) For residential purposes such as residential dwellings and land sites; facilities to provide entertainment television; to transfer property between

owners without making improvements that will promote or sustain economic development in Rural Areas; or for personal, non-business related vehicles;

(g) Where there is directly or indirectly a conflict of interest or the appearance of a conflict of interest in the Project; for Intermediaries this would include a situation in which the Intermediary, its officers, managers, Board of Directors, employees, their spouses, children, or close relatives, have a financial or ownership interest in the Project being funded, including its construction or development;

(h) For any purpose when receipt of loan funds is conditioned upon the requirement that the Ultimate Recipient acquire electric or telecommunications service from the Intermediary or its affiliates;

(i) For any gambling activity;

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

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

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

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

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

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

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

§ 4280.28 [Reserved]

§ 4280.29 Supplemental financing required for the Ultimate Recipient Project.

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

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

(1) Cash or its equivalent;

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

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

(c) Satisfactory evidence of the Ultimate Recipient's funds must be provided to Rural Development before it will advance any funds to the Intermediary.

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

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

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

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

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

§§ 4280.31–4280.35 [Reserved]

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

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

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

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

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

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

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

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

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

local government review process contained in 2 CFR part 415, subpart C.

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

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

(k) *Environmental requirements.* Actions taken under this subpart, including the loans made from the revolving loan fund using Agency funds, must comply with 7 CFR part 1970. However, revolving loan funds derived from repayments by third parties are not considered Federal financial assistance for the purposes of 7 CFR part 1970.

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

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

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

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

§ 4280.37 Application forms and filing dates.

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

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

§ 4280.38 Maximum amount of loans or Grants.

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

§ 4280.39 Contents of an application.

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

(a) Required forms and certifications:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4280.40 [Reserved]

§ 4280.41 Environmental review of the application.

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

[81 FR 11052, Mar. 2, 2016]

§ 4280.42 Application evaluation and selection.

(a) Rural Development will evaluate the application and score it based on the selection factors in this section. All applications will be ranked on a nationwide basis, based on the total points scored.

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

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

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

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

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

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

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

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

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

(4) *Unemployment rate for the county(ies) where the Project is physically located.* Rural Development will compare the current unemployment rate(s) in the county(ies) to the State and national unemployment rates, and, if applicable, award points under the following categories, whichever is greater:

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

(5) *Per capita personal income for the county(ies) where the Project is physically located.* Rural Development will compare the per capita personal income in the county(ies) where the Project will be located to the national and State per capita personal income levels, and, if applicable, award points under the following categories, whichever is greater:

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

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

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

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

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

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

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

(10) *County participation.* If the Project will be the first REDLG Project financed in a county Rural Development will award 10 points.

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

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

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

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

§ 4280.43 Discretionary points.

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

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

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

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

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

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

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

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

§§ 4280.45–4280.46 [Reserved]

§ 4280.47 Non-selection of applications.

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

§ 4280.48 Post selection period.

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

(a) For a loan:

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

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

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

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

(b) For a Grant:

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

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

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

§ 4280.49 [Reserved]

§ 4280.50 Disbursement of Zero-Interest Loan funds.

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

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

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

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

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

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

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

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

§§ 4280.51–4280.52 [Reserved]

§ 4280.53 Loan payments.

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

§ 4280.54 Construction procurement requirements.

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

§ 4280.55 Monitoring responsibilities.

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

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

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

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

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

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

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

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

§ 4280.56 Submission of reports and audits.

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

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

(2) *Grant (Revolving Loan Fund)*. The Intermediary must submit the Form RD 4280–1 to Rural Development on an annual basis until all projects financed with Rural Development Grant proceeds have been repaid or are otherwise retired, whichever occurs last. Thereafter, on a triennial basis until the fund is terminated, the Intermediary will submit to Rural Development the Form RD 4280–1, reporting on the activity of all loans made from the Revolving Loan Fund.

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

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

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

§§ 4280.57–4280.61 [Reserved]

§ 4280.62 Appeals.

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

§ 4280.63 Exception authority.

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

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

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

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

§§ 4280.64–4280.99 [Reserved]

§ 4280.100 OMB control number.

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

Subpart B—Rural Energy for America Program General

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

§ 4280.101 Purpose.

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

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

(b) Grants to assist agricultural producers and rural small businesses by conducting Energy Audits (EA) and

providing recommendations and information on Renewable Energy Development Assistance (REDA); and

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

§ 4280.102 Organization of subpart.

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

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

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

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

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

(f) Appendix D covers contents of feasibility study.

§ 4280.103 Definitions.

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

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

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

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

long as the concern has been in operation.

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

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

(2) For EA and REDA grants, a unit of State, Tribal, or local government; a land-grant college or university or other institution of higher education; a rural electric cooperative; a public power entity; council; or an Instrumentality of a State, Tribal, or local government that is seeking an EA or REDA grant under this subpart.

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

Biofuel. A fuel derived from renewable biomass.

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

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

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

(1) A domestic or foreign system that:

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

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

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

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

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

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

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

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

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

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

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

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

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

Energy assessment. An Agency-approved report assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target

building and/or equipment sufficiently to provide an Agency-approved energy assessment.

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

(2) If the project's total project cost is $80,000 or less, the energy assessment may be conducted in accordance with paragraph (1) of this definition or by an individual or entity that has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects.

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

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

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

(1) A certified energy auditor certified by the Association of Energy Engineers;

(2) A certified energy manager certified by the Association of Energy Engineers;

(3) A licensed professional engineer in the State in which the audit is conducted with at least 1-year experience and who has completed at least two similar type energy audits; or

(4) An individual with a 4-year engineering or architectural degree with at least 3 years of experience and who has completed at least five similar type energy audits.

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

Existing business. A business that has been in operation for at least 1 full year. The following will be treated as existing businesses provided there is not a significant change in operations of the existing business: Mergers by an existing business with a new or existing business, a change in the business name, or a new business and an existing business applying as co-applicants.

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

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

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

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

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

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

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

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

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

Immediate family(ies). Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

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

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

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

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

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

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

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

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

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

Public Power Entity. Is defined using the definition of ''State utility'' as defined in section 217(A)(4) of the Federal Power Act (16 U.S.C. 824q(a)(4)). As of this writing, the definition ''means a State or any political subdivision of a State, or any agency, authority, or Instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.''

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

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

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

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

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

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

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

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

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

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

Renewable energy. Energy derived from:

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

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

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

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

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

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

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

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

Retrofitting. A modification to an existing building or installed equipment that incorporates a function or feature(s)not included in the original design when built or for the replacement of existing components with components that improve the original design and does not impact original warranty if the warranty is still in existence.

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

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

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

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous

or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

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

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's website at *https://www.rd.usda.gov*, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

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

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

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

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

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the

Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

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

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

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

(i) Energy saved will be determined by subtracting the projected energy (determined by the method in paragraph (1)(i)(B) of this definition) to be consumed from the historical energy consumed (determined by the method in paragraph (1)(i)(A) of this definition), and converting the result to a monetary value using a constant value or price of energy (determined by the method in paragraph (1)(i)(C) of this definition).

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

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

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

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

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

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

(ii) Value of energy credited or sold will be calculated based on the amount of energy units to be credited or sold at the proposed rate per unit, as documented in utility net metering or crediting policies and/or a power purchase agreement. Attach utility net metering or crediting policies and/or a power purchase agreement to document energy quantity and proposed rate for energy credited or sold.

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

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

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

Small business means,

(1) An entity or utility, as applicable, as further defined in subparagraphs (i) through (iv) and paragraph (2) of this

definition. With the exception of the entities identified in this paragraph, all other non-profit entities are not small businesses for the purposes of REAP program eligibility:

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

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

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

(iv) A Tribal corporation or other Tribal business entities that are chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or have similar structures and relationships with their Tribal governments and are acceptable to the Agency. The Agency will determine the small business status of such Tribal entity without regard to the resources of the Tribal government; and

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

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

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

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

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

Smart Utility. The use of broadband facilities and equipment that is only available internally by a recipient during the economic life of the assets financed by an Agency loan, grant, or loan guarantee.

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

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

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

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

Underserved community(ies). Communities (including urban or rural communities and Indian tribal communities) that have limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets and that have either a high

rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency-approved census.

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

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

Veteran. A veteran is a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable as defined in title 38 U.S.C. 101(2).

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

§ 4280.104 Exception authority.

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

§ 4280.105 Review or appeal rights.

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

§ 4280.106 Conflict of interest.

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

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

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

§ 4280.107 [Reserved]

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

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

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

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, Title VI of the Civil Rights Act of 1964, *42 U.S.C. 2000d et*

seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

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

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

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

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

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

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

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

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

§ 4280.109 Ineligible applicants, grantees, and owners.

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

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

(b) If an applicant, grantee, or owner is debarred from receiving Federal assistance, the applicant, grantee, or owner is not eligible to receive a grant or combined grant and guaranteed loan under this subpart.

§ 4280.110 General applicant, application, and funding provisions.

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

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

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

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

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

(d) *Application modification.* Once submitted and prior to Agency award, if an applicant modifies the scope of the project described in its application, the application will be treated as a new application. The submission date of record for such modified applications will be the date the Agency receives the modified information, and the application will be processed and scored by the Agency as a new application under this subpart.

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

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

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

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

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

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

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

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

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

in the technical report may require additional environmental documentation in accordance with 7 CFR part 1970.

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

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

(1) *Time extensions.* The Agency may extend the 2-year time limit for a period not to exceed 24 months if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control. Grantees must submit a request for the no-cost extension no later than 30 days before the two-year anniversary of executing the Financial Assistance Agreement. This request must describe the extenuating circumstances that were beyond their control to complete the project for which the grant was awarded, and why an approval is in the government's best interest.

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

§ 4280.111 Notifications.

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

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

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

RENEWABLE ENERGY SYSTEM AND ENERGY EFFICIENCY IMPROVEMENT GRANTS

§ 4280.112 Applicant eligibility.

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

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

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

(1) Own the project; and

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

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

(d) *Revenues and expenses.* The applicant must have available at the time of application satisfactory sources of revenue in an amount sufficient to provide

for the operation, management, maintenance, and any debt service of the project for the useful life of the project. In addition, the applicant must control the revenues and expenses of the project, including its operation and maintenance. Notwithstanding the provisions of this paragraph, the applicant may employ a qualified consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

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

(f) *Unique Entity Identifier (UEI)*. All applicants must register for a UEI as part of the registration process. Generally, the UEI number is included on Standard Form-424, ''Application for Federal Assistance.''

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

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

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

§ 4280.113 Project eligibility.

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

(a) The project must be for:

(1) The purchase of a new RES;

(2) The purchase of a refurbished RES;

(3) The retrofitting of an existing RES;

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

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

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

(A) Efficiency improvements to existing RES; and

(B) Construction of a new energy efficient building only when the building is used for the same purpose as the existing building, and, based on an energy assessment or energy audit, as applicable, it will be more cost effective to construct a new building and will use less energy on annual basis than improving the existing building.

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

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

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

(b) The project must utilize commercially available technology;

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

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

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

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

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

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

§4280.114 Ineligible projects.

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

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

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

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

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

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

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

(g) Projects where 50 percent or more of the costs are ineligible or where

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

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

§ 4280.115 RES and EEI grant funding.

(a) *Grant amounts.* The amount of grant funds that will be made available to an eligible RES or EEI project under this subpart will not exceed 25 percent of eligible project costs. Eligible project costs are specified in paragraph (c) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The type of RES to be purchased;

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

(3) The expected environmental benefits of the RES;

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

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

(6) The expected energy efficiency of the RES.

§4280.116 Grant applications—general.

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

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

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

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

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

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

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

§4280.117 Determination of technical merit.

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

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

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

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

(i) Project description;

(ii) Qualifications of EEI provider(s); and

(iii) Vender/Installer certification, energy assessment, or energy audit.

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

(i) Project description;

(ii) Resource assessment;

(iii) Project economic assessment; and

(iv) Qualifications of key service providers.

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

(i) Project information;

(ii) Energy assessment or energy audit; and

(iii) Qualifications of the contractor or installers.

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

(i) Project description;

(ii) Resource assessment;

(iii) Project economic assessment;

(iv) Project construction and equipment; and

(v) Qualifications of key service providers.

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

(i) Qualifications of the project team;

(ii) Agreements and permits;

(iii) Resource assessment;

(iv) Design and engineering;

(v) Project development;

(vi) Equipment procurement and installation; and

(vii) Operations and maintenance.

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

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

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

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

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

(e) *Further processing of applications.* A project that is determined to have ''technical merit'' or ''conditional technical merit'' is eligible for further consideration for funding. Projects with ''conditional technical merit'' would be subject to funding conditions that would need to be met to ensure full technical merit prior to completion of the project. A project that is determined to be ''without technical merit'' is considered to be an incomplete application and therefore is not eligible to compete for funding.

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

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

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

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

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

(3) Form SF–424C, ''Budget Information—Construction Programs.''

(4) Form SF–424D, ''Assurances—Construction Programs.''

(5) Identify the ethnicity, race, and gender of the applicant. Identify if the borrower is a veteran. This information

is optional and is not required for a complete application but may be used by the Agency to award priority points.

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

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

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

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

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

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

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

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

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

(ii) For each entity(ies) it controls or entity(ies) it is controlled by, provide a list of the individual owners with their contact information. Describe the relationship between the applicant and the other entity(ies), including percent ownership and control, management, passive investor ownership, and as applicable products exchanged. Organizational charts to demonstrate structure should be submitted when applicable.

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

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

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

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

(A) *Historical financial statements.* Provide Agency-acceptable historical balance sheets and income statements

the lesser of the last 3 fiscal years or all years of operation.

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

(C) *Pro forma financial statements.* Provide balance sheets, income statements, and cash flow statements or financial model starting from the current financial statements through a minimum of 2 years of the project performing at full operational capacity or stable operations. Financial projections must be supported by a list of assumptions showing the basis for the projections.

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

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

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

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

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

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

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

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

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

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

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

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

(a) *Criteria for submitting applications for projects with total project costs of less than $200,000, but more than $80,000.* In order to submit an application under

this section, each of the conditions specified in paragraphs (a)(1) through (7) of this section must be met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Form RD 400–6, ''Compliance Statement,'' for contracts exceeding $10,000; and

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

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

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

(2) The RES or EEI project must be constructed, installed, and operating as

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

(3) Prior to making payment, the Agency will be provided with Form RD 1924–9, ''Certificate of Contractor's Release,'' and Form RD 1924–10, ''Release by Claimants,'' or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Form SF–424C, ''Budget Information for Construction Programs''.

(iv) Form SF–424D, ''Assurances for Construction Programs''.

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

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

(vii) Certification by the applicant that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Project description.* Provide a description of the proposed EEI, including its intended purpose and a vendor/

installer certification that the EEI project meets the requirements for being commercially available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Form RD 400–6, ''Compliance Statement'' for contracts exceeding $10,000; and

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

(d) *Payment process for applications for RES and EEI projects with total project costs of $80,000 or less.* (1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor's certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the applicant to have an inspector certify that the project is constructed and installed correctly.

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

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

§ 4280.121 Scoring RES and EEI grant applications.

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

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

(1) Any one of the three impact areas, 1 point will be awarded.

(2) Any two of the three impact areas, 3 points will be awarded.

(3) All three impact areas, 5 points will be awarded.

(b) *Energy generated, replaced, or saved.* A maximum of 25 points will be awarded for this criterion. Applications for RES and EEI projects are eligible for points under both paragraphs (b)(1) and (2) of this section.

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

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

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

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

(ii) *EEI.* The Agency will award up to 10 points under this sub-criterion based on the average annual energy saved per grant dollar requested for the EEI project. The Agency will award up to 10 points as determined under paragraph (b)(1)(ii)(A) and (B) of this section. If the average annual energy saved per grant dollar requested is:

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

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

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

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

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

(B) *Calculation.* Energy replacement is determined by dividing the quantity of renewable energy that the RES project is estimated would have been generated if it were in place over the most recent 12-month period by the quantity of energy actually consumed over the same period by the applicable energy process(es) that is(are) consuming energy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Simple payback.* A maximum of 15 points will be awarded for this criterion based on the simple payback of the project as defined in §4280.103. Points will be awarded for either RES or EEI; points will not be awarded for more than one category.

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

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

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

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

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

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

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

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

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

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

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

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

shall an application receive more than 10 points under this criterion.

(1) The application is for an underrepresented technology.

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

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

(i) Owned by a veteran, including but not limited to individuals as sole proprietors, members, partners, stockholders, etc., of not less than 20 percent. In order to receive points, applicants must provide a statement in their applications to indicate that owners of the project have Veteran status.

(ii) [Reserved]

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

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

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

[86 FR 22309, Apr. 27, 2021, as amended at 90 FR 30560, July 10, 2025]

§ 4280.122 Selecting RES and EEI grant applications for award.

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

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

(1) To be competed in the State and National competitions, complete applications must be received by the applicable State Office by 4:30 p.m. local time no later than March 31. If March 31 falls on a non-business day or a federally-observed holiday, the next Federal business day will be considered the last day for receipt of a complete application. Complete applications received after this date and time will be processed in the subsequent fiscal year.

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

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

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

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

(c) *Ranking of applications.* The Agency will rank complete eligible applications using the scoring criteria specific in §4280.121. Higher scoring applications will receive first consideration.

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

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

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

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

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

§4280.123 Awarding and administering RES and EEI grants.

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

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

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

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

(2) Liability.

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

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

(c) *Forms and certifications.* The forms specified in paragraphs (c)(1) through (5) of this section will be attached to the Letter of Conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (4) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(5) of this section, which is to be completed by contractors, does not need to be returned to the Agency, but must be kept on file by the grantee.

(1) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(2) Form RD 1940–1.

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

(4) Form RD 400–4, ''Assurance Agreement,'' or successor form.

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

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

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

(f) *Financial Assistance Agreement.* Once the requirements specified in paragraphs (a) through (e) of this section have been met, the Financial Assistance Agreement can be executed by the grantee and the Agency. The Agreement should be signed as soon as possible, but no later than within 6 months of obligation of funds or grant funds may be de-obligated by the Agency. The grantee must abide by all requirements contained in the Financial Assistance Agreement, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements might result in termination of the grant and adoption of other available remedies.

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

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

§ 4280.124 Servicing RES and EEI grants.

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

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

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

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

Agency approval as outlined in paragraph (b)(1)(iii) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Records.* The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records must be retained beyond the 3-year period if audit findings have not been resolved or if directed by the

United States. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

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

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

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

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

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

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

(5) For a grant awarded to a project with total project costs of $200,000 and greater, grant funds will be disbursed in full after the project is completed, is operational, and has met or exceeded the steady state operating level as set out in the grant award requirements. Grant funds may also be disbursed through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until construction of the project is completed, the project is operational, and the project has met or exceeded the steady state operating level as set out in the grant award requirements. In addition, the Agency reserves the right to request additional information or testing if upon a final site visit or review of documentation, the 30-day steady state operating level is not found acceptable to the Agency.

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

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

(i) Time schedules are being met;

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Objectives and timetables established for the next reporting period.

(ii) *Final project development report.* The final project development report must be submitted 90 days after project completion and include:

(A) A detailed project funding and expense summary; and

(B) A summary of the project's installation/construction process, including recommendations for development of similar projects by future Applicants to the program.

(3) *Project completion requirements.* Once the project has been constructed, the grantee must provide the Agency as applicable via form RD 4280–3D ''Annual Outcome Project Performance Certification'', a certification that their system has for the past year performed at the steady operating level as described in the technical report of their application, and whether projected jobs created or saved have occurred, or certify that it has not performed as described. If it has not performed, a description of the circumstances which have occurred and affected system performance must be reported, along with the actual performance of the subject REAP project, and the actual number of jobs created or saved as a direct result of the REAP project.

(i) *RES.* Three total annual outcome project performance certifications or reports are required for RES projects. The first is due at the completion of the first full calendar year following the year in which the project was completed. The remaining are required for subsequent calendar years.

(ii) *EEI.* Two total annual outcome performance certifications or reports are required for EEI projects. The first is due at completion of the first full calendar year following the year in which the project was completed. The second is required for the subsequent calendar year.

(j) *Grant close-out.* Grant close-out must be performed in accordance with the requirements specified in 2 CFR part 200.

§ 4280.125 Construction planning and performing development.

(a) *General.* The following requirements are applicable to all procurement methods specified in paragraph (f) of this section.

(1) *Maximum open and free competition.* All procurement transactions, regardless of procurement method and dollar value, must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Competitive restriction examples include, but are not limited to, the following: Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience or excessive bonding

requirements. In specifying material(s), the grantee and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency will consider any recommendation made by the grantee's consultant concerning the technical design and choice of materials to be used for such a project. If the Agency determines that a design or material, other than those that were recommended, should be considered by including them in the procurement process as an acceptable design or material in the project, the Agency will provide such applicant or grantee with a comprehensive justification for such a determination. The justification will be documented in writing.

(2) *Equal employment opportunity*. For all construction contracts and grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375 and Executive Order 13672, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant, or the lender and borrower, as applicable, is responsible for ensuring that the contractor complies with these requirements.

(3) *Surety*. The Agency will require surety on any contract for procurement exceeding $100,000, except as provided for in paragraph (a)(3)(iv) of this section. For contracts of lesser amounts, the grantee may require surety.

(i) Surety covering both performance and payment will be required. The United States, acting through the Agency, will be named as co-obligee on all surety unless prohibited by State or Tribal law. Surety may be provided as specified in paragraphs (a)(3)(i)(A) or (B) of this section.

(A) Surety in the amount of 100 percent of the contract cost may be provided using either:

(*1*) A bank letter of credit; or

(*2*) Performance bonds and payment bonds. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the project is located.

(B) Cash deposit in escrow of at least 50 percent of the contract amount. The cash deposit cannot be from funds awarded under this subpart.

(ii) The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety are necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the Agency after submission of a justification to the Agency together with the proposed form of escrow agreement or letter of credit.

(iii) When surety is not provided, contractors must furnish evidence of payment in full for all materials, labor, and any other items procured under the contract in an Agency-approved form.

(iv) The Agency may make exceptions to surety for any of the situations identified in paragraphs (a)(3)(iv)(A) through (E) of this section.

(A) Small acquisition and construction procedures as specified in § 4280.119(c) and (d) or § 4280.120(c) and (d) as applicable are used.

(B) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are $200,000 or less.

(C) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are more than $200,000 and the following requirements can be met:

(*1*) The project involves two or fewer subcontractors; and

(*2*) The equipment manufacturer or provider must act as the general contractor.

(D) Other construction projects that have only one contractor performing work.

(E) The grantee agrees to request reimbursement of grant funds only after the contractors have furnished evidence of payment in full and evidence there are no outstanding liens regarding any materials, labor, and any other items procured under the contract, and the systems are deemed operational.

(4) *Grantees accomplishing work.* In some instances, grantees may wish to perform a part of the work themselves. Grantees may accomplish construction by using their own personnel and equipment, provided the grantees possess the necessary skills, abilities, and resources to perform the work and there is not a negative impact to their business operation. For a grantee to provide a portion of the work, with the remainder to be completed by a contractor:

(i) A clear understanding of the division of work must be established and delineated in the contract;

(ii) Grantees are not eligible for payment for their own work as it is not an eligible project cost;

(iii) Warranty requirements applicable to the technology must cover the grantee's work; and

(iv) Inspection and acceptance of the grantee's work must be completed by either:

(A) An inspector that will:

(*1*) Inspect, as applicable, and accept construction; and

(*2*) Furnish inspection reports; or

(B) A licensed engineer that will:

(*1*) Prepare design drawings and specifications;

(*2*) Inspect, as applicable, and accept construction; and

(*3*) Furnish inspection reports.

(b) *Forms used.* Technical service and procurement documents must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract will become effective until concurred in writing by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(c) *Technical services.* Unless the requirements of paragraph (c)(4) of this section can be met, all RES and EEI projects with total project costs greater than $1,000,000 require:

(1) The design, installation monitoring, testing prior to commercial operation, and project completion certification be completed by a licensed professional engineer (PE) or team of licensed PEs. Licensed PEs may be ''in-house'' PEs or contracted PEs.

(2) Any contract for design services must be subject to Agency concurrence.

(3) Engineers must be licensed in the State where the project is to be constructed.

(4) The Agency may grant an exception to the requirements of paragraphs (c)(1) through (3) of this section if the following requirements are met:

(i) State or Tribal law does not require the use of a licensed PE; and

(ii) The project is not complex, as determined by the Agency, and can be completed to meet the requirements of this program without the services of a licensed PE.

(d) *Design policies.* Unless the applicant plans to request a lump sum reimbursement of grant funds at the end of construction and 30 days of successful operation, regardless of total project costs, final plans and specifications must be reviewed by the Agency and approved prior to the start of construction. Facilities funded by the Agency must meet the following design requirements, as applicable:

(1) *Environmental requirements.* Actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. Project planning and design must not only be responsive to the grantee's needs but must consider the environmental consequences of the proposed project. Project design must incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review. If such actions are taken, the Agency has the right to

withdraw and discontinue processing the application.

(2) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) as implemented by 41 CFR 101–196, section 504 of the Rehabilitation Act of 1973 (42 U.S.C. 1474 *et seq.*) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Energy/environment.* Project design shall consider cost effective energy-efficient and environmentally-sound products and services.

(4) *Seismic safety.* All new structures, fully or partially enclosed, used or intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and E.O. 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property shall incorporate seismic safety provisions to the extent practicable as specified in 7 CFR part 1792, subpart C.

(e) *Contract methods.* This paragraph identifies the three types of contract methods that can be used for projects funded under this subpart. The procurement methods, which are applicable to each of these contract methods, are specified in paragraph (f) of this section.

(1) *Traditional method or design-bid-build.* The services of the consulting engineer or architect and the general construction contractor must be procured in accordance with the following paragraphs.

(i) *Solicitation of offers.* Solicitation of offers must:

(A) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary will set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors must be clearly stated.

(B) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(ii) *Contract pricing.* Cost plus a percentage of cost method of contracting must not be used.

(iii) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(A) An engineer or architect as a person who has prepared plans and specifications or who will be responsible for monitoring the construction;

(B) Any entity in which the grantee's architect or engineer is an officer, employee, or holds or controls a substantial interest in the grantee;

(C) The grantee's governing body officers, employees, or agents;

(D) Any member of the grantee's immediate family or partners in paragraphs (e)(1)(iii)(A), (B), or (C) of this section; or

(E) An entity which employs, or is about to employ, any person in paragraph (e)(1)(iii)(A), (B), (C), or (D) of this section.

(iv) *Contract award.* Contracts must be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must include, but not be limited to, matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts must not be made with parties who are suspended or debarred.

(2) *Design/build method.* The design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval.

(i) *Concurrence information.* The applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (e)(2)(i)(A) through (H) of this section.

(A) The grantee's written request to use the design/build method with a description of the proposed method.

(B) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It shall include a nontechnical statement summarizing the work to be performed by the contractor, the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(C) A proposed firm-fixed-price contract for the entire project which provides that the contractor will be responsible for any extra cost which result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, local, and Tribal requirements effective on the contract execution date.

(D) Where noncompetitive negotiation is proposed and found, by the Agency, to be an acceptable procurement method, then the Agency will evaluate documents indicating the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(E) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the project.

(F) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(G) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.

(H) The grantee's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the grantee has the legal authority to enter into and fulfill the contract.

(ii) *Agency concurrence of design/build method.* The Agency will review the material submitted by the applicant. When all items are acceptable, the Agency approval official will concur in the use of the design/build method for the proposal.

(iii) *Forms used.* Agency approved contract documents must be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred, in writing, by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(iv) *Contract provisions.* Contracts will have a listing of attachments and must contain the following:

(A) The contract sum;

(B) The dates for starting and completing the work;

(C) The amount of liquidated damages, if any, to be charged;

(D) The amount, method, and frequency of payment;

(E) Surety provisions that meet the requirements of paragraph (a)(3) of this section;

(F) The requirement that changes or additions must have prior written approval of the Agency as identified in the letter of conditions;

(G) Contract review and concurrence. The grantee's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are in compliance with Federal, State, or Tribal law, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they

have been concurred, in writing, by the Agency;

(H) This part does not relieve the grantee of any responsibilities under its contract. The grantee is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of Agency funding. These include, but are not limited to, source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, Tribal, or Federal authority; and

(3) *Construction management.* Construction managers as a constructor (CMc) acts in the capacity of a general contractor and is financially and professionally responsible for the construction. This type of construction management is also referred to as construction manager ''At Risk.'' The construction contract is between the grantee and the CMc. The CMc in turn subcontracts for some or all of the work. The CMc will need to carry the Agency required 100 percent surety and insurance, as required under paragraph (a)(3) of this section. Projects using construction management must follow the requirements of (e)(2)(i) through (iv) of this section.

(f) *Procurement methods.* Procurement must be made by one of the following methods: Competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) are the preferred procurement method for construction contracts.

(1) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method, the following will apply:

(i) At a sufficient time prior to the date set for opening of bids, bids must be solicited from an adequate number of qualified sources. In addition, the invitation must be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (f)(1) of this section.

(iii) All bids must be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award must be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs will be considered in determining which bid is lowest.

(v) The applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the applicant will select and notify the lowest responsible bidder. The contract will be awarded using an Agency-approved form.

(vi) Any or all bids may be rejected by the grantee when it is in their best interest.

(2) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers (offerors). Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications are necessary. If competitive negotiation is used for procurement, the following requirements will apply:

(i) Proposals must be solicited from two qualified sources, unless otherwise approved by the Agency, to permit reasonable competition consistent with the nature and requirements of the procurement.

(ii) The request for proposal must identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The grantee must provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the grantee, price and other factors considered. Unsuccessful offerors must be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby the offerors' qualifications are evaluated, and the most qualified offeror is selected, subject to negotiations of fair and reasonable compensation.

(3) *Noncompetitive negotiation*. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source. Noncompetitive negotiation may be used when the award of a contract is not feasible under small acquisition and construction procedures, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) After solicitation of a number of sources, competition is determined inadequate; or

(ii) No acceptable bids have been received after formal advertising.

(4) *Additional procurement methods*. The grantee may use additional innovative procurement methods provided the grantee receives prior written approval from the Agency. Contracts will have a listing of attachments and the minimum provisions of the contract will include:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages to be charged;

(iv) The amount, method, and frequency of payment;

(v) Whether or not surety bonds will be provided; and

(vi) The requirement that changes or additions must have prior written approval of the Agency.

(g) *Contracts awarded prior to applications*. Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(1) *Modifications*. The contract shall be modified to conform to the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing.

(2) *Consultant's certification*. Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(3) *Owner's certification*. Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing.

(h) *Contract administration*. Contract administration must comply with 7 CFR 1780.76. If another authority, such as a Federal, State, or Tribal agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency will accept copies of their reports or forms as meeting oversight requirements of the Agency.

§§ 4280.126–4280.136 [Reserved]

Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

§ 4280.137 Combined grant and guaranteed loan funding requirements.

The requirements for a RES or EEI project for which an applicant is seeking a combined grant and guaranteed loan are specified in this section.

(a) *Eligibility*. All applicants must be eligible under the requirements specified in § 4280.112. If the applicant is seeking a loan, the applicant must also meet the borrower eligibility requirements specified in 7 CFR 5001.126. Lenders must meet eligibility requirements specified in 7 CFR 5001.130–132. Projects must meet the project eligibility requirements specified in §§ 4280.113, 7 CFR parts 5001.102 (b) and (c) and 5001.106–107, as applicable. For projects that include New Markets Tax Credits, the guaranteed loan portion of the

combined funding request must meet provisions found in 5001.141.

(b) *Funding.* Funding provided under this section is subject to the limits described in paragraphs (b)(1) through (2) of this section.

(1) The amount of any combined grant and guaranteed loan shall not exceed 75 percent of eligible project costs and the grant portion shall not exceed 25 percent of eligible project costs. Loan amount provisions of 7 CFR part 5001.406(d) apply, except for (d)(2). For purposes of combined funding requests, eligible project costs are based on the total costs associated with those items specified in § 4280.115(c) and 7 CFR part 5001.121(d), except for (d)(2). The applicant must provide the remaining total funds needed to complete the project.

(2) The minimum guaranteed loan request allowed is $5,000, with the grant portion of the funding request being at least $1,500 for EEI projects and at least $2,500 for RES projects.

(c) *Loan origination provisions.* Provisions found in 7 CFR parts 5001.201 through 5001.208 apply to the guaranteed loan portion of a combined grant and guaranteed loan funding request.

(d) *Application provisions and documentation.* When applying for combined funding, the applicant/borrower must provide all documentation outlined in this section and the lender must submit grant and guaranteed loan application information simultaneously.

(1) Applications must include the following documentation, including the requisite forms and certifications, specified in §§ 4280.118, 4280.119, or 4280.120 as applicable, for the grant request, except that applicants submitting a properly completed 5001–1 form only need to submit the applicable RD 4280–3 form containing the applicant's CAGE code and properly signed certifications. The guaranteed loan applications are filed in accordance with 7 CFR part 5001.301 where they will be processed in accordance with 7 CFR parts 5001.303 and 5001.307, and as follows:

(2) Where both the grant application and the guaranteed loan application provisions request the same documentation, form, or certification, such documentation, form, or certification may be submitted once; the combined application does not need to contain duplicate documentation, forms, and certifications.

(e) *Loan provisions.* Provisions found in 7 CFR parts 5001.401 through 5001.408 apply to the guaranteed loan portion of a combined funding request.

(f) *Guarantee provisions.* Provisions found in 7 CFR parts 5001.450 through 5001.459 apply to the guarantee on the guaranteed loan portion of a combined funding request.

(g) *Servicing provisions.* Provisions found in 7 CFR parts 5001.501 through 5001.524 apply to the guaranteed loan portion of a combined funding request.

(h) *Evaluation, scoring, and award.* The Agency will evaluate each combined application according to § 4280.116(c) and 7 CFR part 5001.315 (a) and (b). The Agency will select applications according to applicable procedures specified in § 4280.122(a) and (b) unless modified by this section. A combination loan and grant request will be selected based upon the grant score of the project. The Agency will score combined funding applications based upon the grant score as noted in § 4280.121. Projects will be ranked and selected for award according to applicable competition procedures specified in § 4280.122 (c), unless modified by this section or via a FEDERAL REGISTER notification.

(i) *Interest rate and terms of loan.* The interest rate and terms of the guaranteed loan for the loan portion of the combined funding request will be determined based on the procedures specified in 7 CFR parts 5001.401 and 5001.402.

(j) *Other provisions.* In addition to the requirements specified in paragraphs (a) through (i) of this section, the combined funding request is subject to the other requirements specified in this subpart, including, but not limited to, processing and servicing requirements, as applicable, as described in paragraphs (j)(1) through (4) of this section.

(1) All other provisions of §§ 4280.101 through 4280.111 apply to the grant portion of the combined funding request and all other provisions as applicable of 7 CFR parts 5001.1 through 5001.10 apply to the guaranteed loan portion of the combined funding request.

(2) All other provisions of §§4280.112 through 4280.124 apply to the grant portion of the combined funding request and §4280.125 applies if the project for which the grant is sought has a total project cost of $200,000 and greater.

(3) All guarantee loan and grant combination applications that are ranked, but not funded, will be processed in accordance with provisions found in §4280.122(d), (e), and (f).

(4) Applicants whose combination applications are approved for funding must utilize both the loan and the grant. The guaranteed loan will be closed prior to grant funds being disbursed. The Agency reserves the right to reduce the total loan guarantee and grant award, as appropriate, if construction costs are less than projected or if funding sources differ from those provided in the application.

(5) Ineligible project provisions of §§5001.115 and 5001.119, and ineligible use of funds provision of §5001.122 apply to the guaranteed loan portion of the combined funding request. Borrower ineligibility provisions of §5001.127 are also applicable.

§§4280.138–4280.148 [Reserved]

ENERGY AUDIT AND RENEWABLE ENERGY DEVELOPMENT ASSISTANCE GRANTS

§4280.149 Applicant eligibility.

To be eligible for an EA grant or a REDA grant under this subpart, the applicant must meet each of the criteria, as applicable, specified in paragraphs (a) through (d) of this section. The Agency will determine an applicant's eligibility.

(a) The applicant must be one of the following:

(1) A unit of State, Tribal, or local government;

(2) A land-grant college or university, or other institution of higher education;

(3) A rural electric cooperative;

(4) A public power entity;

(5) An instrumentality of a State, Tribal, or local government; or

(6) A council, as defined under the Resource Conservation and Development Program, at 16 U.S. C. 3451.

(b) The applicant must have sufficient capacity to perform the EA or REDA activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(c) The applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(d) The applicant must:

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

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

(3) Provide its UEI number in each application it submits to the Agency. Generally, the UEI number is included on SF–424.

§4280.150 Project eligibility.

To be eligible for an EA or a REDA grant, the grant funds for a project must be used by the grantee to assist agricultural producers or rural small businesses in one of the purposes specified in paragraphs (a) and (b) of this section, and must also comply with paragraphs (c) through (f) of this section.

(a) Conducting and promoting energy audits as defined in 4280.103.

(b) Conducting and promoting REDA by providing to agricultural producers and rural small businesses recommendations and information on how to improve the energy efficiency of the operations and to use renewable energy technologies and resources in their operations.

(c) EA and REDA can be provided only to a project located in a rural area unless the grantee of such project is an agricultural producer. If the project is owned by an agricultural producer, the project for which such services are being provided may be located in either a rural or non-rural area and the EA or REDA can only be for an EEI or RES on components that support the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the Energy Audit or REDA can only be for RES or EEI components of the business operation that are directly related to and their use and purpose is limited

to the agricultural production operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(d) The EA or REDA must be provided to a recipient in a State.

(e) The applicant must have a place of business in a State.

(f) The applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

§ 4280.151 Ineligible projects.

Ineligible projects for EA and REDA grants include, but are not limited to:

(a) Research related projects.

(b) Feasibility studies of any nature.

(c) Projects where funding is not targeted directly to assisting agricultural producers or rural small businesses.

(d) Projects to develop computer software or programs.

(e) Projects where 50 percent or more of the costs are in-eligible or where project costs as defined in the application do not meet the definition of providing energy audits or renewable energy development assistance.

(f) Projects which propose to provide energy audits or renewable energy development assistant for residential purposes.

§ 4280.152 Grant funding for Energy Audit and Renewable Energy Development Assistance.

(a) *Maximum grant amount.* The maximum aggregate amount of EA and REDA grants awarded to any one recipient under this subpart cannot exceed $100,000 in a Federal fiscal year. Grant funds awarded for EA and REDA projects may be used only to pay eligible project costs, as described in paragraph (b) of this section. Ineligible project costs are listed in paragraph (c) of this section. Provisions for EA applications are listed in paragraph (d)of this section.

(b) *Eligible project costs.* Eligible project costs for EA and REDA are those costs incurred after the date a complete application has been received by the Agency and that are directly related to conducting and promoting EA and REDA, which include but are not limited to:

(1) Salaries;

(2) Travel expenses;

(3) Office supplies (*e.g.*, paper, pens, file folders); and

(4) Expenses charged as a direct cost or as an indirect cost of up to a maximum of 5 percent for administering the grant.

(c) *Ineligible project costs.* Ineligible project costs for EA and REDA grants include, but are not limited to:

(1) Payment for any construction-related activities;

(2) Purchase or lease of equipment;

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

(4) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106;

(5) Any costs of preparing the application package for funding under this subpart; and

(6) Funding of political or lobbying activities.

(7) Funding to train individuals to become qualified to perform EA or REDA assistance.

(8) Payment or waiver of student tuition.

(d) *EA.* A grantee that conducts energy audits must require that, as a condition of providing the EA assistance, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. Further, the amount paid by the agricultural producer or rural small business will be retained by the grantee as a contribution towards the cost of the energy audit and considered program income. The grantee may use the program income to further the objectives of their project or EA services offered during the grant period in accordance with Departmental Regulations. The 25% to be paid by an agricultural producer or rural small business does not count towards the commitment of funds scoring criteria noted in 4280.155(f).

§ 4280.153 EA and REDA grant applications—content.

(a) Unless otherwise specified in a FEDERAL REGISTER notice, applicants may only submit one EA grant application and one REDA grant application each Federal fiscal year. No combination (EA and REDA) applications will be accepted.

(b) Applicants must submit complete applications consisting of the elements specified in paragraphs (b)(1) through (7) of this section, except that paragraph (b)(3), is optional. Applications will be evaluated based only on information submitted by the applicant in the application.

(1) Form SF–424.

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

(3) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a complete application.

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

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

(6) A proposed scope of work to include the following items:

(i) A brief summary including a project title describing the proposed project;

(ii) Goals of the proposed project;

(iii) Geographic scope or service area of the proposed project and the method and rationale used to select the service area;

(iv) Identification of the specific needs for the service area and the target audience to be served. The number of agricultural producers and/or rural small businesses to be served must be identified including name and contact information, if available, as well as the method and rationale used to select the agricultural producers and/or rural small businesses;

(v) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task. Include whether organizational staff, consultants, or contractors will be used to perform each task. If a project is located in multiple States, resources must be sufficient to complete all projects;

(vi) Marketing strategies to include a discussion on how the applicant will be marketing and providing outreach activities to the proposed service area ensuring that agricultural producers and/or rural small businesses are served;

(vii) Applicant's experience as follows:

(A) If applying for a REDA grant, the applicant's experience in completing similar REDA activities, such as renewable energy site assessments and renewable energy technical assistance provided directly to agricultural producers and rural small businesses, including the number of similar projects the applicant has performed and the number of years the applicant has been performing a similar service.

(B) If applying for an EA grant, the number of energy audits the applicant has completed and the number of years the applicant has been performing those services;

(C) For all applicants, the amount of experience in administering EA, REDA, or similar activities as applicable to the purpose of the proposed project. Provide discussion if the applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with the agricultural producers and/or rural small businesses the applicant has served. If the applicant has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, please describe the achievement;

(viii) Itemized budget; and

(ix) Identify the amount of matching funds and other funds and the source(s) the applicant is proposing to use for the project. Provide written commitments for matching funds and other funds at the time the application is submitted.

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

(B) If a third party is providing financial assistance to the project, the applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project, identify the dollar amount being provided and any applicable rates and terms.

§ 4280.154 Evaluation of EA and REDA grant applications.

The Agency will evaluate EA and REDA grant applications, based only upon information submitted in the application, to determine if:

(a) The application is complete, as defined in § 4280.103 and as per § 4280.153;

(b) The applicant is eligible according to § 4280.149;

(c) The project is eligible according to § 4280.150 and 4280.151, including 50% or more of proposed project costs are eligible; and

(d) Grant funding provisions according to § 4280.152 are met.

§ 4280.155 Scoring EA and REDA grant applications.

The Agency will score each EA and REDA application using the criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible. Unless otherwise altered via a FEDERAL REGISTER notification, the project must score a minimum of 40 points to be eligible to compete for funding.

(a) *Geographic scope of project in relation to identified need.* A maximum of 20 points can be awarded.

(1) If the applicant's proposed or existing service area is state-wide or includes all or parts of multiple states, and the scope of work has identified needs throughout that service area, 20 points will be awarded.

(2) If the applicant's proposed or existing service area consists of multiple counties in a single state and the scope of work has identified needs throughout that service area, 15 points will be awarded.

(3) If the applicant's service area consists of a single county or municipality and the scope of work has identified needs throughout that service area, 10 points will be awarded.

(b) *Number of agricultural producers/rural small businesses to be served.* A maximum of 20 points will be awarded for this criterion based on the proposed number of ultimate recipients to be assisted and if the applicant has provided the names and contact information for the ultimate recipients to be assisted.

(1) If the applicant plans to provide EA or REDA to:

(i) Up to 10 ultimate recipients, 2 points will be awarded.

(ii) Between 11 and up to and including 25 ultimate recipients, 5 points will be awarded.

(iii) More than 25 ultimate recipients, 10 points will be awarded.

(2) If the applicant provides a list with at least 50 percent of the total number of proposed ultimate recipients ready to be assisted, including their name and contact information, an additional 10 points may be awarded.

(c) *Marketing and outreach plan.* A maximum of 5 points will be awarded for this criterion. If the scope of work included in the application provides a satisfactory discussion of each of the following criteria, one point for each can be awarded.

(1) The goals of the project;

(2) Identified need;

(3) Targeted ultimate recipients;

(4) Timeline and action plan; and

(5) Marketing and outreach strategies and supporting data for strategies.

(d) *Applicant's organizational experience in completing the EA or REDA proposed activity.* A maximum of 25 points will be awarded for this criterion based on the experience of the organization in providing EA or REDA as applicable to the purpose of the proposed project. The organization must have been in business and provided services for the number of years as identified in the paragraphs below. Experience of contractors proposed in the application to perform the services may be applied to this scoring criteria as long as the experience relates to the same type of activity, *e.g.*, energy audit experience for an EA application.

(1) More than 10 years of experience, 25 points will be awarded.

(2) At least 5 years and up to and including 10 years of experience, 20 points will be awarded.

(3) At least 2 years and up to and including 5 years of experience, 10 points will be awarded.

(4) Less than 2 years of experience, no points will be awarded.

(e) *Potential of project to produce energy savings or generation and its attending environmental benefits.* A maximum of 10 points will be awarded for this criterion under both paragraphs (e)(1) and (2) of this section

(1) If the applicant (does not include entities the applicant will contract with) has an existing program that can demonstrate the achievement of energy savings or energy generation with the agricultural producers and/or rural small businesses it has served, 5 points will be awarded.

(2) If the applicant (does not include entities the applicant will contract with) provides evidence that it has received one or more awards (*e.g.*, recognition, not funding awards) within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to a maximum of 5 points will be awarded as follows:

(i) International/national—3 points for each.

(ii) Regional/State—2 points for each.

(iii) Local—1 point for each.

(f) *Commitment of funds.* A maximum of 20 points will be awarded for this criterion if written documentation from each source providing matching funds and other funds are submitted with the application. Compare eligible commitment of funds to the amount of grant requested to derive percentage to be used for scoring.

(1) If the applicant proposes to match 50 percent or more of the grant funds requested, 20 points will be awarded.

(2) If the applicant proposes to match 20 percent or more but less than 50 percent of the grant funds requested, 15 points will be awarded.

(3) If the applicant proposes to match 5 percent or more but less than 20 percent of the grant funds requested, 10 points will be awarded.

(4) If the applicant proposes to match less than 5 percent of the grant funds requested, no points will be awarded.

§ 4280.156 Selecting EA and REDA grant applications for award.

Unless otherwise provided for in a FEDERAL REGISTER notice, EA and REDA grant applications will be processed in accordance with this section. EA and REDA grant funding is maintained at the National Office and applications compete for funds only once in a nationwide competition.

(a) *Application competition.* Complete EA and REDA applications received by the Agency by 4:30 p.m. local time on January 31 will be competed against each other. If January 31 falls on a weekend or a Federally observed holiday, the next Federal business day will be considered the last day for receipt of a complete application. Complete applications received after 4:30 p.m. local time on January 31, regardless of the postmark on the application, will be processed in the subsequent fiscal year. Unless otherwise specified in a FEDERAL REGISTER notice, the two highest scoring applications from each State, based on the scoring criteria established under § 4280.155, will compete for initial funding. If undersubscribed on eligible applications, the third highest scoring application from each state shall be requested for National Office review and potential competition, ranking and funding, until funds are expended.

(b) *Ranking of applications.* All applications submitted to the National Office under paragraph (a) of this section will be ranked in priority score order. All applications that are ranked and meet the minimum scoring threshold will be considered for selection for funding.

(c) *Selection of applications for funding.* Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding. If two or more applications score the same and if remaining funds are insufficient to fund each such application, the Agency will distribute the remaining funds to each such application on a pro-rata basis. At its discretion, the Agency may also elect to redirect unused funds into the RES/EEI program

or allow any remaining multi-year funds to be carried over to the next fiscal year rather than funding on a pro-rata basis.

(d) *Handling of ranked applications not funded.* Based on the availability of funding, a ranked application submitted for EA or REDA funds may not be funded. Such ranked applications will not be carried forward into the next Federal fiscal year's competition.

§ 4280.157 [Reserved]

§ 4280.158 Awarding and administering EA and REDA grants.

The Agency will award and administer EA and REDA grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.123, except as specified in paragraphs (a) through (b) of this section.

(a) Instead of complying with § 4280.123(b), the grantee must provide satisfactory evidence to the Agency that all officers of grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the grantee.

(b) The power purchase agreement specified in § 4280.123 (h) is not required.

§ 4280.159 Servicing EA and REDA grants.

The Agency will service EA and REDA grants in accordance with the requirements specified in Departmental Regulations, the Financial Assistance Agreement, 7 CFR part 3, 7 CFR 1951 Subparts E and O, and the requirements in § 4280.124, except as specified in paragraphs (a) through (d) of this section.

(a) *Grant disbursement.* The Agency will determine, based on the applicable Departmental Regulations, whether disbursement of a grant will be by advance or reimbursement. Form SF–270, Request for Advance or Reimbursement, must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

(b) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period (*e.g.*, the number of EA performed, number of recipients assisted, and the type of assistance provided for REDA);

(2) A list of recipients, each recipient's location, and each recipient's NAICS code;

(3) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(4) Objectives and timetable established for the next reporting period.

(c) *Final performance report.* A final performance report will be required with the final Federal financial report within 90 days after project completion. The final performance report must contain the information specified in paragraphs (c)(1)(i) or (ii) of this section, as applicable.

(1) For EA projects, the final performance report must provide complete information regarding:

(i) The number of audits conducted,

(ii) A list of recipients (agricultural producers and rural small businesses) with each recipient's NAICS code,

(iii) The location of each recipient,

(iv) The cost of each audit and documentation showing that the recipient of the EA provided 25 percent of the cost of the audit, and

(v) The expected energy saved for each audit conducted if the audit is implemented.

(2) For REDA projects, the final performance report must provide complete information regarding:

(i) The number of recipients assisted, and the type of assistance provided,

(ii) A list of recipients with each recipient's NAICS code,

(iii) The location of each recipient, and

(iv) The expected renewable energy that would be generated if the projects were implemented.

(d) *Outcome project performance report.* One year after submittal of the final performance report, the grantee will provide the Agency a final status report on the number of projects that are proceeding with the grantee's recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

§§ 4280.160–4280.165 [Reserved]

§ 4280.166 OMB control number.

The report and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0067

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

For all EEI projects with total project costs of more than $80,000, provide the information specified in Sections A and D and in Section B or Section C, as applicable. If the application is for an EEI project with total project costs of $80,000 or less, please see § 4280.120 (b)(3) for the technical report information to be submitted with your application.

If the application is for an EEI project with total project costs of $200,000 and greater, you must conduct an energy audit. However, if the application is for an EEI project with a total project costs of less than $200,000, you may conduct either an energy assessment or an energy audit.

Section A—Project Information. Describe how all the improvements to or replacement of an existing building and/or equipment meet the requirements of being commercially available. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the EEI(s) is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section B—Energy audit. If conducting an energy audit, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being audited. Any energy conversion should be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency, including a discussion of reliability and durability of the improvements.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Identify significant changes in future related operations and maintenance costs.

(iv) Describe explicitly how outcomes will be measured.

(3) *Technical analysis.* Give consideration to the interactions among the potential improvements and the current energy system(s).

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Calculate all direct and attendant indirect costs of each improvement;

(iii) Rank potential improvements measures by cost-effectiveness; and

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

(4) *Qualifications of the auditor.* Provide the qualifications of the person which completed the energy audit.

Section C—Energy Assessment. If conducting an Energy Assessment, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being evaluated. Any energy conversion shall be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential

improvement and its ability to reduce energy consumption or improve energy efficiency.

(3) *Technical analysis.* Giving consideration to the interactions among the potential improvements and the current energy system(s), provide the information specified in section C(3)(i) through (iii) of this appendix.

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Document baseline data compared to projected consumption, together with any explanatory notes on source of the projected consumption data. When appropriate, show before-and-after data in terms of consumption per unit of production, time, or area.

(iii) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the assessor.* Provide the qualifications of the person that completed the assessment. If the energy assessment for a project with total project costs of $80,000 or less is not conducted by Energy Auditor or Energy Assessor, then the person must have at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects.

Section D—Qualifications. Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are qualified installer/contractor.

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

Provide the information specified in Sections A through D for each technical report prepared under this appendix. A renewable energy site assessment may be used in lieu of Sections A through C if the renewable energy site assessment contains the information requested in Sections A through C. In such instances, the technical report would consist of Section D and the renewable energy site assessment.

NOTE: If the total project cost for the RES project is $80,000 or less, this appendix does not apply. Instead, for such projects, please provide the information specified in §4280.120 (b)(4).

Section A—Project Description. Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed. Describe how the system meets the definition of commercially available. Identify the project's location and describe the project site.

Section B—Resource Assessment. Describe the quality and availability of the renewable resource to the project. Identify the amount of renewable energy generated that will be generated once the proposed project is operating at its steady state operating level. If applicable, also identify the percentage of energy being replaced by the system.

If the application is for a bioenergy project, provide documentation that demonstrates that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

Section C—Project Economic Assessment. Describe the projected financial performance of the proposed project. The description must address total project costs, energy savings, and revenues, including applicable investment and other production incentives accruing from Government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, and byproducts. Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

Section D—Project Construction and Equipment Information. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the RES is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section E—Qualifications of Key Service Providers. Describe the key service providers, including the number of similar systems installed and/or manufactured previously, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

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

Provide the information specified in Sections A through G for each technical report prepared under this appendix. Provide the resource assessment under Section C that is applicable to the project. For hybrid projects, technical reports must be prepared for each technology that comprises the hybrid project.

Section A—Qualifications of the Project Team. Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.

Section B—Agreements and Permits. Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, interconnection agreements and power purchase agreements are necessary for all renewable energy projects electrically interconnected to the utility grid.

Section C—Resource Assessment. Describe the quality and availability of the renewable resource and the amount of renewable energy generated through the deployment of the proposed system. For all bioenergy projects, except anaerobic digesters projects, complete Section C.3 of this appendix. For anaerobic digester projects, complete Section C.6 of this appendix.

1. *Wind.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

2. *Solar.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

3. *Bioenergy/Biomass Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

4. *Geothermal Electric Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

5. *Geothermal Direct Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

6. *Anaerobic Digester Project/Biogas.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes or other Renewable Biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis. If an anerobic digester project, identify the type of operation (*e.g.,* dairy, swine, layer, etc.), along with breed, herd population size and demographics, and the type of waste collection method and frequency information available. For the biogas produced, identify the type of digester (*e.g.,* mixed, plug-flow, attached film, covered lagoon, etc.), if applicable, or the method of capture (landfill, sewage waste treatment, etc.) and treatment. Identify the system designer and determine the digester design assumptions such as the number and type of animals, the bedding type and estimated annual quantity used, the manure and wastewater volumes, and the treatment of digester effluent (*e.g.,* none, solids separation by screening, etc.

with details including use or method of disposal).

7. *Hydrogen Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

8. *Hydroelectric/Ocean Energy Projects.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a qualified consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(9) *RES with storage components.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable energy resource, where applicable. Indicate the storage system specifications and the integrity of the system in conjunction with the RES it is integrated with, including application, size, lifetime, response time, capital and maintenance costs associated with the operation as well as the distribution of the stored resource(s).

Section D—Design and Engineering. Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is commercially available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component warranties and the availability of spare parts must be presented.

Section E—Project Development. Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in Section F of this appendix.

Section F—Equipment Procurement and Installation. Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule. Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

Section G—Operations and Maintenance. Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the RES or EEI shall be monitored and recorded as appropriate to the specific technology.

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

EXECUTIVE SUMMARY

Provide an overview to describe the nature and scope of the proposed project, including the purpose, project location, design features, capacity, and estimated capital costs. Include a summary of the feasibility determinations made for each applicable component.

ECONOMIC

What is it?	Cost benefit analysis.
What are the factors to consider?.	Minimum amount of inputs (labor, infrastructure, utilities, renewable resources, feedstocks) to operate successfully.

ECONOMIC—Continued

	Contracts in place and contracts to be negotiated, including terms and renewals. Environmental risks. Cost of project relative to the increase in revenues or benefits provided. Overall economic impact of project including new markets created and economic development.

MARKET

What is it?	Analysis of the current and future market potential, competition, sales or service estimations including current and prospective buyers or users.
What are the factors to consider?.	Competition. Type of project: Service, product or commodity based. Target market, new versus established. End user analysis, captive versus competitive. By-product revenue streams. Industry risk.

TECHNICAL

What is it?	Analyzing the reliability of the technology to be used and/or the analysis of the delivery of goods or services, including transportation, business location, and the need for technology, materials, and labor.
What are the factors to consider?.	Commercial availability. Product and process success record and duplication of results. Experience of the service providers. Roads, rail, airport infrastructure. Need for local transportation. Labor market. Availability of materials. Use, age, and reliability of technology. Construction risk.

FINANCIAL

What is it?	Analysis of the operation to achieve sufficient income, credit, and cashflow to financially sustain the project over the long term and meet all debt obligations.
What are the factors to consider?.	Commercial or project underwriting. Management's assumptions. Accounting policies. Source of repayment. Dependency on other entities. Equity contribution. Market demand forecast. Peer industry comparison. Cost-accounting system. Availability of short-term credit. Adequacy of raw materials and supplies.

FINANCIAL—Continued	
	Sensitivity analysis.
MANAGEMENT	
What is it?	Analysis of the legal structure of the business or operation; ownership, board and management analysis.
What are the factors to consider?.	History of the business or organization. Professional and educational background. Experience. Skills. Qualifications necessary to implement the project.
RECOMMENDATION	
Conclude with an opinion and recommendation presented by the consultant.	
QUALIFICATIONS	
Provide a resume or statement of qualifications of the author of the feasibility study, including prior experience.	

Subpart C [Reserved]

Subpart D—Rural Microentrepreneur Assistance Program

SOURCE: 86 FR 26353, May 14, 2021, unless otherwise noted.

§ 4280.301 Purpose and scope.

(a) This subpart contains the policies and procedures by which the Agency will administer the Rural Microentrepreneur Assistance Program (RMAP). The purpose of the Program is to support the development and ongoing success of rural microentrepreneurs and microenterprises. To accomplish this purpose, the Program will make direct loans and provide grants to selected Microenterprise Development Organizations. Selected Microenterprise Development Organization will use the funds to:

(1) Provide microloans to rural microentrepreneurs and microenterprises;

(2) Provide business-based training and technical assistance to rural microborrowers and potential microborrowers as an essential part of the microlending process;

(3) Perform other such activities as deemed appropriate by the Secretary to ensure the development and ongoing success of rural microenterprises.

(b) The Agency will make direct loans to microlenders for the purpose of providing fixed interest rate microloans to rural microentrepreneurs for business startup and for growing microenterprises in compliance with §§ 4280.311 and 4280.312. Eligible microlenders will also be eligible to receive microlender technical assistance grants to provide technical assistance and training to microenterprises that have received or are seeking a microloan under this program in compliance with § 4280.313.

(c) To allow for extended opportunities for technical assistance and training, the Agency will make technical assistance-only grants to Microenterprise Development Organizations that have sources of funding other than program funds for making or facilitating microloans.

§ 4280.302 Definitions and abbreviations.

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

Administrative expenses. Those expenses incurred by a Microenterprise Development Organization for the operation of services under this program. Not more than 10 percent of technical assistance grant funds may be used for such expenses.

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

Agricultural production. The cultivation, growing, or harvesting of plants and crops (including farming), breeding, raising, feeding, or housing of livestock (including ranching).

Applicant. The legal entity, also referred to as a Microenterprise Development Organization, submitting an application to participate in the program.

Application. The required forms and documentation submitted by a Microenterprise Development Organization for acceptance into the program.

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

Business incubator. An organization that provides temporary premises at below market rates, technical assistance in developing business or marketing plans, technical services, use of equipment, or other facilities or services to rural microentrepreneurs and microenterprises starting or growing a business. The business incubator may also provide access to capital through direct loans or referrals to loan programs.

Close relative. Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan and/or grant agreement, or other related documents evidencing the loan from the Agency or the Microenterprise Development Organization.

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

Eligible project cost. The total cost of a microborrower's project for which a microloan is being sought from a microlender, less any costs identified as ineligible in § 4280.323.

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

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

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

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

Loan loss reserve fund (LLRF). A deposit account that each microlender must establish and maintain in an amount equal to not less than 5 percent of the total amount owed by the microlender under this program to the Agency. This account can be used to pay any shortage in the rural microloan revolving fund caused by delinquencies or losses on microloans.

Microborrower. A microentrepreneur or microenterprise that has received loans or financial assistance from a microlender under this program in an amount of $50,000 or less.

Microenterprise. Microenterprise means:

(i) A sole proprietorship located in a rural area, as defined; or

(ii) A business entity located in a rural area, as defined, with not more than 10 full-time-equivalent employees.

Such businesses may include any type of legal business that meets local standards of decency, though certain business types may be ineligible as defined in §4280.323 Business types may also include agricultural producers provided they meet the stipulations in this definition.

Microenterprise development organization (MDO). A domestic organization that is a non-profit entity; an Indian tribe; or a public institution of higher education with loan or assistance programs for the benefit of rural microentrepreneurs and microenterprises. An MDO will:

(i) Provide training and technical assistance;

(ii) Make microloans or facilitate access to capital or other related services; and

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

Microentrepreneur. An owner and operator, or prospective owner and operator, of a rural microenterprise who is unable to obtain sufficient training, technical assistance, or credit other than under this section. All microentrepreneurs assisted under this regulation must be located in rural areas.

Microlender. An MDO that has been approved by the Agency for participation under this subpart to make microloans and provide an integrated program of training and technical assistance to its microborrowers and prospective microborrowers.

Microloan. A business loan of not more than $50,000 for eligible purposes to a microborrower with a fixed interest rate and a term not to exceed 10 years.

Military personnel. Individuals, regardless of rank or grade, currently in active United States military service with less than 6 months remaining in their active duty service requirement.

Nonprofit entity. An entity chartered as a nonprofit entity under State or Tribal Law.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural Microloan Revolving Fund (RMRF). An exclusive account on which the Agency will hold a first lien and from which microloans will be made by the MDO. All payments from microborrowers and reimbursements from the LLRF will be deposited into the RMRF account. Loan payments will be made to the Agency by the microlender from the RMRF.

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

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

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

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

(iv) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands,

the Agency shall determine what constitutes rural and rural area based on available population data.

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

Technical assistance (TA) and training. A function performed for the benefit of a private business enterprise or a community which is a problem-solving activity such as market research, product and/or service improvement, feasibility study, worker training programs, etc., to assist in the economic development of a rural area.

Technical assistance grant. A grant from the Agency, the funds of which are used to provide TA and training.

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

FTE—Full-time employee.

FY—Fiscal year.

LLRF—Loan loss reserve fund.

MDO—Microenterprise Development Organization.

RMAP—Rural Microentrepreneur Assistance Program.

RMRF—Rural microloan revolving fund.

TA—Technical assistance.

[86 FR 26353, May 14, 2021, as amended at 87 FR 38644, June 29, 2022]

§ 4280.303 Exception authority.

The Administrator may make limited exceptions to the requirements or provisions of this subpart. Such exceptions must be in the best financial interest of the Federal government and may not conflict with applicable law. No exceptions may be made regarding applicant eligibility, project eligibility, or the rural area definition. In addition, exceptions may not be made:

(a) To accept an applicant into the program that would not normally be accepted under the eligibility criteria; or

(b) To fund an interested party or applicant that has not successfully competed for funding in accordance with this subpart.

§ 4280.304 Review or appeal rights and administrative concerns.

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

(b) *Administrative concerns.* Any questions or concerns regarding the administration of the program, including any action of the microlender, may be sent to: USDA Rural Development, Rural Business-Cooperative Service, Program Management Division at 1400 Independence Avenue SW, Room 5160–S, Mail Stop 3226, Washington, DC 20250–3226 or its successor agency, or the local USDA Rural Development office.

§ 4280.305 Nondiscrimination and compliance with other Federal laws.

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

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

20250–9410, or call (866) 632–9992 (toll free) or (202) 401–0216 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) A pre-award compliance review will take place at the time of application when the applicant completes or provides the Agency with sufficient demographic information to complete Form RD 400–8, ''Compliance Review''. Post-award compliance reviews will take place once every three years after the beginning of participation in the program and until such time as a microlender leaves the program.

§ 4280.306 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office, the Agency's website at: *https://www.rd.usda.gov/page/regulations-and-guidance/* and for grants on the internet at *www.grants.gov*.

§§ 4280.307–4280.309 [Reserved]

§ 4280.310 Program requirements for MDOs.

(a) *Eligibility requirements for applicant MDOs.* To be eligible for a direct loan or grant award under this subpart, an applicant must meet each of the criteria set forth in paragraphs (a)(1) through (4) of this section, as applicable.

(1) *Type of applicant.* The applicant must meet the definition of an MDO as provided in § 4280.302.

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

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

(ii) Legally admitted permanent residents residing in the United States.

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

(4) *Other eligibility requirements.* The applicant must also provide evidence that it:

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

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

(iii) Is actively and successfully participating as an intermediary lender in good standing under similar loan programs; and

(iv) Provides an attorney's opinion regarding the potential microlender's legal status and its ability to enter into program transactions at the time of initial entry into the program. Subsequent to acceptance into the program, an attorney's opinion will not be required unless the Agency determines significant changes to the microlender have occurred.

(b) *System for Awards Management.* All applicants must be registered in the System for Awards Management (SAM) prior to submitting an application, unless determined exempt under 2 CFR 25.110. Loan and grant recipients must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure that they complete the Financial Assistance General Certifications and Representations in SAM.

(c) *Minimum score.* Once deemed eligible, an entity will be evaluated based on the scoring criteria in § 4280.316 for adequate qualification to participate in the program. Eligible MDOs must score a minimum of sixty (60) points in order to be considered to receive an award under this subpart.

(d) *Ineligible applicants.* An applicant will be considered ineligible if it:

(1) Does not meet the definition of an MDO as provided in § 4280.302;

(2) Is debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs; or

(3) Has an outstanding judgment against it, obtained by the United States in a Federal Court (other than U.S. Tax Court).

(e) *Delinquencies.* No applicant will be eligible to receive a loan if it is delinquent on a Federal debt.

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

(1) Establish an RMRF, or add capital to an RMRF originally capitalized under this program, and establish or continue a training and TA program for its microborrowers and prospective microborrowers; or

(2) Fund a TA-only grant program to provide services to rural microentrepreneurs and microenterprises.

(g) *Business incubators.* Because the purpose of a business incubator is to provide business-based TA and an environment in which micro-level, very small, and small businesses may thrive, a microlender that meets all other eligibility requirements and owns and operates a small business incubator will be considered eligible to apply. In addition, a business incubator selected to participate as a microlender may use RMAP funds to lend to an eligible microenterprise tenant, without creating a conflict of interest under §4280.323(c).

§4280.311 Loan provisions for Agency loans to microlenders.

(a) *Purpose of the loan.* Loans will be made to eligible and qualified microlenders to capitalize RMRFs that it will administer by making and servicing microloans in one or more rural areas.

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

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

(d) *Cost share.* The Federal share of the eligible project cost of a microborrower's project funded under this section shall not exceed 75 percent. The cost share requirement shall be met by the microlender using either of the options identified in paragraphs (d)(1) and (2) of this section in establishing an RMRF. A microlender may establish multiple RMRFs utilizing either option. Whichever option is selected for an RMRF, it must apply to the entire RMRF and all microloans made with funds from that RMRF.

(1) *Microborrower project level option.* The loan covenants between the Agency and the microlender and the microlender's lending policies and procedures shall limit the microlender's loan to the microborrower to no more than 75 percent of the eligible project costs and require that the microborrower obtain the remaining 25 percent of the eligible project cost from non-Federal sources. The non-Federal share of the eligible project cost of the project may be provided in cash (including through fees, grants, and gifts) or in the form of in-kind contributions.

(2) *RMRF level option.* The microlender shall capitalize the RMRF at no more than 75 percent Agency loan funds and not less than 25 percent non-Federal funds, thereby allowing the microlender to finance 100 percent of the microborrower's eligible project costs. All contributed funds shall be maintained in the RMRF.

(e) *Loan terms and conditions for microlenders.* Program loans will be made to microlenders under the following terms and conditions:

(1) Funds received from the Agency and any non-Federal share will be deposited into an account that will be the RMRF account and shall not be mingled with other MDO funds. The Agency will hold first lien position on the RMRF account, the LLRF account, and all notes receivable from microloans using Agency funds.

(2) The RMRF account will be used to make fixed-rate microloans, accept repayments from microborrowers and reimbursements from the LLRF, to repay the Agency loan and, with the advance written approval of the Agency, to supplement the LLRF with interest or fee earnings from the RMRF.

(3) The term of an Agency loan made to a microlender will be 20 years. If requested by the applicant MDO, a shorter term may be agreed upon by the microlender and the Agency. If a repayment workout is required after loan closing, the term of the loan may not exceed a 20-year period from the loan origination date.

(4) Each RMAP loan made to a microlender during its first five years of participation in the program will bear an interest rate of 2 percent for the life of the loan. After the fifth year of an MDO's continuous and satisfactory participation in the program, each new loan made to the microlender will bear interest at a rate of 1 percent. The interest rate on previous loans will remain unchanged. Satisfactory participation requires a loan default rate of 5 percent or less, a pattern of delinquencies of 10 percent or less in the MDO's RMRF account(s), and timely submission of reports to the Agency as required by § 4280.311(h).

(5) Each loan made to a microlender will automatically receive a 2-year deferral during which time no repayment to the Agency will be required. The deferral period will begin on the day the Agency's loan to the microlender is closed. During the initial 2-year deferral period, each loan to a microlender will accrue interest only on funds disbursed by the Agency. Interest accrued during the 2-year deferral period will be capitalized to the loan's principal balance during the 24th month of the loan unless the microlender chooses to make a voluntary payment of the accrued interest. The required monthly payments to amortize the loan after the 2-year deferral period will be based on the full loan amount plus capitalized interest, not just the amount disbursed to the microlender, even in cases where the Agency's loan has not been fully advanced to the microlender.

(6) Except in the case of liquidation or early repayment, loans to microlenders must fully amortize over the life of the loan. The first payment will be due to the Agency on the last day of the 24th month of the life of the loan.

(7) The microlender is responsible for full repayment of its loan to the Agency regardless of the performance of its microloan portfolio. Partial or full repayment of debt to the Agency under the program may be made at any time, including during the deferral period, without any pre-payment penalties being assessed.

(8) The Agency may call the entire loan due and payable prior to the end of the full term due to any non-performance, delinquency, or default on the loan.

(9) The loan closing between the microlender and the Agency should take place within 90 days from the execution of Form RD 1940–1, ''Request for Obligation of Funds.'' Microlenders that are unable to close the loan within 90 days of obligation must provide justification for the delay or loan funds will be forfeited through a de-obligation of funds.

(10) Microlenders will be eligible to receive a disbursement of up to 25 percent of the total loan amount at the time of loan closing. Funds disbursed at loan closing exceeding 25 percent of the loan amount will only be made if and to the extent that the MDO has made a funding commitment to an eligible microborrower that will be closed within 60 days from the Agency loan date. Interest will accrue on all funds disbursed to the microlender beginning on the date of disbursement.

(11) Microlenders may request in writing and receive additional loan disbursements until the full amount of the loan to the microlender is disbursed, or until the end of the 36th month of the loan, whichever occurs first. Letters of request for disbursement should be made not more often than quarterly and must be accompanied by a description of the microlender's anticipated need. Such description will indicate the amount and number of microloans anticipated to be made with the loan disbursement.

(12) Funds not disbursed to the microlender by the end of the 36th month of the loan from the Agency will be de-obligated and no longer available for disbursement to the MDO. In such cases where loan funds are deobligated, the Agency will establish a revised payment schedule to fully amortize the loan balance by its maturity date.

(13) In the event a microlender fails to meet its payment or reporting obligations to the Agency, the Agency may pursue any combination of the following:

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

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

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

(14) If a microlender makes a withdrawal from the RMRF for any purpose other than to make a microloan, repay the Agency, or, with advance written approval, transfer an appropriate amount of non-Federal funds to the LLRF, the Agency may take actions including the restriction of further access to withdrawals from the account by the microlender or declaring the loan in default due to improper use of loan funds.

(f) *Loan funding limitations*—(1) *Minimum and maximum loan amounts.* The minimum loan amount that a microlender may borrow under this program will be $50,000. The maximum amount any microlender may borrow on a single loan under this program, or in any given Federal FY, will be $500,000. In no case will the aggregate outstanding balance owed to the program by any single microlender exceed $2,500,000.

(2) *Use of funds.* Agency loan funds must be used only to establish or recapitalize an existing Agency funded RMRF account out of which microloans will be made, into which microloan payments will be deposited, and from which repayments to the Agency will be made.

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

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

(2) *Capitalization and maintenance.* The LLRF is subject to each of the following conditions:

(i) The microlender must maintain the LLRF at a minimum of 5 percent of the total amount owed by the microlender under the program to the Agency. If the LLRF falls below the required amount, the microlender will have 30 days to replenish the LLRF. The Agency will hold a security interest in the account and all funds therein until the MDO has repaid its debt to the Agency under this program.

(ii) No Agency loan funds may be used to capitalize the LLRF.

(iii) The LLRF must be held in a Federally insured deposit account separate and distinct from any other fund owned by the microlender.

(iv) The LLRF must remain open, appropriately capitalized, and active until such time as any loans owed to the Agency by the microlender under the program related to such LLRF are paid in full.

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

(i) Recapitalize the RMRF in the event of the loss and write-off of a microloan;

(ii) Accept Non-Federal deposits as required for maintenance of the fund at a level equal to 5 percent or more of the amount owed to the Agency by the microlender under the program; and

(iii) Prepay or repay the Agency program loan.

(4) *LLRF funded at time of closing.* The LLRF account must be established by the microlender prior to the closing of the loan from the Agency. At the time of initial loan closing, sources of funding for the LLRF must be identified by the microlender and funds equal to 5 percent of the initial loan disbursement, if made at loan closing, must be made to the LLRF by the microlender. The amount in the LLRF can be built over time and must be maintained in an amount greater than or equal to 5 percent of the amount owed to the Agency by the microlender under the program. After the first disbursement is made to a microlender, further disbursements will only be made if the LLRF is funded at the appropriate amount. After the initial loan is made

to a microlender, subsequent loan closings may require a deposit of additional funds to the LLRF to maintain an amount equal to 5 percent of the total loan balance owed to the Agency under the program. Federal funds, except where specifically permitted by other laws, may not be used to fund the LLRF.

(5) *Additional LLRF funding.* In the event of exhibited weaknesses, such as losses that are greater than 5 percent of the microloan portfolio or a microborrower delinquency rate in excess of 10 percent, the Agency may require the microlender to deposit additional funds into the LLRF; however, the Agency may never require an LLRF balance of more than 10 percent of the total amount owed to the Agency by the microlender.

(h) *Recordkeeping, reporting, and oversight.* Microlenders must maintain all records applicable to the program and make them available to the Agency upon request. Microlenders must submit quarterly reports as specified in paragraphs (h)(1) through (4) of this section. Portfolio reporting requirements must be met via the electronic reporting system. Other reports, such as narrative information, may be submitted as hard copy in the event the microlender or grantee does not have the capability to submit or accept such reports electronically.

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

(i) An Agency-approved form containing such information as the Agency may require, and in accordance with OMB circulars and guidance, to ensure that funds provided are being used for the purposes for which the loan to the microlender was made;

(ii) Listing of each microborrower under this program, their loan balance and payment status; and

(iii) A discussion reconciling the microlender's actual results for the period against its goals, milestones, and objectives as provided in the application package.

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

(3) *Combining accounts and reports.* If a microlender has more than one loan from the Agency, a separate report must be made for each loan except when RMRF accounts have been combined. A microlender may combine RMRF accounts only when the Agency approves the combining of accounts and reports in writing before such accounts are combined and reports are submitted, and:

(i) The underlying loans have the same rates, terms and conditions, including the method of determining matching funds for a microborrower's project; and

(ii) The combined report allows the Agency to effectively administer the program, including providing the same level of transparency and information for each loan as if separate RMRF and LLRF reports had been prepared.

(4) *Delinquency.* In the event that a microlender has delinquent loans in its RMAP portfolio, quarterly reports will include narrative explanation of the steps being taken to cure the delinquency.

(5) *Other reports.* Other reports may be required by the Agency from time to time in the event of poor performance, one or more work-out agreements, or other such occurrences that require more than the usual set of program servicing.

(6) *Access to microlender's records.* Upon request by the Agency, the microlender will permit representatives of the Agency to inspect and make copies of any records pertaining to operation and administration of the program. Such inspection and copying may be made during regular office hours of the microlender or at any other time agreed upon between the microlender and the Agency.

(7) *Changes in key personnel.* Before any additions or changes are made to key personnel, the microlender must notify, and the Agency must approve,

such changes. Such approval shall not be unreasonably withheld by the Agency.

§4280.312 Loan approval and closing.

(a) *Loan approval and obligating funds.* The loan will be considered approved on the date the signed copy of Form RD 1940–1, ''Request for Obligation of Funds,'' is executed by the Agency. Form RD 1940–1 authorizes funds to be obligated and may be executed by the Agency after the microlender has signed the document, provided that the microlender has the legal authority to contract for a loan and to enter into required agreements, including an Agency-approved loan agreement, and meets all program loan requirements.

(b) *Letter of conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions. The Agency will review any requests for changes to the letter of conditions and may approve only minor changes that do not materially affect the microlender and remain within the program requirements. Changes in legal entities prior to loan closing will not be approved.

(c) *Loan closing.* (1) Prior to loan closing, microlenders must provide evidence that the RMRF and LLRF bank accounts have been set up and the LLRF has been or will be funded as described in §4280.311(g)(4). Such evidence shall consist of:

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

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

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

(iv) An Agency-approved promissory note and a loan agreement for each loan to the MDO must be executed at loan closing. The loan agreement will be prepared by the Agency using Form RD 4274–4, ''Intermediary Relending Program/Rural Microentrepreneur Assistance Program Loan Agreement,'' and reviewed by the MDO prior to loan closing; and

(v) An appropriate security agreement on the LLRF and RMRF accounts must be executed at loan closing.

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

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

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

(3) The microlender will provide sufficient evidence that no lawsuits or other legal issues are pending or threatened that would adversely affect the security of the microlender when Agency security instruments are filed.

§4280.313 Grant provisions.

Grants offered under this program will be made to eligible MDOs in such amounts and requirements for microlenders with a loan(s) from the Agency, and for MDOs that seek only a TA grant from the Agency. Competition for these funds will occur as a part of the application and qualification process of becoming a microlender or grant recipient. No entity will receive grant funding as both a microlender and a TA-only provider. RMAP microlenders are not eligible for TA-only grant funding and an MDO receiving TA-only grant funding is not eligible for microlender grant funding. Failure to meet scoring benchmarks will preclude an applicant from receiving loan and/or grant dollars. Once an MDO is participating as a microlender, TA grant funds will be made available annually based on the MDO's lending balances and the availability of funds.

(a) *Microlender grants.* The Agency shall make microlender TA grants to

microlenders to assist them in providing marketing, management, and other TA to rural microentrepreneurs and microenterprises that have received or are seeking one or more microloans from the microlender. The capacity of a microlender to provide an integrated program of microlending and TA will be evaluated during the scoring process with their loan application and then annually in determining the amount of annual grant funds. An eligible MDO selected to be a microlender will be eligible to receive a microlending TA grant if it receives funding to provide microloans under this program. Microlender applicants for loan funding to establish or replenish a revolving loan fund originally capitalized under this program, may simultaneously apply for TA grant funds in an amount not to exceed 25 percent of the requested loan amount.

(1) Technical assistance grants to microlenders will be awarded annually on a non-competitive basis in an amount based on the MDO's outstanding loan balance as of June 30, subject to satisfactory program performance of the microlender and the availability of funds. Satisfactory performance includes the timely payment of program loan(s) and the submission of periodic reports to the Agency. Annual TA grants to a microlender, subject to the availability of funds, will be made in an amount to replenish the microlender's TA fund to an amount equal to 20 percent of the outstanding principal balance of loans made by the microlender to ultimate recipients unless otherwise published in an annual program funding notice. If available grant funds are not sufficient to fully replenish each microlender's TA funds to 20 percent of their outstanding loan balance, the available funds will be distributed proportionately based on the percentage of available funds to the total amount of annual TA grant funds requested.

(2) Any grant dollars obligated but not spent by the microlender from their initial or subsequent grants will be subtracted from the subsequent year's grant eligibility calculation to ensure that obligations cover only microloans made and active and that the MDO's total grant funds available for TA do not exceed the established 20 percent threshold.

(3) The microlender will agree to use TA grant funds exclusively for providing TA assistance and training to eligible microentrepreneurs and microenterprises, with the exception that up to 10 percent of the grant funds may be used to cover the microlender's administrative expenses. Grant funds may not be used to make loan payments.

(b) *Technical assistance only grants.* Grants will be competitively made to MDOs for the purpose of providing TA and training to prospective microborrowers. Technical assistance-only grants will be provided to eligible MDOs that seek to provide business-based TA and training to eligible microentrepreneurs and microenterprises, but do not seek funding as a microlender for an RMRF.

(1) The amount of a TA-only grant under this program will not exceed 10 percent of the amount of authorized appropriations available in any Federal FY for TA-only grants.

(2) Technical assistance only grants will have a grant term not to exceed 12 months from the date the grant agreement is signed.

(3) Technical assistance only grantees will be required to:

(i) Refer clients to internal or external non-program funded lenders for loans of $50,000 or less, and

(ii) Collect data regarding such clients. Technical assistance-only grantees will be considered successful if a minimum of 1-in-5 TA clients are referred for a microloan and are operating a business within 18 months of receiving TA from the MDO.

(c) *Matching requirement.* The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services. Unless specifically permitted by laws other than the statute authorizing RMAP, matching contributions must be made up of non-Federal funds.

(d) *Administrative expenses.* Not more than 10 percent of a grant received by an MDO for a Federal FY may be used to pay administrative expenses. Microlenders must annually submit a budget of proposed administrative expenses for

Agency approval. The Agency has the right to deny the requested amount, even if it is at 10 percent or less, and to fund administrative expenses at a lower level.

(1) Administrative expenses should be kept to a minimum. As such, the applicant MDO is required in the application materials to provide an administrative budget plan indicating the amount of funding it will need for administrative purposes. Applicants will be scored accordingly, with those using less than 10 percent of the grant funds for administrative purposes being scored higher than those using 10 percent of the grant funds for administrative purposes.

(2) While operating the program, the selected grantee will be expected to adhere to the estimates it provides in its application and annual budget. If for any reason the MDO cannot meet those expectations, it must contact the Agency in writing with justification to request a budget adjustment. Budget adjustments will be considered only if the adjustment result for administrative expenses is within the 10 percent limitation.

(3) Microlenders that exceed 10 percent for administrative expenses will be considered in performance default and may be subject to Agency actions including the forfeiting of funds.

(e) *Ineligible grant purposes.* Grant funds, matching funds, indirect costs, and in-kind goods and services may not be used for:

(1) Grant application preparation costs;

(2) Costs incurred prior to the obligation date of the grant;

(3) Capital improvements;

(4) Political or lobbying activities;

(5) Assistance to any ineligible entity;

(6) Payment of any judgment or debt owed; or

(7) Payment of any loan.

(f) *Facilitation of access to capital.* Technical assistance-only grantees will be expected to provide training and TA services to the extent that access to capital for eligible microentrepreneurs and microenterprises is facilitated by referral to either an internal or external non-program loan fund so that these clients may take advantage of available financing programs.

(g) *Grant agreement.* For any grant to an MDO or microlender, the Agency will notify the approved applicant in writing, using an Agency-approved grant agreement, setting out the conditions under which the grant will be made. The form will include those matters necessary to ensure that the proposed grant is completed in accordance with the proposed project, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Agency regulations are complied with.

§4280.314 [Reserved]

§4280.315 MDO application and submission information.

(a) *Initial and subsequent applications.* Applications shall be submitted in accordance with the provisions of this subpart unless adjusted by the Agency in an annual FEDERAL REGISTER document. The information required in §§4280.315 and 4280.316 is necessary for an application to be considered complete. Only those applicants that meet the basic eligibility requirements in §4280.310 will have their applications fully scored and considered for participation in the program under this section. When preparing applications, applicants are strongly encouraged to review the application requirements and scoring criteria in §4280.316 and provide documentation that will support a competitive score.

(b) *Content and form of submission.* All applicants must provide the information specified in paragraph (c) of this section. Additional application information is required in paragraph (d) of this section depending on the type of application being submitted.

(c) *Application information for all applicants.* All applicants must provide the following information and forms fully completed and with all attachments:

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

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

(3) For entities applying for program loan funds to become an RMAP microlender only, Form RD 1910–11, ''Certification of No Federal Debt.''

(4) Form RD 400–8, ''Compliance Review'' or sufficient demographic information for Agency completion of Form RD 400–8.

(5) Demonstration that the applicant is eligible to apply to participate in the program by submission of documentation as follows:

(i) If a nonprofit entity, evidence that the applicant organization meets the citizenship requirements and a copy of the applicant's bylaws and articles of incorporation, which include evidence that the applicant is legally considered a non-profit organization;

(ii) If an Indian tribe, evidence that the applicant is a federally recognized Indian tribe, and that the Indian tribe neither operates nor is currently served by an existing MDO;

(iii) If a public institution of higher education, evidence that the applicant is a public institution of higher education; and

(iv) For nonprofit applicants only, a Certificate of Good Standing, not more than six (6) months old, from the Office of the Secretary of State in the State, or tribal equivalent, in which the applicant is located. If the applicant has offices in more than one state, then the state in which the applicant is organized and licensed will be considered the home location.

(6) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under the program with similar rates and terms.

(d) *Type of application specific information.* In addition to the information required under paragraph (c) of this section, the following information is also required, as applicable:

(1) An applicant with more than 3 years of experience as an MDO outside of the program seeking to participate as an RMAP microlender must provide sufficient documentation to validate its years of experience.

(2) An applicant with 3 years or less experience as an MDO outside of the program seeking to participate as an RMAP microlender must provide the additional information specified in § 4280.316(c).

(3) An applicant seeking status as a microlender must identify in its application which cost-share option(s) the applicant will utilize, as described in § 4280.311(d), to meet the Federal cost-share requirement. If the applicant will utilize the RMRF-level option, the applicant shall identify the amount(s) and source(s) of the non-Federal share.

(4) An applicant seeking TA-only grant funds must provide the additional information specified in § 4280.316(d).

(e) *Application limits.* Microenterprise Development Organizations may only submit and have pending for consideration one application at any given time, which is for either microlender funds or TA-only funds.

(f) *Completed applications.* Applications that fulfill the requirements specified in paragraphs (a) through (e) of this section will be fully reviewed, scored, and ranked by the Agency in accordance with the provisions of § 4280.316.

§ 4280.316 Application scoring.

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

(a) *Application requirements for all applicants.* All applicants must submit the eligibility and application information described in § 4280.315. The maximum points available in this part of the application are 45. In addition to the eligibility information, all applicants will submit:

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

(2) Resumes for each of the individuals shown on the organizational chart and indicated as key to the operation of the activities to be funded under the program. There should be a corresponding resume for each of the key individuals noted and named on the organizational chart. Points will be awarded based on the quality of the resumes and on the ability of the key personnel to administer the program. Up to 5 points will be awarded.

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

(4) Information indicating an understanding of microenterprise development concepts. Provide those parts of your policy and procedures manual that deal with the provision of loans, management of loan funds, and provision of TA. Up to 5 points will be awarded.

(5) The applicant's most recent, and two-year's previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its fund balance, its ability to manage one or more federal programs, and its capacity to manage multiple funding sources, including restricted and non-restricted funding sources, income, earnings, and expenditures. Up to 10 points will be awarded.

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

(7) Information regarding the geographic service area to be served, which must be rural as defined, and include the number of counties or other jurisdictions to be served. Note that the applicant will not be scored on the size of the service area, but on its ability to fully cover the service area as described. Up to 10 points will be awarded.

(b) *Program loan application requirements for MDOs seeking to participate as RMAP microlenders with more than 3 years of experience.* In addition to the information required under paragraph (a) of this section, applicants with more than three (3) years of experience as a microlender, including non-RMAP microloans, must also provide the information specified in paragraphs (b)(1) through (5) of this section. The total number of points available under this section (in addition to the up to 45 points available in paragraph (a) of this section) is 55.

(1) *History of provision of microloans.* The applicant must provide data regarding its history of making microloans for the three years previous to this application by answering the questions in paragraphs (b)(1)(i) through (v) of this section. This information should be provided clearly and concisely in numerical format as the data will be used to calculate points as noted. Up to a maximum of 20 points may be awarded under this criterion.

(i) Number and amount of microloans made during each of the three previous years.

(ii) Number and amount of microloans made in rural areas, as defined, in each of the three years prior to the year in which the application is submitted. If the history of providing microloans in rural areas shows at least one loan made in:

(A) Three or more consecutive years immediately prior to the application, 5 points will be awarded;

(B) At least two of the years but not more than the three consecutive years immediately prior to this application, 3 points will be awarded;

(C) At least 6 months, but not more than one year immediately prior to this application, 1 point will be awarded.

(iii) Calculate and enter the total number of microloans made in rural areas as a percentage of the total number of all microloans made for each of the past three years. If the percentage of the total number of microloans made in rural areas is:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(iv) Enter the dollar amount of microloans made in rural areas as a

percentage of the dollar amount of the total portfolio (rural and non-rural) of microloans made for each of the previous three years. If the percentage of the dollar amount of the microloans made in rural areas is:

(A) 75 percent or more of the total amount, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(v) Each applicant shall compare the diversity of its entire microloan portfolio to the demographic makeup of its service area (as determined by the latest applicable decennial census for the state) based on the number of microloans made during the three years preceding the subject application. Demographic groups shall include gender, racial and ethnic minority status, and disability (as defined in the Americans with Disabilities Act). Points will be awarded on the basis of how close the MDO's microloan portfolio matches the demographic makeup of its service area. A maximum of 5 points will be awarded.

(A) If at least one loan has been made to each of the three demographic groups and if the percentage of loans made to each demographic group is 5 percent or less of their demographic makeup, 5 points will be awarded.

(B) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each between 5 to 10 percent or less of the demographic makeup, 3 points will be awarded.

(C) If at least one loan has been made to each demographic group and if the percentage of loans made to one or more of the demographic groups is greater than 10 percent of the demographic makeup, 1 point will be awarded.

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

(2) *Portfolio management.* The applicant's ability to manage its portfolio will be determined based on the data provided in response to paragraphs (b)(2)(i) and (ii) of this section and scored accordingly. The maximum number of points under this criterion is 10.

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

(A) 95 percent or more, 5 points will be awarded;

(B) At least 85 percent but less than 95 percent, 3 points will be awarded;

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

(ii) Enter the total number of microloans currently 30 to 90 days in arrears, or that have been written off over the three previous years. If the total number of these microloans is:

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

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

(3) *History of provision of technical assistance.* The Applicant's history of provision of TA to microentrepreneurs and microenterprises, and its ability to reach diverse communities, will be scored based on the data specified in paragraphs (b)(3)(i) through (iii) of this section. Applicants may use a chart to provide this information as they deem appropriate. The maximum number of points under this criterion is 15.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both microloans and TA services for each of the previous three years. Of this total number, provide the percentage of rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three years. If the provision of both microloans and TA services to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(ii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of

the previous three years. If the demonstrated provision of microloans and TA services to these rural microentrepreneurs and rural microenterprises is at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(iii) Provide the ratio of TA clients that also received microloans, rounding to the nearest whole number, during each of the previous three years. If the ratio of clients receiving TA services to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) A ratio of either 1:9 or 1:10, 1 point will be awarded.

(4) *Ability to provide technical assistance.* In addition to providing a statistical history of their provision of TA to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training methods used by the applicant organization to provide such TA and discussing the outcomes of their endeavors. Technical assistance is defined in §4280.302. The narrative will be scored as specified in paragraphs (b)(4)(i) through (iii) of this section. Points may be awarded for each of the categories. The maximum number of points under this criterion is 5.

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

(ii) Applicants that provide success stories to demonstrate the effects of TA on their clients will be awarded 2 points.

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

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

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

(ii) Equal to 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

(c) *Application requirements for MDOs seeking to participate as RMAP microlenders with 3 years or less experience.* In addition to the information required under paragraph (a) of this section, an applicant MDO with 3 years or less experience that is applying to be a microlender must submit the information specified in paragraphs (c)(1) through (8) of this section. The total number of points available under this paragraph, in addition to the maximum of 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) The applicant must provide a narrative work plan that clearly indicates its intention for the use of loan and grant funds. Provide goals and milestones for planned microlending and TA activities. In relation to the information requested in paragraph (a) of this section, the applicant must describe how it will incorporate its mission statement, utilize its employees, and maximize its human and capital assets to meet the goals of this program. The applicant must provide its strategic plan and organizational development goals and clearly indicate its lending goals for the five years after the date of application. The narrative work plan should be not more than five pages in length. Up to a maximum of 10 points will be awarded.

(2) The applicant will provide the date that it began business as an MDO or other provider of business education and/or facilitator of capital. This date will reflect when the applicant became licensed to do business by the Secretary of State, or tribal equivalent, in which it is registered and engaged regularly paid staff to conduct business on a daily basis. If the applicant has been in business for:

(i) More than 2 years but less than 3 years, 5 points will be awarded;

(ii) At least 1 year, but not more than 2 years, 3 points will be awarded;

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

(iv) Less than 6 months, or more than 3 full years, 0 points will be awarded. (If more than 3 full years, the applicant must apply under the provisions for MDOs with more than 3 years of experience as specified in paragraph (b) of this section.)

(3) The applicant must describe in detail any microenterprise development training received by it as a whole, or its employees as individuals, to date. The narrative may refer reviewers to already submitted resumes to save space. The training received will be rated on its topical variety, the quality of the description, and its relevance to the organization's strategic plan. The applicant should not submit training brochures or conference announcements. Up to a maximum of 10 points will be awarded.

(4) The applicant must indicate its current number of employees, those that concentrate on rural microentrepreneurial development, and the current average caseload for each. Indicate how the caseload ratio does or does not optimize the applicant's ability to perform the services described in the work plan. Discuss how Agency grant funds will be used to assist with TA program delivery and how funding of the program loan application will affect the portfolio. Up to 5 points will be awarded.

(5) Applicants may submit a maximum of five (5) letters of support with one point awarded for each letter. Support letters should be signed and dated and come from potential beneficiaries and other local organizations. Letters received from Congressional members and technical assistance providers will not be included in the count of support letters received. Additionally, identical form letters signed by multiple potential beneficiaries and/or local organizations will not be included in the count of support letters received. The applicant must indicate any training organizations with which it has a working relationship. Provide contact information for references regarding the applicant's capacity to perform the work in the plan provided. Up to a maximum of five (5) points will be awarded.

(6) Describe any plans for continuing training relationship(s), including ongoing or future training plans and goals, and the timeline for the same. Up to 5 points will be awarded.

(7) The applicant will describe its internal benchmarking system for determining client success, reporting on client success, and following client success for up to 5 years after completion of a training relationship. Up to 10 points will be awarded.

(8) The applicant will identify its proposed administrative expenses to be spent from TA grant funds. The maximum total number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than or equal to 5 percent of the TA grant funds, 5 points will be awarded;

(ii) More than 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

(d) *Application requirements for MDOs seeking TA-only grants.* Technical assistance-only grants may be provided to MDOs that are not RMAP microlenders seeking to provide training and technical assistance to rural microentrepreneurs and rural microenterprises. An applicant seeking a TA-only grant must submit the information specified in paragraphs (d)(1) through (4) of this section. The total number of points available under this section, in addition to the 45 points available in paragraph (a) of this section, is 55, for a total of 100 points.

(1) *History of provision of TA.* Each applicant's history of provision of TA to microentrepreneurs and microenterprises, and its ability to reach diverse communities, will be scored based on the data specified in paragraphs (d)(1)(i) through (iii) of this section. The maximum number of points under this criterion is 20.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both TA services and resultant microloans for each of the previous three years. Of this total number, provide the percentage of rural microentrepreneurs and rural microenterprises that received both TA services and resultant

microloans for each of the previous three years. If the provision of both TA services and resultant microloans to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

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

(ii) Provide the percentage of the total number of rural microentrepreneurs by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three years. If the demonstrated provision of TA and resultant microloans to these rural microentrepreneurs when compared to the total number of microentrepreneurs assisted, is at a rate of:

(A) 75 percent or more, 10 points will be awarded;

(B) At least 50 percent but less than 75 percent, 7 points will be awarded;

(C) At least 25 percent but less than 50 percent, 5 points will be awarded.

(iii) Provide the ratio of TA clients that also received microloans during each of the last three years, rounded to the nearest whole number. If the ratio of clients receiving TA to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) Either 1:9 or 1:10, 1 point will be awarded.

(2) *Ability to provide TA.* In addition to providing a statistical history of their provision of TA to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training method(s) used by the applicant organization to provide TA and discussing the outcomes of their endeavors. The narrative will be scored as specified in paragraphs (d)(2)(i) through (iv) of this section. The maximum number of points under this criterion is 20.

(i) Applicants that have used more than one method of training and TA (*e.g.*, classroom training, peer-to-peer discussion groups, individual assistance, and distance learning) will be awarded 5 points.

(ii) Applicants that provide success stories to demonstrate the effects of TA on their clients will be awarded points under either of the following paragraphs, but not both:

(A) News stories that highlight businesses made successful as a result of the applicant's TA; 5 points will be awarded.

(B) Internal stories that highlight businesses made successful as a result of TA, 3 points.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs will be awarded 3 points. Applicants will provide the total number of evaluations received and the average score from the evaluations received. An additional two points will be awarded if the total evaluation scores are above an average of 3.0 on a five-point scale, with points determined by the client ratings on a declining scale as follows:

(A) Extremely Satisfied, 5 points.

(B) Satisfied, 4 points.

(C) Average, 3 points.

(D) Dissatisfied, 2 points.

(E) Very Unsatisfied, 1 point.

(iv) Applicants that present well-written narrative information regarding their programs and services to be delivered and their outreach efforts within the service area that is clearly and concisely written and is five pages or less will be awarded up to a maximum of 5 points.

(3) *Technical assistance plan.* Submit a concise plan for the provision of TA explaining how the funds will benefit the current program and how it will allow the applicant to expand its non-program microlending activities. Up to 10 points will be awarded.

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

(i) Less than or equal to 5 percent of the TA grant funds, 5 points will be awarded;

(ii) More than 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

(e) *Re-application requirements for participating microlenders with more than 5 years of experience as a microlender under this program.* (1) Microlender applicants with more than 5 years of experience as an MDO under this program may choose to submit a shortened loan/grant application that includes the following:

(i) A letter of request for funding stating the amount of loan and/or grant funds being requested;

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

(iii) An indication of the number and percent of the MDO's microentrepreneurs and microenterprises remaining in business for two years or more after microloan disbursement from program funds; and

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

(2) The Agency, using this request and data available in the reports submitted under previous funding(s), will review the overall program performance of the applicant over the life of its participation in the program to determine its continued qualification for subsequent funds. Requirements include:

(i) A loan default rate of 5 percent or less;

(ii) A pattern of delinquencies during the period of participation in this program of 10 percent or less;

(iii) A pattern of use of TA dollars that indicates at least one in ten TA clients receive a microloan;

(iv) A statement discussing the need for more funding, accompanied by account documentation showing the amounts in each of the RMRF and LLRF accounts established to date; and

(v) A pattern of compliance with program reporting requirements.

(3) Shortened applications under this section will be rated on a pass or fail basis. Passing applications will be assigned a score of 90 points and will be ranked accordingly in the quarterly competitions. Failing applications under this section will be scored 0 and experienced MDOs may be required to complete the application requirements of paragraph (b) of this section.

§ 4280.317 Selection of applications for funding.

All eligible applications received will be scored using the scoring criteria specified in § 4280.316 and funded in descending order from the highest total score to applications receiving 60 points, subject to the authorization of appropriations for the Federal FY. If two or more applications have the same score and available funds cannot fund the individual projects, the Administrator may prioritize such applications to help the program achieve overall geographic diversity.

(a) *Timing and submission of applications.* (1) All applications must be submitted as a complete application in one package of materials. Packages must be in the order of appearance in § 4280.315. Applications that are disorganized or otherwise not ready for evaluation will be returned to the applicant and not considered for funding.

(2) Applications will be accepted on a continuing basis at any Rural Development State Office and will compete nationally for available funds on a quarterly basis using Federal fiscal quarters.

(3) Applications received will be reviewed, scored, and ranked quarterly. Unless withdrawn by the applicant, the Agency will retain unsuccessful applications that score 60 points or more for consideration in subsequent reviews, through a total of four quarterly reviews. Applications unsuccessful after competing for funds in four quarters will be returned to the applicant.

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

(c) *Applicant notification.* The Agency will notify applicants regarding their selection or non-selection, provide appeal rights of unsuccessful applicants, and provide closing procedures for the loan and/or grant awardees.

(d) *Closing.* Awardees unable to complete closing for an approved obligation within 90 days or an extended date approved by the Agency will forfeit their funding award in accordance with § 4280.311(e)(9).

§§ 4280.318–4280.319 [Reserved]

§ 4280.320 Grant administration.

(a) *Oversight.* Any MDO receiving a grant under this program is subject to Agency oversight, with site visits and inspection of records occurring at the discretion of the Agency. In addition, MDOs receiving a grant under this subpart must submit reports, as specified in paragraphs (a)(1) through (3) of this section.

(1) On a quarterly basis, within 30 days after the end of each Federal fiscal quarter, the microlender will provide to the Agency an Agency-approved quarterly report containing such information as the Agency may require to ensure that funds provided are being used for the purposes for which the grant was made, including:

(i) Narrative reporting information as required by Office of Management and Budget (OMB) circulars and successor regulations. This narrative will include information on the MDO's TA, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information;

(ii) If requesting grant funds at the time of reporting, an executed SF–270 form and a brief description of the proposed activity-based expenditures are required.

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

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

(b) *Payments.* The Agency will make grant payments not more often than quarterly. The first grant payment may be made in advance and will equal no more than one fourth of the grant award. Other payment requests must be submitted on Standard Form 270 and will only be paid if the MDO's reports are up to date and approved.

§ 4280.321 Grant and loan servicing.

In addition to the ongoing oversight of the participating MDOs, all grants will be serviced in accordance with applicable regulations, including 7 CFR part 1951, subparts E and O, 7 CFR part 3, and the Office of Management and Budget (OMB) regulations including, but not limited to, 2 CFR parts 200, 215, 220, 230, and OMB Circulars A–110 and A–133. Loans to microlenders will be serviced in accordance with 7 CFR part 1951, subparts E, O, and R, and OMB Circular A–129.

§ 4280.322 Loans from the microlenders to microentrepreneurs.

The primary purpose of making a program loan to a microlender is to enable that microlender to make microloans to rural microenterprises and microentrepreneurs. It is the responsibility of each microlender to make microloans in such a fashion that the terms and conditions of the microloan will support microborrower success while enabling the microlender to repay its loan from the Agency. It is the responsibility of each microborrower to repay the microlender in accordance with the terms and conditions agreed to with the microlender. The microlender is responsible for full repayment to the Agency of its loan regardless of the performance of its microloan portfolio.

(a) *Maximum microloan amount.* The maximum amount of a microloan made under this program will be $50,000. The total outstanding balance of microloans to any microborrower may not exceed $50,000.

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

(1) No microloan may have a term of more than 10 years;

(2) The interest rate charged to the microborrower will be established at or before the microloan closing and at such a rate that the microloan is affordable to the microborrower and provides a reasonable margin of earnings to the microlender.

(c) *Microloan insurance requirements.* The microlender has full discretion to require reasonable hazard, key person, and other insurance coverage from the microborrower as part of the loan transaction.

(d) *Credit elsewhere test.* Microborrowers will be subject to a ''credit elsewhere'' test so that the microlender will make loans only to those borrowers that cannot obtain business funding of $50,000 or less at affordable rates and on acceptable repayment terms. Each microborrower file must contain evidence that the microborrower has sought credit elsewhere or that the rates and terms available within the community at the time were outside the range of the microborrower's affordability. Evidence may include a comparison of rates, loan limitations, terms, or other requirements from other funding sources. Denial letters from other lenders are not required.

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

(f) *Eligible microloan purposes.* Agency loan funds may be used to make microloans as defined in § 4280.302 for any legal business purpose not identified in § 4280.323 as an ineligible purpose. Microlenders may make microloans for qualified business activities and expenses including, but not limited to:

(1) Working capital;

(2) The purchase of furniture, fixtures, supplies, inventory or equipment;

(3) Debt refinancing;

(4) Business acquisitions; and

(5) The purchase or lease of real estate that is already improved and will be used for the location of the subject business only, provided no demolition or construction will be accomplished with program funds. Neither interior decorating, nor the affixing of chattel to walls, floors, or ceilings are considered to be demolition or construction.

(g) *Military personnel.* Military personnel who are or seek to be a microentrepreneur and are on active duty with six months or less remaining in their active duty status may receive a microloan and/or TA and training if they are otherwise qualified to participate in the program.

§ 4280.323 Ineligible microloan purposes and uses.

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

(a) Construction costs including property demolition, renovation, elimination of walls, or property additions.

(b) The financing of timeshares, apartments, duplexes, or other residential housing.

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

(1) Financial assistance to principals, directors, officers, or employees of the microlender, or their close relatives, as defined; or

(2) Financial assistance to any entity which would appear to benefit the microlender or its principals, directors, or employees, or their close relatives, as defined, in any way other than the normal repayment of debt.

(d) Distribution or payment to a microborrower when such will use any portion of the microloan for other than business purposes.

(e) Microloans to a charitable institution not gaining sufficient revenue from business sales or services to support the operation and repay the microloan.

(f) Microloans to a fraternal organization.

(g) Any microloan to an applicant that has an RMAP-funded microloan application pending with another microlender or that has an RMAP-

funded microloan outstanding with another microlender that would cause the applicant to owe a combined amount of more than $50,000 to one or more microlenders under the program.

(h) Assistance to USDA Rural Development employees, or their close relatives, as defined.

(i) Microloans for any illegal activity.

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

(k) Loans supporting explicitly religious activities, such as worship, religious instruction or proselytization.

(l) Golf courses, race tracks, or gambling facilities.

(m) Funding of any political or lobbying activities.

(n) Lines of credit.

§§ 4280.324–4280.399 [Reserved]

§ 4280.400 OMB control number.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0062. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart E—Rural Business Development Grants

SOURCE: 80 FR 15667, Mar. 25, 2015, unless otherwise noted.

GENERAL

§ 4280.401 Purpose.

This subpart implements the RBDG program administered by the Agency. Grants made under this subpart will be made to eligible entities for use in funding various business opportunity and business enterprise Projects that serve Rural Areas.

§ 4280.402 [Reserved]

§ 4280.403 Definitions.

Administrator. The Administrator of RBS or designees or successors.

Agency. Rural Business-Cooperative Service (RBS) or successor.

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

Arm's-length Transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary, or stockholder interest in the grantee or transferor at the time of the transaction.

Business Support Centers. Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a Rural Area, but must provide assistance to businesses located in Rural Areas.

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

Departmental Grant Regulations. The USDA grant regulations at 2 CFR chapter IV.

Economic Development. The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels or gains in other measurements of economic activity, such as land values.

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

Industrial Site. The development of undeveloped real estate for uses which will assist Small and Emerging Businesses.

Long-term. The period of time covered by the three most recent decennial censuses of the United States to the present.

Nonprofit. An entity chartered as a nonprofit organization under applicable State or Tribal law.

Other Business Development. Any business related activity that will assist Small and Emerging Businesses and may include but is not limited to business incubators, business training centers, and other training activity which leads directly to Small and Emerging Business development.

Planning. A process to coordinate Economic Development activities, develop guides for action, or otherwise assist local community leaders in the Economic Development of Rural Areas.

Priority Communities. Communities targeted for Agency assistance as determined by the U.S. Department of Agriculture Under Secretary for Rural Development that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor, or have experienced Long-Term population decline or job deterioration.

Project. The result of the use of grant funds provided under this subpart through Technical Assistance or Planning relating to the Economic Development of a Rural Area; or the result of the use of program funds (*i.e.*, a facility whether constructed by the applicant or a third party made with grant funds, Technical Assistance, startup operating costs, or working capital). A revolving fund established in whole or in part with grant funds will also be considered a Project.

Public Bodies/Government Entity. Public Bodies include States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and education institutions organized under State and Federal laws, and Indian Tribes.

Rural and Rural Area. As described in 7 U.S.C. 1991(a)(13)(A) and (D) *et seq*.

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

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

Technical Assistance. A function performed for the benefit of a private business enterprise or a community and which is a problem solving activity, such as market research, product and/or service improvement, feasibility

study, etc., to assist in the Economic Development of a Rural Area.

[80 FR 15667, Mar. 25, 2015, as amended at 88 FR 86570, Dec. 14, 2023]

§ 4280.404 Exception authority.

The Administrator may make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's financial interest.

§ 4280.405 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11.

§ 4280.406 Conflict of interest.

(a) *General.* No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, Conflict of Interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and matching funds or award of Project construction contracts to an individual owner, partner, or stockholder, or to a beneficiary or immediate family of the applicant or grantee when the recipient will retain any portion of ownership in the applicant's or grantee's Project. Grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest. All transactions must be Arm's-length Transactions.

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

(c) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress so long as the member's ownership is less than 10 percent.

§ 4280.407 Statute and regulation references.

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

§ 4280.408 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.

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

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

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

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

(2) Grants will require one subsequent compliance review following Project completion. This will occur prior to the last disbursement of grant funds.

(d) *Environmental requirements.* Actions taken under this subpart must

comply with 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

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

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

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

(4) Applications for Technical Assistance or Planning Projects are generally excluded from the environmental review process by 7 CFR 1970.53 provided the assistance is not related to the development of a specific site. However, as further specified in 7 CFR 1970.53, the grantee for a Technical Assistance grant, in the process of providing Technical Assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the Technical Assistance as requested by the Agency and in accordance with 7 CFR part 1970.

(5) Applicants for grant funds must consider and document within their plans the important environmental factors within the Planning area and the potential environmental impacts of the plan on the Planning area, as well as the alternative Planning strategies that were reviewed.

(6) Whenever an applicant files an application that includes a direct construction Project and a plan, they must have a separate environmental evaluation.

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

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

(f) *Uniform Relocation and Real Property Acquisition Policies Act.* All Projects must comply with the requirements set forth in 7 CFR part 21.

(g) *Floodplains and wetlands.* All Projects must comply with Executive Order 11988 ''Floodplain Management'' and Executive Order 11990 ''Protection of Wetlands.'' The applicable regulations are codified at 44 CFR parts 59 through 80.

[80 FR 15667, Mar. 25, 2015, as amended at 81 FR 11052, Mar. 2, 2016]

§ 4280.409 [Reserved]

§ 4280.410 Other laws and regulations that contain compliance requirements for this program.

(a) *Equal employment opportunity.* For all construction contracts and grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60–1). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) *Architectural barriers.* All facilities financed with Zero-Interest Loans that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to and usable by disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, (42 U.S.C. 4151–4157).

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

(d) *Drug-free workplace.* Grants made under these programs are subject to the requirements contained in 2 CFR chapter IV which implements the

Drug-Free Workplace Act. RBDG recipients will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(e) *Debarment and suspension*. The requirements of 2 CFR chapter IV are applicable to this program.

(f) *Intergovernmental review of Federal programs*. These programs are subject to the requirements of Executive Order 12372 and 2 CFR chapter IV. Proposed Projects are subject to the State and local government review process contained in 2 CFR chapter IV.

(g) *Restrictions on lobbying*. The restrictions and requirements imposed by 31 U.S.C. 1352, and 2 CFR chapter IV, are applicable to these programs.

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

(i) *Affirmative fair housing*. If applicable, the grantee will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601–3631 and 24 CFR part 100).

(j) *Flood hazard insurance*. The RBDG program is subject to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by 42 U.S.C. 4001–4129 and 7 CFR part 1806, subpart B.

(k) *Uniform administrative requirements, cost principles, and audit requirements for Federal awards*. The requirements of 2 CFR chapter IV, or its successor regulations are applicable to this program.

(l) *Planning and performing construction and other development*. The requirements of 7 CFR part 1924, subpart A, or its successor regulations, are applicable to this program.

(m) *Transparency Act*. The requirements of 2 CFR part 170 are applicable to this program.

§ 4280.411 Forms, guides, and attachments.

All forms, guides, and attachments referenced in this subpart are available online at: *http://forms.sc.egov.usda.gov/eForms/* or in any Rural Development State office.

§§ 4280.412–4280.414 [Reserved]

RURAL BUSINESS DEVELOPMENT GRANTS

§ 4280.415 Rural Business Development Grants.

Sections 4280.416 through 4280.439 identify the provisions that the Agency will use for making awards for Rural Business Development Grants.

ELIGIBILITY

§ 4280.416 Applicant eligibility.

To receive an RBDG under this subpart, an applicant must meet the requirements specified in paragraphs (a) through (e) of this section. If an award is made to an applicant, that applicant (grantee) must continue to meet the requirements specified in this section. If the grantee does not, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(a) *Type of applicant*. The Applicant must be one of the following:

(1) A Public Body/Government Entity;

(2) An Indian Tribe; or

(3) A Nonprofit entity.

(b) *Financial strength and expertise*. The Applicant must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(1) Financial strength will be analyzed by the Agency based on financial data provided in the application. The analysis will consider the applicant's tangible net worth, which must be positive, and whether the applicant has dependable sources of revenue or a successful history of raising revenue sufficient to meet cash requirements.

(2) Expertise will be analyzed by the Agency based on the applicant staff's training and experience in activities similar to those proposed in the application and, if consultants will be used, on the staff's experience in choosing and supervising consultants.

(c) *Universal identifier and system for awards management*. Unless exempt under 2 CFR 25.110, the Applicant must:

(1) Be registered in the System for Awards Management (SAM) prior to submitting an application;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency; and

(3) Provide its Unique Entity Identifier (UEI) in each application it submits to the Agency. The UEI is included on the Standard Form (SF) 424, ''Application for Federal Assistance.''

(d) *Delinquent debt.* The applicant must not have any delinquent debt to the Federal Government. If an applicant has any delinquent debt to the Federal Government, the applicant will be ineligible to receive any funds obligated under this subpart until the debt has been paid.

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

[80 FR 15667, Mar. 25, 2015, as amended at 89 FR 34959, May 1, 2024]

§ 4280.417 Project eligibility.

For a Project to be eligible for funding under this subpart, the proposed Project must meet each of the requirements specified in paragraphs (a) through (e) of this section.

(a) *Types of projects.* Grant funds may be used for Projects identified in either paragraph (a)(1) of this section, business opportunity type grants, or paragraph (a)(2) of this section, business enterprise type grants. Unless otherwise announced in a Notice of Solicitation of Applications, the Agency will set aside 10 percent of its RBDG appropriation for business opportunity type grants. The Agency reserves the right to reallocate funds set aside for business opportunity type grants to business enterprise type grants if it becomes apparent to the Agency that there is insufficient demand for the funds set aside for the business opportunity type grants.

(1) *Business opportunity Projects.* Grant funds may be used for business opportunity Projects that include one or more of the following activities:

(i) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies;

(ii) Identify, train, and provide Technical Assistance to existing or prospective rural entrepreneurs and managers;

(iii) Establish Business Support Centers and otherwise assist in the creation of new Rural businesses;

(iv) Conduct local community or multi-county Economic Development Planning;

(v) Conduct leadership development training of existing or prospective adult rural entrepreneurs and managers;

(vi) Establish centers for training, technology, and trade that will provide training to Rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets; or

(vii) Pay reasonable fees and charges for professional services necessary to conduct the Technical Assistance, training, or planning functions.

(2) *Business enterprise projects.* Grant funds may be used to finance and/or develop Small and Emerging Businesses in Rural Areas including, but not limited to, the following activities:

(i) Acquisition and development of land, easements and rights-of-way;

(ii) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities;

(iii) Provision of loans for startup operating cost and working capital;

(iv) Reasonable fees and charges for professional services necessary for the planning and development of the Project;

(v) Establishment of a revolving loan fund to provide financial assistance to third parties through a loan; and

(vi) Establishment, expansion, and operation of Rural distance learning networks or development of Rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancements for adult students;

(vii) Provision of Technical Assistance for Small and Emerging Businesses, including but not limited to feasibility studies and business plans; and/or

(viii) Provision of Technical Assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

(b) *Result of projects.* (1) For business opportunity type grants, the Project must have a reasonable prospect that the Project will result in the Economic Development of a Rural Area.

(2) For business enterprise type grants, the Project must have a reasonable prospect that it will result in the development or financing of Small and Emerging Businesses.

(c) *Basis for success or failure.* Grants may be made only when the application demonstrates a need for the Project and includes a basis for determining the success or failure of the Project and individual major elements of the Project and outlines procedures that will be taken to assess the Project's impact at its conclusion.

(d) *Local and area-wide strategic plans.* Business opportunity type grants may be made only when the proposed Project is consistent with any local and area-wide strategic plans for community and Economic Development, coordinated with other Economic Development activities in the Project area, and consistent with any Rural Development State Strategic Plan.

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

[80 FR 15667, Mar. 25, 2015, as amended at 85 FR 57085, Sept. 15, 2020]

§§ 4280.418–4280.420 [Reserved]

FUNDING PROVISIONS

§ 4280.421 Term requirement.

A grant may be considered for the amount needed to assist with the completion of a proposed Project, provided that the Project can reasonably be expected to be completed within 1 full year after it has begun.

§ 4280.422 Joint funding.

To the extent permitted by law, Agency grant funds may be used jointly and in proportion with funds furnished by the grantee or from other sources including Agency loan funds.

§ 4280.423 Ineligible uses of grant funds.

Grant funds may not be used towards any of the uses identified in paragraphs (a) through (n) of this section.

(a) Duplicate current services or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided.

(b) Pay costs of preparing the application package for funding under this program or any other program.

(c) Pay costs for any expenses incurred prior to receipt of a full application, except for those permitted under Departmental Regulations.

(d) Fund political activities.

(e) Pay for assistance to any private business enterprise which does not create and/or support jobs in the United States.

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

(g) Fund Agriculture Production either directly or through horizontally integrated livestock operations except for commercial nurseries, timber operations or limited Agricultural Production related to Technical Assistance Projects. The following are not considered Agriculture Production:

(1) Aquaculture, including conservation, development, and utilization of water for aquaculture;

(2) Commercial fishing;

(3) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage;

(4) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation; or

(5) The growing of mushrooms or hydroponics.

(h) To finance comprehensive area-wide type Planning. This does not preclude the use of grant funds for Planning for a given Project.

(i) To make loans when the rates, terms, and charges for those loans are not reasonable or would be for purposes not eligible under 7 CFR part 4274, subpart D.

(j) For programs operated by cable television systems.

(k) To fund a part of a Project that is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the Project.

(l) To pay for Technical Assistance that duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with FS and the Agency to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for Technical Assistance under the FS program. The grantee will provide documentation to FS and the Agency regarding the contact with each agency.

(m) Pass through grants. Pass through grants are for, but not limited to:

(1) The purchase, refurbishing, or remodeling of real estate for use as a business incubator without charging a fair market rental;

(2) The purchase of equipment for use by an ultimate recipient without charging a fair market rental; and

(3) The making of a Revolving Loan Fund (RLF) loan without taking appropriate security to reasonably assure repayment of the loan.

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

§§ 4280.424–4280.426 [Reserved]

APPLYING FOR A GRANT

§ 4280.427 Application.

Applications for an RBDG grant as specified in § 4280.417(a)(1) and (2) must contain the following:

(a) An original and one copy of SF 424, ''Application For Federal Assistance (For Non-construction);''

(b) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(c) A proposed scope of work, including a description of the proposed Project, *e.g.*, RLF, Technical Assistance, Industrial Site, Business Opportunity and Other Business Development, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the Project, and the estimated time it will take from grant approval to beginning of Project implementation;

(d) A written narrative that includes, at a minimum, the following items:

(1) An explanation of why the Project is needed, the benefits of the proposed Project, and how the Project meets the grant eligible purposes;

(2) Area to be served, identifying each governmental unit, *i.e.* town, county, etc., to be affected by the Project;

(3) Description of how the Project will coordinate Economic Development activities with other Economic Development activities within the Project area;

(4) Business to be assisted, if appropriate, and Economic Development to be accomplished;

(5) An explanation of how the proposed Project will result in newly created, increased, or supported jobs in the area and the number of projected new and supported jobs within the next 3 years;

(6) A description of the applicant's demonstrated capability and experience in providing the proposed Project assistance or similar Economic Development activities, including experience of key staff members and persons who will be providing the proposed Project activities and managing the Project;

(7) The method and rationale used to select the areas and businesses that will receive the service;

(8) A brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(9) Other information the Agency may request to assist it in making a grant award determination;

(e) The latest 3 years of financial information to show the applicant's financial capacity to carry out the proposed work. If the applicant is less than 3 years old, at a minimum, the information should include all balance sheet(s), income statement(s) and cash flow statement(s). A current audited report is required if available;

(f) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372;

(g) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the RBDG;

(h) A budget which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the Project; and

(i) RBDG construction Project grants must conform with 7 CFR part 1924, subpart A requirements.

§ 4280.428 Strategic economic and community development.

Applicants with projects that support the implementation of Strategic Community Investment Plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of Strategic Community Investment Plans on a multi-jurisdictional and multi-sectoral basis.

[85 FR 59395, Sept. 22, 2020]

§ 4280.429 [Reserved]

§ 4280.430 Notification of decision.

When the Agency has determined that an application is not eligible or that no further action will be taken, the Agency will notify the applicant in writing of the reasons why the application was not favorably considered and provide any appeal rights.

§§ 4280.431–4280.433 [Reserved]

PROCESSING AND SCORING APPLICATIONS

§ 4280.434 General processing and scoring provisions.

The Agency will review each application for assistance in accordance with the priorities established in § 4280.435. The Agency will assign each application a priority rating and will select applications for funding based on the priority ratings and the total funds available to the program.

(a) *Applications.* The Agency will score each application based on the information contained in the application and its supporting information. All applications submitted for funding must contain sufficient information to permit the Agency to complete a thorough priority rating.

(b) *Unfunded applications.* The Agency will notify eligible applicants if funds are not available. If an applicant wishes to have their application maintained in an active file for future consideration, the applicant must revise and update their application in writing for the Agency to reconsider in a future funding cycle.

§ 4280.435 Scoring criteria.

The Agency will use the criteria in this section to score applications for purposes identified under § 4280.417(a)(1)and (2).

(a) *Leveraging.* If the grant will fund a critical element of a larger program of Economic Development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows. If points are awarded for leveraging, funds must be spent proportionally, and if leveraged funds are not utilized proportionately with the grant, the Agency reserves the right to take any legal action, including terminating the grant.

(1) If Rural Development's portion of Project funding is:

(i) Less than 20 percent—30 points;

(ii) 20 but less than 50 percent—20 points;

(iii) 50 but less than 75 percent—10 points; or

(iv) 75 percent or more—0 points.

(2) [Reserved]

(b) Points will be awarded for each of the following criteria met by the community or communities that will receive the benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (b)(1)

through (4) of this section, total points awarded under this paragraph (b) must not exceed 40.

(1) *Trauma*. Experiencing trauma due to a major natural disaster that occurred not more than 3 years prior to the filing of the application for assistance—15 points;

(2) *Economic distress*. The community has suffered a loss of 20 percent or more in their total jobs caused by the closure of a military facility or other employers within the last 3 years—15 points;

(3) *Long-term poverty*. Has experienced Long-Term poverty as demonstrated by being a former Rural empowerment zone, Rural economic area partnership zone, Rural enterprise community, champion community, or a persistent poverty county as determined by USDA's Economic Research Serviced—10 points;

(4) *Population decline*. Has experienced Long-Term population decline—10 points as demonstrated by the latest three decennial censuses.

(c) *Population*. Proposed Project(s) will be located in a community of:

(1) Under 5,000 population—15 points;

(2) Between 5,000 and less than 15,000 population—10 points; or

(3) Between 15,000 and 25,000 population—5 points.

(d) *Unemployment*. Proposed Project(s) will be located in areas where the unemployment rate:

(1) exceeds the State rate by 25 percent or more—20 points;

(2) exceeds the State rate by less than 25 percent—10 points; or

(3) is equal to or less than the State rate—0 points.

(e) *Median household income*. Proposed Project(s) will be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act for a family of 4 for the State is:

(1) Less than poverty line—25 points;

(2) More than poverty line but less than 65 percent of State MHI—15 points;

(3) Between 65 and 85 percent of State MHI—10 points; or

(4) Greater than 85 percent State MHI—0 points.

(f) *Experience*. Applicant has evidence of successful experience in the type of activity. Evidence of successful experience may be a description of experience supplied and certified by the applicant based upon its current employees' resumes:

(1) 10 or more years-30 points;

(2) At least 5 but less than 10 years-20 points;

(3) At least 3 but less than 5 years-10 points; or

(4) At least 1 but less than 3 years-5 points.

(g) *Small business start-up or expansion*. Applicant has evidence that small business development will be supported by startup or expansion as a result of the activities to be carried out under the grant. Written evidence of commitment by a small, or a Small and Emerging Business must be provided to the Agency, and should include the number of jobs that will be supported and created. 5 points for each letter up to 25 points.

(h) *Jobs created or supported*. The anticipated development, expansion, or furtherance of business enterprises as a result of the proposed Project will create and/or support existing jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business to be assisted.

(1) One job for less than $5,000—25 points;

(2) one job for $5,000 but less than $10,000—20 points;

(3) one job for $10,000 but less than $15,000—15 points;

(4) one job for $15,000 but less than $20,000—10 points; or

(5) one job for $20,000 but less than $25,000—5 points.

(i) *Size of grant request*. Grant Projects utilizing funds available under this subpart of:

(1) less than $100,000—25 points;

(2) $100,000 to $200,000—15 points; or

(3) more than $200,000 but not more than $500,000—10 points.

(j) *Indirect cost*. Applicant is not requesting grant funds to cover their administrative or indirect costs-5 points.

(k) *Discretionary points*. Either the State Director or Administrator may assign up to 50 discretionary points to an application. Assignment of discretionary points must include a written justification. Permissible justifications

are geographic distribution of funds, special Secretary of Agriculture initiatives such as Priority Communities, or a state's strategic goals. Discretionary points may only be assigned to initial grants. However, in the case where two Projects have the same score, the State Director may add one point to the Project that best fits the State's strategic plan regardless of whether the Project is an initial or subsequent grant.

§§ 4280.436–4280.438 [Reserved]

GRANT AWARDS AND AGREEMENT

§ 4280.439 Grant awards and agreements.

The Agency will award and administer RBDG grants in accordance with applicable Departmental regulations, this subpart, and the unauthorized grant provisions of 7 CFR part 1951, subpart O.

(a) *Letter of conditions.* The Agency will provide each approved applicant a letter of conditions, which sets out the conditions under which the grant will be made, including, but not limited to, an Agency grant agreement.

(b) *Applicant's intent to meet conditions.* The applicant must complete, sign and return a ''Letter of Intent to Meet Conditions,'' to the Agency. If applicant identifies certain conditions that the applicant cannot meet, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed by the letter of conditions by the applicant before the any grant will be made.

§§ 4280.440–4280.442 [Reserved]

POST AWARD ACTIVITIES AND REQUIREMENTS

§ 4280.443 Grant monitoring and servicing.

RBDG grants will be monitored and serviced in accordance with the grant agreement, this subpart, and 2 CFR chapter IV.

§§ 4280.444–4280.447 [Reserved]

§ 4280.448 Transfers and assumptions.

The Agency will approve transfer and assumption requests on grants awarded under this subpart on a case by case basis, and then only to eligible entities under § 4280.416.

§§ 4280.449–4280.499 [Reserved]

§ 4280.500 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0070 in accordance with the Paperwork Reduction Act of 1995. You are not required to respond to this collection of information unless it displays a valid OMB control number.

[88 FR 86570, Dec. 14, 2023]

PART 4284—GRANTS

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart F also issued under 7 U.S.C 1932(e).
Subpart J also issued under 7 U.S.C. 1627c.
Subpart K also issued under 7 U.S.C. 1632b.

SOURCE: 62 FR 42387, Aug. 7, 1997, unless otherwise noted.

Subparts A–E [Reserved]

Subpart F—Rural Cooperative Development Grants

SOURCE: 89 FR 75771, Sept. 16, 2024, unless otherwise noted.

§ 4284.501 Purpose.

This subpart implements the Rural Cooperative Development Grant (RCDG) Program. Grants are made to Nonprofit Institutions who in turn provide Technical Assistance including Cooperative Development to start, expand or improve Cooperatively and Mutually Owned Businesses in Rural Areas.

§ 4284.502 Organization of subpart.

The information in this subpart is organized into six main topics:

(a) *General information.* Sections 4284.501 through 4284.519 discuss the purpose of the program, definitions, exception authority, conflict of interest, and compliance with other laws and regulations.

(b) *Eligibility information.* Sections 4284.520 through 4284.529 discuss the eligibility requirements for the program. The sections include information on Applicant eligibility, Project eligibility, and the use of funds. See § 4284.522 for information about the award amounts, Period of Performance, and Matching Funds requirements.

(c) *Application requirements information.* Sections 4284.530 through 4284.539 discuss the requirements for submitting an application. The sections include information on what forms and other information are required for a complete application as well as the format of the application, the application deadline, and how to submit the application.

(d) *Application processing information.* Sections 4284.540 through 4284.549 discuss how the Agency will process applications. The sections include information on how applications will be reviewed for eligibility, how applications will be evaluated for merit, and how an Applicant can withdraw an application from consideration.

(e) *Award information.* Sections 4284.550 through 4284.559 discuss how the Agency will make awards. The sections include information about how applications will be selected for funding, how Applicants will be notified if their applications are selected for funding, how Applicants can resolve disputes regarding funding selections, and the requirements for an Applicant to accept an award and be approved as a Recipient of an award.

(f) *Post-award information.* Sections 4284.560 through 4284.561 discuss the reporting requirements for Recipients after an award is approved as well as monitoring procedures that the Agency will use.

(g) *Other.* (1) Sections 4284.562 through 4284.599 are reserved.

(2) Section 4284.600 includes the Office of Management and Budget (OMB) control number for reporting and recordkeeping requirements under this subpart.

§ 4284.503 Definitions.

These are the definitions for terms used in this subpart. Additional terms used in this subpart are found in the applicable laws and regulations, in particular 2 CFR part 200 and 7 CFR part 11.

1994 Institution means a college identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Adverse Decision has the meaning located at 7 CFR 11.1.

Adverse Decision Letter means a letter issued by the Agency to the Applicant or Recipient that explains the Adverse Decision.

Agency means the Rural Business-Cooperative Service (RBCS or the Agency), an agency of the United States Department of Agriculture (USDA or the Department), or a successor agency.

Applicant means the Nonprofit Institution that is applying for funding through the RCDG program.

Board of Directors (Board) means the group of individuals that manage or direct the Center.

Business Plan means a formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including pro forma financial statements appropriate to the term and scope of the Project and sufficient to evidence the viability of the Project. It may also contain background information about the organization or team attempting to reach those goals.

Center means the Rural Cooperative Development Center to be established and/or operated by a Recipient of the RCDG program.

Cooperative means a business or organization owned, democratically governed, controlled and operated by those who use and benefit from it. Profits and losses generated by the organization are distributed in proportion to use as patronage to the user-owners, also known as members. Investment returns to non-members are limited.

Cooperative Development refers to a type of Technical Assistance that establishes and promotes Cooperative businesses through hands-on activities, often but not exclusively, assisting a group through a series of stages. These stages include but are not limited to the following: idea exploration by a group with shared needs, member-use analysis, identifying a steering committee and guiding them through the development process, modeling effective democratic processes and good governance practices, creation of legal and policy documents, conducting a membership drive, raising member equity, acquiring sufficient capital, supporting operations, ongoing education and training, ongoing Board development and relations with management, supporting decision-making regarding patronage, and fostering an environment that is supportive of Cooperatives.

Economic Development means the economic growth of an area as evidenced by an increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Equipment has the meaning located at 2 CFR 200.1.

Feasibility Study means a comprehensive analysis of the economic, market, technical, financial, and management capabilities of a Project or business in terms of the Project's expectation for success.

Federal Award has the meaning located at 2 CFR 200.1.

Grant Agreement or Financial Assistance Agreement has the meaning located at 2 CFR 200.1.

Institutions of Higher Education has the meaning located at 2 CFR 200.1.

Key Personnel means employees, new hires, consultants, and/or contractors of the Center who provide Technical Assistance including Cooperative Development and oversee and/or complete the tasks in the work plan.

Letter of Conditions means the letter that the Agency issues to an entity whose application is selected for funding. The letter outlines all the conditions of the award that must be met before the award can be approved. Other agencies may call this letter an award letter or award notice.

Matching Funds means a cost-sharing contribution to the Project that is 25 percent of the eligible Project Cost. For 1994 Institutions, a cost-sharing contribution that is 5 percent of the eligible Project Cost.

Mutually Owned Business means a business not incorporated under a Cooperative statute but operating as a Cooperative. Cooperative operation of the business is reflected in the articles and by-laws.

Networking means the creation and sharing of knowledge, best practices and transferrable strategies, engaging in mentor/mentee relationships amongst Centers, and developing joint Technical Assistance Projects with other Centers and other organizations engaged in Economic Development with the intent of advancing Cooperative Development and its practice.

New Cooperative Approach refers to development of a Cooperatively or Mutually Owned Business approach in a new industry, utilizing a new Cooperative structure, or serving a new function. This industry, structure, or function must be new to the Center or new to the service area.

Nonprofit Institution means any organization or institution, including an accredited Institution of Higher Education, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Operating Cost means the day-to-day expenses of running a business; for example: utilities, rent on the office space a business occupies, salaries, depreciation, marketing and advertising, and other basic overhead items.

Period of Performance has the meaning located at 2 CFR 200.1.

Project means all of the eligible activities to be funded by the grant and Matching Funds under this subpart.

Project Cost has the meaning located at 2 CFR 200.1.

Public Body means any State, county, city, township, incorporated town or village, borough, authority, district, Economic Development authority, or Indian tribe on Federal or State reservations or other federally recognized Indian tribe.

Real Property has the meaning located at 2 CFR 200.1.

Recipient has the meaning located at 2 CFR 200.1.

Research and Development (R&D) has the meaning located at 2 CFR 200.1.

Rural and Rural Area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urban area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development (RD), or as otherwise identified in this definition as follows:

(1) An area that is attached to the urban 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 (2) census blocks wide. Applicants from such an area should work with their RD State office to request a determination of whether their project is located in a Rural Area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

(3) For the purposes of this definition, populations of individuals incarcerated on a long-term or regional basis shall not be included in determining whether an area is ''rural'' or a ''rural area''.

(4) For the purposes of this definition, the first 1,500 individuals who reside in housing located on a military base shall not be included in determining whether an area is ''rural'' or a ''rural area''.

(5) For the Commonwealth of Puerto Rico, the island is considered Rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.''

(6) For the State of Hawaii, all areas within the State are considered Rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(7) 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.

(8) The determination that an area is ''rural in character'' will be made by the Under Secretary of RD. The process to request a determination under this provision is outlined in paragraph (8)(ii) of this definition.

(i) The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urban area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urban area of such a city or town; or

(B) An urban area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a Rural Area.

(ii) Units of local government may petition the Under Secretary of RD for a ''rural in character'' designation by submitting a petition to both the appropriate RD State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (8)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within five (5) business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's website, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Rural Development (RD) refers to a mission area within the USDA which includes RBCS, the Rural Housing Service, and the Rural Utilities Service, and their successors.

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State Office refers to USDA RD offices located in each State.

Subaward has the meaning located at 2 CFR 200.1.

Technical Assistance means the process of providing targeted support for the startup, expansion, and operational improvement of Cooperatively and Mutually Owned Businesses typically delivered via multiple contacts over a period of time. It includes the transfer of skills and knowledge through research and collection of information to provide guidance and advice; assessment and analysis through Feasibility Studies and Business Plans, customized training, written information, in person or virtual exchanges, web-based curricula, and webinars.

Underserved and Economically Distressed has the meaning located in the annual notification issued on the program website.

Value-Added means the incremental profit earned from each transaction or step in processing after deducting processing costs, depreciation, and other relevant expenses. Each stage of processing or ownership transfer typically adds value to a good, product, or service.

§ 4284.504 Exception authority.

The Administrator of the Agency may, on a case-by-case basis, grant an exception to any non-statutory requirement or provision of this subpart provided that such exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable laws.

§ 4284.505 [Reserved]

§ 4284.506 Conflict of interest.

No conflict of interest or appearance of conflict of interest will be allowed.

(a) *Description.* A conflict of interest occurs in a situation in which a person or entity has a competing, or the appearance of a competing, personal, professional, or financial interest that makes it difficult for the person or entity to act impartially. For purposes of this subpart, interactions among the following individuals constitute a conflict of interest or appearance of a conflict of interest:

(1) Applicant Board, employees, consultants, and contractors.

(2) Recipient Board, employees, consultants, and contractors.

(3) Center Board, employees, consultants, and contractors.

(4) Subrecipients and their employees, consultants, and contractors.

(5) Immediate family members of those listed in paragraphs (a)(1) through (4) of this section.

(b) *Written disclosure.* Recipients must comply with 2 CFR 400.2(b), which requires written disclosure of any potential conflicts of interest and maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award, and administration of Federal Awards.

(c) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(d) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

§ 4284.507 [Reserved]

§ 4284.508 Compliance with other laws and regulations.

The Agency, Applicants, and Recipients must comply with all applicable laws and regulations. An effort has been made to identify the most-commonly cited laws and regulations and to reference them as follows:

(a) *Federal laws.* Federal laws are codified in the United States Code (U.S.C.). A selection of laws is identified as follows:

(1) Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

(2) Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

(3) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(4) The Civil Rights Act of 1964, Title VI (42 U.S.C. 2000d *et seq.*).

(5) The Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794).

(b) *Federal regulations.* Federal regulations are codified in the Code of Federal Regulations (CFR). In particular, 2 CFR parts 1 through 200 address items such as universal identifiers, reporting Subaward and executive compensation, debarment and suspension, drug-free workplaces, administrative requirements, cost principles, and audit requirements. We particularly encourage Applicants and Recipients to become familiar with 2 CFR part 200 in its entirety.

(c) *Departmental regulations.* Departmental regulations are those regulations that are specific to awards made through the USDA. They are codified in the CFR. A selection of applicable regulations is identified as follows:.

(1) *2 CFR parts 400 through 499.* These parts include USDA's adoption of Federal administrative requirements and cost principles. They also include regulations on debarment and suspension, lobbying, drug-free workplaces, and research awards.

(2) *7 CFR part 11.* This part includes USDA's procedures for administrative appeals, as handled by its National Appeals Division.

(3) *7 CFR part 15.* This part includes USDA's procedures for compliance with nondiscrimination laws and regulations.

(d) *Agency regulations.* Agency regulations are those regulations that are specific to awards made through the Agency and they may also be specific to a program. They are codified in the CFR. A selection of those regulations is as follows:

(1) *7 CFR part 1900.* This part covers delegations of authority, Adverse Decisions and administrative appeals, applicability of Federal law, and processing and servicing grant awards.

(2) *7 CFR part 1901, subpart E.* This subpart covers civil rights compliance requirements.

(3) *7 CFR part 1951.* This part covers servicing grant awards, including unauthorized assistance.

(4) *7 CFR part 1970.* This part covers environmental policies and considerations.

(e) *Access to laws and regulations.* (1) Laws may be accessed through the U.S.C. At the time this subpart was published, the U.S.C. may be accessed electronically at this website: *https://uscode.house.gov/.*

(2) Regulations may be accessed through the CFR. At the time this subpart was published, the CFR may be

accessed electronically at this website: *https://www.ecfr.gov/*.

§§ 4284.509–4284.519 [Reserved]

§ 4284.520 Applicant eligibility.

(a) *Eligible Applicants.* Applicants are eligible for assistance through this program if they meet the following requirements:

(1) *Applicant type.* A Nonprofit Institution.

(2) *Applicant location.* Applicant must be located in a State.

(3) *Unique entity identifier (UEI).* Applicants must have a UEI and active registration through the System for Award Management (SAM) at SAM.gov unless exempt under 2 CFR 25.110.

(4) *Multiple grant eligibility.* An Applicant may submit only one application in response to a solicitation. All applications submitted, regardless of the Applicant entity name, that include the same Executive Director, employees, Board, advisory boards or committees of an existing Center or a majority thereof will be determined ineligible for funding.

(b) *Ineligible Applicants.* Applicants are ineligible for assistance through this program if one or more of the following occurs:

(1) The Applicant is an individual, for-profit entity, or Public Body.

(2) The Applicant is debarred or suspended or is otherwise excluded from, or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' See 2 CFR part 417 for more information.

(3) The Applicant has an outstanding judgment obtained against the organization by the United States in a Federal Court (other than United States Tax Court).

(4) The Applicant is delinquent on the payment of Federal income taxes.

(5) The Applicant is delinquent on Federal debt.

(6) The Applicant has been convicted of a felony criminal violation under any Federal law within the past 24 months.

(7) The Applicant has unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(8) The Applicant has an award through this program that is not scheduled to end until after September 30 (for awards that began the preceding October 1) of the current Federal fiscal year, or December 31 (for awards that began the preceding January 1) of the current calendar year.

§ 4284.521 [Reserved]

§ 4284.522 Project eligibility.

(a) *Eligible Projects.* Eligible Projects must meet all of the following requirements. Failure to meet one or more of these requirements means that the application will not be considered for funding.

(1) *Rurality.* All Project activities must serve individuals, Cooperatively and Mutually Owned Businesses, small businesses, or other similar entities in Rural Areas.

(2) *Project focus.* The Project must focus on establishing or operating a Center with the goals of creating jobs in Rural Areas through the development of new Rural Cooperatives, Value-Added processing, and Rural businesses.

(3) *Amount requested.* The amount requested must not exceed any maximum amounts specified in the annual notification issued on the program website.

(4) *Matching Funds.* Matching Funds may be provided in cash by the Applicant, or cash or in-kind by a third party and are required for 25 percent (or 5 percent if a 1994 Institution) of the Project Cost. For example, if an Applicant requests an award amount of $150,000, the Matching Funds contribution must be $50,000, and the overall Project Cost is $200,000.

(i) *Matching Funds.* (A) Must be spent on eligible expenses.

(B) Must be from non-Federal sources unless authorized to be used as Matching Funds by the legislation authorizing the Federal source of funding.

(C) Must be spent in advance or as a pro-rata portion of grant funds being spent.

(ii) *In-kind contributions.* (A) Cannot include over-valued, in-kind contributions.

(B) You must be able to document and verify the number of hours worked and the value associated with any in-kind contribution being used to meet a Matching Funds requirement.

(C) In-kind contributions provided by individuals, businesses, or Cooperatives which are being assisted by the Center cannot be provided for the direct benefit of their own Projects as USDA RD considers this to be a conflict of interest.

(5) *Use of funds.* The Project must use grant and Matching Funds for allowable purposes. See § 4284.525.

(6) *Period of Performance.* The Period of Performance cannot exceed one (1) year. The grant period should begin no earlier than October 1 (the beginning of the Federal fiscal year) and no later than January 1 (the beginning of the calendar year).

(b) *Ineligible Projects.* Projects are ineligible for assistance through this program if the application:

(1) Requests more than the maximum grant amount;

(2) Focuses assistance on one Cooperatively or Mutually Owned Business;

(3) Includes a conflict of interest (see § 4284.506) where the expenses associated with the conflict of interest exceed 10 percent of the Project Cost. If the costs associated with the conflict of interest are 10 percent or less, the process in paragraph (b)(4) of this section will be followed;

(4) Includes unallowable costs (see § 4284.525) totaling more than 10 percent of Project Costs. If the application includes 10 percent or less of Project Costs in unallowable costs, and the application is otherwise eligible and selected for funding, those unallowable costs must be removed. If time permits, the Agency may allow those unallowable costs to be replaced with allowable costs. Otherwise, the amount of the Award will be reduced accordingly. If we cannot determine the percentage of unallowable costs, your application will not be considered for funding.

§§ 4284.523–4284.524 [Reserved]

§ 4284.525 Use of grant and Matching Funds.

(a) *Allowable uses of grant and Matching Funds.* The following types of activities and expenses are allowable:

(1) Costs associated with establishing or operating a Center, including legal services, accounting services, clerical assistance, technical services, office supplies, hiring employees, monitoring contracts, professional development for staff, attending conferences that would advance Cooperative Development and its practice, and Board travel;

(2) Technical Assistance including Cooperative Development as defined in § 4284.503;

(3) Costs for coordination of services and sharing of information among the Centers; and

(4) Providing loans and/or grants as Subawards per 2 CFR part 200 for Technical Assistance including Cooperative Development.

(b) *Unallowable uses of grant and Matching Funds.* No funds under this subpart shall be used to:

(1) Pay for the preparation of the grant application;

(2) Pay any costs of the Project incurred prior to the date of grant approval;

(3) Pay expenses not directly related to the funded Project;

(4) Pay for Board/advisory council member's time;

(5) Pay for the Operating Costs of any entity receiving assistance from the Recipient;

(6) Fund R&D;

(7) Duplicate activities paid for by another Federal grant program or activities charged to a previous RCDG Project;

(8) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(9) Pay for any goods or services from a person or entity who has a conflict of interest with the Recipient;

(10) Pay any judgment or debt owed to the United States;

(11) Purchase or make improvements to Real Property;

(12) Plan, develop, repair, rehabilitate, acquire, or construct a building or facility;

(13) Purchase, lease purchase, or install Equipment;

(14) Purchase or pay for the repair of vehicles; or

(15) Fund activities considered unallowable by the applicable cost principles, mostly of which are included in 2 CFR part 200, subpart E, or successor regulation.

§§ 4284.526–4284.529 [Reserved]

§ 4284.530 Notifications.

The Agency will issue any program notifications on the program website.

(a) *Amount of funding available.* The Agency will publish the amount of funding available for awards during each Fiscal Year within 30 calendar days of notification from OMB of the amount available.

(b) *Underserved and Economically Distressed Areas.* The Agency will publish the source for identifying Underserved and Economically Distressed areas no later than the date the application period opens.

(c) *Additional merit evaluation criteria.* The Agency may establish additional merit evaluation criteria to meet the Department's or Agency's key priorities, goals, and objectives. Any such criteria will be published no later than the date the application period opens.

(d) *Other.* The Agency will publish any other additional requirements or programmatic changes no later than the date the application period opens.

§ 4284.531 Application requirements.

All applications must include the following:

(a) *Application forms.* The following forms must be completed, signed, and submitted as part of the application. Any additional forms that may be required will be published in the applicable annual notification.

(1) SF–424, ''Application for Federal Assistance.''

(2) SF–424 A, ''Budget Information—Non-Construction Programs.''

(b) *Proposal.* Each proposal must contain the following items. Additional items may be requested and will be published in the applicable annual notification.

(1) Title page.

(2) Table of contents.

(3) A summary of the proposal should briefly describe the Center, the goals of the Project, and the amount requested.

(4) Applicants must discuss how the following are met:

(i) Eligibility requirements in § 4284.520; including how they identify as an Institution of Higher Education or Nonprofit Institution.

(ii) Project eligibility requirements in § 4284.522; and

(iii) Eligible use of grant and Matching Funds requirements in § 4284.525.

(5) The proposal narrative should address how the Center will improve the economic conditions of Rural Areas by providing Technical Assistance including Cooperative Development. In particular, the Applicant must:

(i) Substantiate that the Center will use RCDG funds to serve Rural Areas in the United States as defined in § 4284.503.

(ii) Provide a description of the contributions that this Project is likely to make that will improve the economic conditions of the Rural Areas served by the Center.

(iii) Discuss how the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, Tribal Governments, and State and local governments.

(iv) Discuss how the Center intends to take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector. Applicants should indicate what financial support has been received in the past three (3) years from private sources and share plans of how the Applicant intends to secure long term sustainability of the Center.

(v) Merit evaluation criteria must be addressed in narrative form by the Applicant.

(A) *Experience.* Describe the Center's experience in Technical Assistance including Cooperative Development. Include the Center's role and accomplished outcomes for each organization assisted. Described experience must be within the last three (3) years. Centers that are not yet established should discuss the expertise and track record of Key Personnel expected to perform activities related to the Project. Provide the following for each organization assisted:

(*1*) Name of organization;

(*2*) Organization's complete address;

(*3*) Indicate whether the service location is Rural;

(*4*) Indicate whether the organization is Cooperatively or Mutually owned;

(*5*) Discussion on the Applicant's role(s) in providing Technical Assistance, including Cooperative Development;

(*6*) Date(s) of service;

(*7*) Indicate if a Cooperatively or Mutually Owned Business was established as a result of the Cooperative Development services provided;

(*8*) Date the Cooperatively or Mutually Owned Business was established;

(*9*) Indicate whether the Cooperatively or Mutually Owned Business is active or inactive;

(*10*) Discussion on any New Cooperative Approach used; and

(*11*) Discussion on the outcomes of the assistance, including but not limited to, the retention of Cooperatively or Mutually Owned Businesses, jobs created and/or saved, or other economic conditions (*e.g.*, number of housing units, number of childcare spaces, etc.).

(B) *Work plan and budget.* All tasks in the work plan and budget must be for allowable uses of funds. For each task, the following must be provided:

(*1*) A detailed narrative description, for each of the Technical Assistance, Cooperative Development, and Networking tasks as well as any Subawards for loans and/or grants. Applicants must identify project partners for Networking tasks;

(*2*) A detailed breakdown of all estimated Project Costs including Operating Costs, with grant and Matching Funds identified separately;

(*3*) Key Personnel that will be responsible for overseeing and/or conducting each task;

(*4*) A specific timeframe corresponding to the actual time each task is estimated to be completed; and

(*5*) Zip code for each of the organizations being assisted who are located in Underserved and Economically Distressed areas.

(C) *Qualifications of Key Personnel.* Key Personnel are expected to be qualified, committed, and available during the Period of Performance. The following must be provided for each Key Personnel identified in the work plan and budget.

(*1*) Name of Key Personnel;

(*2*) A summary of formal training and/or skills and years of experience directly related to the task(s) to be performed as outlined in the work plan and budget; and

(*3*) For Key Personnel to be hired, list the necessary qualifications needed to complete Project task(s).

(D) *Verification of Matching Funds.* Applicants must provide authentic documentation from the source(s) of Matching Funds to confirm the eligibility and availability of both cash and in-kind contributions that meet the Matching Funds requirements as defined in §§4284.503 and 4284.522. If selected for funding, Matching Funds will be reverified before a Financial Assistance Agreement is executed.

(vi) Applicants must certify that Matching Funds will be spent at the same time grant funds are anticipated to be spent and that expenditures of Matching Funds shall be pro-rated or spent in advance of grant funding, such that for every dollar of the grant funds requested, at least 25 cents (5 cents for 1994 Institutions) of Matching Funds will be expended.

(vii) To measure the success of the Project in a quantitative way, Applicants must have baseline and target performance metrics and will have a baseline metric of zero. Applicants must provide a target metric for each of the following performance metrics:

(A) Number of Rural groups assisted.

(B) Number of Cooperatives assisted.

(*1*) Number of jobs created/saved.

(*2*) Number of jobs created/saved in Underserved and Economically Distressed areas.

(C) Number of Mutually Owned Businesses (LLC/LLP) assisted.

(*1*) Number of jobs created/saved.

(*2*) Number of jobs created/saved in Underserved and Economically Distressed areas.

(D) Number of other businesses assisted.

(*1*) Number of jobs created/saved.

(*2*) Number of jobs created/saved in Underserved and Economically Distressed areas.

(E) Number of Business Plans developed.

(F) Number of Cooperatives incorporated.

(G) Number of Feasibility Studies completed.

(H) Number of workshops/seminars conducted.

(I) Number of conferences held.

(*1*) Number of conferences conducted with other Centers.

(*2*) Number of conferences conducted with other organizations.

(J) If working with housing, number of housing units created/saved.

(K) For consumer co-ops (grocery, retail) number of people with access to goods or services.

(L) Financial loss avoided as a result of 'no-go' decision in the Cooperative Development process.

(M) Any additional performance measures as outlined in your Financial Assistance Agreement, or specified in the annual notification.

(*1*) It is permissible to have a zero in a performance metric. Jobs created targets must be calculated based upon actual jobs to be created by the Center because of RCDG funding or actual jobs to be created by Cooperatively or Mutually Owned Businesses as a result of the assistance from the Center. Jobs saved targets must be calculated only on actual jobs that would have been lost if the Center did not receive RCDG funding or actual jobs that would have been lost without assistance from the Center.

(*2*) Additional performance metrics can be suggested, for example; where jobs created or jobs saved may not be a relevant indicator (*e.g.*, housing). These additional criteria must be specific and measurable performance metrics to be included in a Federal Financial Assistance Agreement.

§ 4284.532 [Reserved]

§ 4284.533 Submission requirements.

Unless otherwise specified in an annual notification issued under § 4284.530, the following requirements apply to all applications.

(a) *Submission period*. The application period opens on March 1 and closes 11:59 p.m. Eastern time, on June 1. Applicants are encouraged to submit their applications well in advance of the closing date to ensure timely receipt by the Agency.

(b) *Submission process*. The annual notification will be published on the OMB-designated governmentwide website and will provide instructions on how and where to submit completed applications for RCDG funding. All items required for the application must be submitted in a single application package. Revisions or additional information will not be accepted after the application period closes. Incomplete applications will be rejected and not considered for funding.

§§ 4284.534–4284.539 [Reserved]

§ 4284.540 Application processing.

The following information describes the way the Agency will process applications, including the evaluation of eligibility, risk, and merit.

(a) *Eligibility evaluation*. The Agency will review all applications to determine if they are eligible for assistance based on the requirements in this subpart and other applicable Federal laws and regulations. In particular, the Agency will check the OMB designated repository of government information and, applicants that are excluded from Federal funding will be determined ineligible (see 2 CFR 200.206 for more information). An application must include all application requirements identified in § 4284.531, or the Agency will determine that it is ineligible for assistance.

(b) *Risk evaluation*. The Agency will review those applications that are determined to be eligible for the program.

(1) Typically, the Agency will not determine that an application is ineligible for funding based on the results of the risk evaluation, unless the Agency cannot find a way to reasonably mitigate the risk posed by making an award.

(2) If risk evaluation findings identify significant shortcomings in the Applicant's ability to manage Federal funds, the Agency may determine that the application is ineligible for funding.

(3) The Agency will determine if the Applicant has satisfactory performance for all Federal Awards received in the last five (5) years, based upon review of deficiencies reported in the Federal Awardee Performance and Integrity Information System, or its successor system, the Do Not Pay system, or its successor system, and the Agency's own internal financial and record-keeping systems and files. Satisfactory performance includes timely submission of required reports and documents, timely completion of tasks, and proper use of funds, including achieving the level of funds approved and committed for Underserved and Economically Distressed areas.

(c) *Merit evaluation (Up to 100 total points).* The Agency will conduct a merit evaluation for those applications that are determined to be eligible for the program. The merit evaluation will be conducted by a panel of USDA employees who will convene to reach a consensus on the merit of each eligible application. The merit evaluation will be based on the following criteria:

(1) *Experience (Up to 30 points).* The Agency will evaluate the Applicant's demonstrated experience in Technical Assistance including Cooperative Development; and effectiveness in accomplishing effective outcomes through the development of Cooperatively and Mutually Owned Businesses. Points will be awarded based on the following:

(i) Up to 5 points for track record in providing Technical Assistance to promote and assist the development of Cooperatively and Mutually Owned Businesses.

(ii) Up to 5 points for ability to facilitate Cooperative Development that results in the establishment of Cooperatively and Mutually Owned Businesses in Rural Areas.

(iii) Up to 5 points for ability to facilitate the establishment of New Cooperative Approaches in Rural Areas.

(iv) Up to 5 points for the ability to assist in the retention of businesses in Rural Areas.

(v) Up to 5 points for ability to create and/or save jobs that improve economic conditions of Rural Areas.

(vi) Up to 5 points for ability to improve other economic conditions in Rural Areas.

(2) *Work plan and budget (Up to 45 points).* The Agency will evaluate the Applicant's work plan and budget on its ability to provide a clear, logical, realistic and efficient use of grant and Matching Funds; level of commitment to Underserved and Economically Distressed areas; and Networking with States, Centers and other organizations engaged in Economic Development efforts in Rural Areas. Points will be awarded based on the following:

(i) *Work plan and budget detail.* Up to 30 points will be awarded as follows:

(A) 0 points will be awarded if the application does not address paragraphs (c)(2)(i)(B) through (E) of this section.

(B) Up to 10 points will be awarded if the application provides a detailed narrative description for each of the specific tasks to be completed.

(C) Up to 10 points will be awarded if the application provides a detailed breakdown of all estimated Project Costs, including Operating Costs, for each task with grant and Matching Funds identified separately.

(D) Up to 5 points will be awarded if the application identifies the Key Personnel associated with each task.

(E) Up to 5 points will be awarded if the application provides specific timeframes for each task.

(ii) *Underserved and Economically Distressed.* Up to 15 points will be awarded to Applicants whose work plans and budgets demonstrate their commitment to Underserved and Economically Distressed area(s) as defined in the annual notification.

(A) 0 points will be awarded if the application does not identify tasks and a budget commitment to Underserved and Economically Distressed area(s).

(B) Up to 5 points will be awarded if the Applicant identifies the Underserved and Economically Distressed area(s) within their service area.

(C) Up to 10 points will be awarded if the Applicant's budget commitment (grant and Matching Funds) to Underserved and Economically Distressed areas is:

(*1*) Less than 5 percent budget commitment = 2 points.

(*2*) 5 percent or greater but less than 10 percent budget commitment = 4 points.

(*3*) 10 percent or greater but less than 25 percent budget commitment = 6 points.

(*4*) 25 percent or greater but less than 50 percent budget commitment = 8 points.

(*5*) 50 percent or more budget commitment = 10 points.

(3) *Networking*. Up to 10 points will be awarded to Applicants who demonstrate a commitment to Networking and plan to develop multi-organizational and multi-State Cooperative Development approaches.

(i) Up to 5 points will be awarded if the Applicant describes how it intends to create and share best practices and transferrable strategies with other Centers or organizations engaged in Economic Development.

(ii) Up to 5 points will be awarded if the Applicant describes how it will develop joint Technical Assistance, including Cooperative Development, projects and mentor/mentee relationships with other Centers and other organizations engaged in Economic Development.

(4) *Qualifications of Key Personnel (Up to 10 points)*. The Agency will evaluate if the Key Personnel listed in the work plan and budget are qualified for their related task(s). Points will be awarded as follows:

(i) 0 points will be awarded if the Applicant does not identify formal training, skills, and years of experience for any Key Personnel.

(ii) 1 to 5 points will be awarded if the Applicant details the formal training, skills, and years of experience of some, but not all of the Key Personnel.

(iii) 6 to 10 points will be awarded if the Applicant details the formal training, skills, and years of experience of all Key Personnel.

(5) *Matching Funds commitment (5 points)*. Applicants must meet the Matching Funds requirement to be considered for points. Applicants who meet the 25 percent (5 percent for 1994 Institutions) Matching Funds requirement will receive 5 points.

§ 4284.541 Application withdrawal.

During the period between the submission of the application and award approval, the Applicant must notify the Agency if the Project is no longer viable, or the Applicant is no longer requesting financial assistance for the Project. When the Applicant notifies the Agency, the application will be withdrawn from consideration for funding.

§§ 4284.542–4284.549 [Reserved]

§ 4284.550 Award selection.

Applications will be selected for further processing and consideration of an award after the merit evaluation process is completed for all eligible applications. Applications will be ranked solely based on the points awarded, and they will be funded in rank order until available funds are expended. If there is a tie, the Administrator of the Agency will use discretion to break the tie to improve the geographic diversity of Recipients and/or prioritize Projects that advance the Department or Agency's key priorities, goals, and objectives. If an application cannot be fully funded, the Agency may offer partial funding to the extent funds are available. If an application is ranked and not funded, it will not be carried forward into the next funding competition.

§ 4284.551 Notification of successful Applicants.

(a) The Agency will notify the Applicants whose applications can be funded using available funds with a Letter of Conditions. The Letter of Conditions will provide the conditions under which an award can be approved as well as a copy of the term of the award.

(b) Applicants receiving a Letter of Conditions will have 60 calendar days to meet the conditions of the award.

Some awards may be subject to additional conditions, depending on the nature of the Project and the Agency's determination of risk. The following additional forms must be completed by all successful Applicants:

(1) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(2) Form RD 1940–1, ''Request for Obligation of Funds.''

(3) Form RD 400–4, ''Assurance Agreement.''

(4) SF–LLL, ''Disclosure of Lobbying Activities,'' for entities that engage in lobbying activities.

(5) Form RD 4280–2, ''Rural Business-Cooperative Service Financial Assistance Agreement.''

§ 4284.552 Notification of unsuccessful Applicants.

Applicants whose applications are ineligible for financial assistance or did not score high enough to be funded will be notified as soon as is practicable. The notification will be in writing using an Adverse Decision Letter. This letter will outline the reason(s) for the Agency's decision and any dispute resolution alternatives available to the Applicant.

§ 4284.553 Award approval.

Applicants whose applications are eligible for financial assistance and that score high enough to be funded will have their awards approved by the Agency once the Applicant has met all of the conditions of the award. The approval will be conveyed through the execution of Form RD 4280–2, which is the Financial Assistance Agreement, and provides all terms of the award. Once the award has been approved, the Recipient may begin work on the Project and incur costs.

§ 4284.554 Multi-year award.

The Agency may provide a multi-year funding opportunity to previous Recipients. If the Agency provides a multi-year funding opportunity, the application requirements and award process will be included in the annual notification.

§§ 4284.555–4284.559 [Reserved]

§ 4284.560 Reporting requirements.

Recipients are required to submit financial reports and performance reports on a semi-annual basis. A final financial report and performance report must also be submitted within 120 days after the expiration or termination of the grant.

(a) Failure to submit either a financial report or a performance report within the specified timeframes may result in the Agency withholding grant funds.

(b) Recipients must complete the Project in accordance with the terms and conditions specified in the approved work plan and budget, the Financial Assistance Agreement, and the Letter of Conditions.

(c) Recipients must expend funds only for eligible purposes and will be monitored by the Agency for compliance. Recipients must maintain a financial management system and maintain compliance with Federal Cost Principles in accordance with 2 CFR parts 200 through 299.

(1) *Reporting format and timing.* All performance reports must include a discussion on the performance metrics discussed in the application to determine whether the primary goals and objectives proposed in the approved work plan and budget were accomplished during the reporting period. Formatting of financial reports and performance reports, as well as timing for submission of these reports can be found in the Financial Assistance Agreement.

(2) *Project outcome performance report.* Once the Project is complete, the Recipient must provide the Agency with two annual outcome performance reports. Formatting and submission requirements for this report are included in the Financial Assistance Agreement.

§ 4284.561 Monitoring awards.

Awards will be monitored by Agency personnel in accordance with applicable laws, regulations, and policies (see § 4284.508 for more information). The Agency will designate a contact person for each award. The Agency may terminate or suspend the award for lack of adequate or timely progress, reporting,

documentation, or for failure to comply with Agency requirements.

§§ 4284.562–4284.599 [Reserved]

§ 4284.600 OMB control number.

The reporting and recordkeeping requirements contained in this subpart have been approved by OMB and have been assigned OMB control number 0570–0006 in accordance with the Paperwork Reduction Act of 1995.

Subparts G–I [Reserved]

Subpart J—Value-Added Producer Grant Program

SOURCE: 89 FR 75778, Sept. 16, 2024, unless otherwise noted.

§ 4284.901 Purpose.

This subpart implements the Value-Added Agricultural Product Market Development grant program (Value-Added Producer Grants (VAPG)) that provides grants to support Agricultural Producers' for-profit businesses that produce and market Value-Added Agricultural Products.

§ 4284.902 Organization of subpart.

The information in this subpart is organized into six main topics:

(a) *General information*. Sections 4284.901 through 4284.919 discuss the purpose of the program, definitions, exception authority, conflict of interest, compliance with other laws and regulations, and reserved funds.

(b) *Eligibility information*. Sections 4284.920 through 4284.929 discuss the eligibility requirements for the program. The sections include information on Applicant eligibility, Project eligibility, reserved funds eligibility, priority points eligibility, and the use of funds.

(c) *Application requirements information*. Sections 4284.930 through 4284.939 discuss the requirements for submitting an application. The sections include information on what forms and other information are required for a complete application as well as the format of the application, the application deadline, and how to submit the application.

(d) *Application processing information*. Sections 4284.940 through 4284.949 discuss how the Agency will process applications. The sections include information on how applications will be reviewed for eligibility, how applications will be evaluated for merit, and how an Applicant can withdraw an application from consideration.

(e) *Award information*. Sections 4284.950 through 4284.959 discuss how the Agency will make awards. The sections include information about how applications will be selected for funding, how Applicants will be notified whether their applications have been selected for funding, how Applicants can resolve disputes regarding funding selections, and the requirements for an Applicant to accept an award and be approved as a recipient of an award.

(f) *Post-award information*. Sections 4284.960 through 4284.962 discuss the reporting requirements for recipients after an award is approved as well as monitoring procedures that the Agency will use.

(g) *Other*. (1) Sections 4284.963 through 4284.999 are reserved.

(2) Section 4284.1000 includes the Office of Management and Budget (OMB) control number for reporting and recordkeeping requirements under this subpart.

§ 4284.903 Definitions.

These are the definitions for terms used in this subpart. Additional defined terms used in this subpart may be found in the applicable laws and regulations cited in § 4284.908, in particular 2 CFR part 200. If a term is defined differently in an applicable regulation and in this subpart, such term shall have the meaning as found in this subpart.

Agency means the Rural Business-Cooperative Service (RBCS or the Agency), an agency of the United States Department of Agriculture (USDA or the Department), or a successor agency.

Agricultural Commodity means an unprocessed product of Farms, Ranches, nurseries, and forests and natural and man-made bodies of water, that the Agricultural Producer has cultivated, raised, or harvested with legal access rights. Agricultural Commodities include plant and animal products and

their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-Farm generated manure, and fish and seafood products. Agricultural Commodities do not include animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural Food Product refers to raw, cooked, or processed edible substances, beverages, or ingredients intended for human consumption.

Agricultural Producer, Independent Producer or Producer means a for-profit agricultural business, or entity that is 100 percent owned and controlled by an individual, entity or Family Farm that produces an Agricultural Commodity through participation in the day-to-day labor, management, and field operations; or that has the legal right to harvest an Agricultural Commodity that is the subject of the VAPG Project.

Agricultural Producer Group means a non-profit membership organization that represents Agricultural Producers and whose mission includes working on behalf of Agricultural Producers and more than 50 percent of whose membership and board of directors is comprised of Agricultural Producers.

Applicant means the legal entity and/or owner(s) of the legal entity (regardless of ownership percentage), submitting an application to participate in the competition for program funding.

Beginning Farmer or Rancher means an Agricultural Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years or an eligible Applicant entity that has an ownership or membership of more than 50 percent farmers or ranchers each of whom have operated a Farm or Ranch for no more than 10 years.

Business Plan means a formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including Pro Forma Financial Statements appropriate to the term and scope of the Project and sufficient to evidence the viability of the Project. It may also contain background information about the organization or team attempting to reach those goals.

Change in Physical State means an irreversible processing activity that alters the Agricultural Commodity into a substantially different, marketable Value-Added Agricultural Product. This processing activity must be something other than a post-harvest process that primarily acts to preserve the commodity for later sale.

Emerging Market means a developing, geographic or demographic market that has been supplied by the Applicant or the Applicant's product for two (2) years or less.

Equipment has the meaning located at 2 CFR 200.1.

Family Farm means a Farm or Ranch whose owner(s) are primarily responsible for daily physical labor, business and/or strategic management; whose hired help only supplements family labor; and whose owners are related by blood or marriage or are Immediate Family.

Farm or Ranch means any place from which $1,000 or more of Agricultural Commodities were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farm- or Ranch-Based Renewable Energy means renewable energy generated by use of an Agricultural Commodity on a Farm or Ranch, owned or leased by an Agricultural Producer, which provides the Agricultural Producer with an expanded customer base and increased revenues.

Farmer or Rancher Cooperative means a business owned and controlled by Agricultural Producers that is incorporated, or otherwise identified by the State in which it operates, as a cooperatively operated business. The Agricultural Producers, on whose behalf the value-added work will be done, must be identified by name or class.

Feasibility Study means a comprehensive analysis of the economic, market, technical, financial, and management capabilities of a Project or business in terms of the Project's expectation for success.

Fiscal Year means the Federal Government's fiscal year, October 1 of a given year through September 30 of the succeeding year.

Food Safety refers to conditions and practices that preserve the quality of food to prevent contamination and food-borne illnesses.

Harvester means an Agricultural Producer that can document legal rights to access and harvest the Agricultural Commodity that will be used for the Value-Added Agricultural Product. This does not include harvesting rights for cultivated commodities. Individuals and entities that merely glean, gather, or collect residual commodities that result from an initial harvesting or production of a primary Agricultural Commodity are not considered Harvesters and are not eligible for this program.

Independent Producer has the same meaning as Agricultural Producer in this section.

Immediate Family means individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Key Personnel means the owners, employees, new hires, consultants, and/or contractors who will be overseeing and/or completing the tasks in the work plan.

Letter of Conditions means the letter that the Agency issues to an entity whose application is selected for funding. The letter outlines all of the conditions of the award that must be met before the award can be approved. Other agencies may call this letter an Award Letter or Award Notice.

Local or Regional Supply Network means an interconnected group of individuals and/or entities through which agricultural based products move from production through consumption in a local or regional area of a State.

Locally-Produced Agricultural Food Product refers to raw, cooked, or processed edible substances, beverages, or ingredients intended for human consumption that are raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-Controlled Producer-Based Business Venture refers to a venture greater than 50 percent of the ownership and control of which is held by—

(1) One or more Producers (Agricultural Producers); or

(2) One or more entities, 100 percent of the ownership and control of which is held by one or more Producers (Agricultural Producers). The term 'entity' means—

(i) A partnership;

(ii) A limited liability corporation;

(iii) A limited liability partnership; or

(iv) A corporation.

Market Expansion means a Project in which the Agricultural Producer Applicant seeks to expand the market either geographically or demographically for an existing Value-Added Agricultural Product produced and marketed by the Applicant for at least two (2) years at the time of the application through sales to demonstrably new markets or new customers in existing markets.

Marketing Plan means a plan for the Project that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Matching Funds means a cost-sharing contribution to the Project that is at least equal to the grant amount. Combined grant and Matching Funds equal 100 percent of the Project Costs.

Medium-Sized Farm or Ranch means a Farm or Ranch that is structured as a Family Farm that has averaged $500,001 to $1,000,000 in annual gross sales of Agricultural Commodities in the previous three (3) years.

Mid-Tier Value Chain refers to local and regional supply networks that link Agricultural Producers with businesses, cooperatives, or consumers that market Value-Added Agricultural Products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of Small- and Medium-Sized Farms or Ranches that are structured as a Family Farm; and

(2) Obtains agreement from an eligible Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture that is engaged in the value chain on a marketing strategy.

Period of Performance has the meaning located at 2 CFR 200.1.

Physical Segregation means separating an Agricultural Commodity or product on the same Farm from other varieties of the same commodity or product on the same Farm during production and harvesting, with assurance of continued separation from similar commodities during processing and marketing in a manner that results in the enhancement of the value of the separated commodity or product.

Planning Grant means a grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added Project, and specifically for the purpose of paying for conducting and developing a Feasibility Study, Business Plan, and/or Marketing Plan associated with the processing and/or marketing of a Value-Added Agricultural Product.

Produced in a Manner that Enhances the Value of the Agricultural Commodity refers to the use of a recognizably coherent set of agricultural production practices in the growing or raising of the Agricultural Commodity, such that a differentiated market identity is created for the resulting product.

Producer has the same meaning as Agricultural Producer in this section.

Pro forma Financial Statement means a financial statement that projects the future financial position of a company. The statement is part of the Business Plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections for a minimum of three (3) years in the form of cash flow statements, income statements, and balance sheets.

Program Income has the meaning located at 2 CFR 200.1.

Project means all of the eligible activities to be funded by the grant and Matching Funds.

Project Cost has the meaning located at 2 CFR 200.1.

Qualified Consultant means a third-party, without a conflict of interest, possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Recipient has the meaning located at 2 CFR 200.1.

Rural Development (RD) means a mission area within USDA, which includes the Rural Housing Service, Rural Utilities Service, and RBCS.

Small-Sized Farm or Ranch means a Farm or Ranch that is structured as a Family Farm that has averaged $500,000 or less in annual gross sales of Agricultural Commodities in the previous three (3) years.

Socially-Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a Socially-Disadvantaged Group.

Socially-Disadvantaged Group means a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Steering Committee means an unincorporated group comprised wholly of specifically identified Agricultural Producers in the process of organizing one of the program eligible Applicant types.

TTB Permit means a permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB), U.S. Department of the Treasury, granting approval to operate a TTB-regulated alcohol business.

Value-Added Agricultural Product means any Agricultural Commodity produced in a State that:

(1) Meets one of the following methodologies:

(i) Has undergone a Change in Physical State;

(ii) Is Produced in a Manner that Enhances the Value of the Agricultural Commodity;

(iii) Is Physically Segregated in a manner that results in the enhancement of the value of the Agricultural Commodity;

(iv) Is a source of Farm- or Ranch-Based Renewable Energy, including E–85 fuel; or

(v) Is aggregated and marketed as a Locally Produced Agricultural Food Product; and

(2) As a result of the Change in Physical State or the manner in which the Agricultural Commodity was produced, marketed, or segregated:

(i) The customer base for the Agricultural Commodity is expanded; and

(ii) A greater portion of the revenue derived from the marketing, processing, or Physical Segregation of the Agricultural Commodity is available to the Producer of the commodity.

Veteran Farmer or Rancher means a farmer or rancher who has served in the Armed Forces, as defined in 7 U.S.C. 2279, and who either has not operated a Farm or Ranch or has operated a Farm or Ranch for not more than 10 years; or is a Veteran who first obtained status as a veteran during the most recent 10-year period.

Working Capital Grant means a grant to provide funds to operate a value-added Project, specifically to pay the eligible Project expenses related to the processing and/or marketing of the Value-Added Agricultural Product.

§ 4284.904 Exception authority.

Except as specified in paragraphs (a) and (b) of this section, the Administrator of the Agency may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable law.

(a) *Applicant eligibility*. No exception to Applicant eligibility can be made.

(b) *Project eligibility*. No exception to Project eligibility can be made.

§ 4284.905 [Reserved]

§ 4284.906 Conflict of interest.

No conflict of interest or appearance of a conflict of interest will be allowed.

(a) *Description*. A conflict of interest occurs in a situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or entity to act impartially. For the purposes of this subpart, relationships that can involve a conflict of interest include, but are not limited to:

(1) Recipient owners, employees, officers, agents, consultants, and contractors.

(2) Immediate family members of those listed in paragraph (a)(1) of this section.

(b) *Written disclosure*. Recipients must comply with 2 CFR 400.2(b), which includes providing written disclosure of any potential conflicts of interest and maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award, and administration of Federal Awards.

(c) *Assistance to employees, relatives, and associates*. The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(d) *Member/delegate clause*. No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom. But, this provision shall not be construed to bar, as a contractor under the Federal award, a publicly held corporation whose ownership might include a member of Congress.

§ 4284.907 [Reserved]

§ 4284.908 Compliance with other laws and regulations.

The Agency, Applicants, and recipients must comply with all applicable laws and regulations. An effort has been made to identify the most-commonly cited laws and regulations and reference them as follows:

(a) *Federal laws*. Federal laws are codified in the United States Code (U.S.C.). A selection of applicable laws is identified as follows:

(1) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*);

(2) The Civil Rights Act of 1964, Title VI (42 U.S.C. 2000d *et seq.*); and

(3) The Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794).

(b) *Federal regulations*. Federal regulations are codified in the Code of Federal Regulations (CFR). A selection of applicable regulations is identified as follows:

(1) *2 CFR parts 1 through 200.* These parts address items such as universal identifiers, reporting subaward and executive compensation, debarment and suspension, drug-free workplaces, administrative requirements, cost principles, and audit requirements. We particularly encourage Applicants and Recipients to become familiar with 2 CFR part 200 in its entirety.

(2) *27 CFR part 1.* This part is applicable to Applicants that will produce and market value-added products in the industries of wine, beer, distilled spirits or other alcoholic merchandise.

(c) *Departmental regulations.* Departmental regulations are those regulations that are specific to awards made through USDA. They are codified in the CFR. A selection of applicable regulations is identified as follows:

(1) *2 CFR parts 400 through 499.* These parts include USDA's adoption of Federal administrative requirements and cost principles. They also include regulations on debarment and suspension, lobbying, drug-free workplaces, and research awards.

(2) *7 CFR part 11.* This part includes USDA's procedures for administrative appeals, as handled by its National Appeals Division.

(3) *7 CFR part 15d.* This part includes USDA's procedures for compliance with nondiscrimination laws and regulations. The Agency will not discriminate against Applicants on the basis of race, color, religion, national origin, sex, marital status, disability, or age (provided that the Applicant has the capacity to contract); because all or part of the Applicant's income derives from any public assistance program; or because the Applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(d) *Agency regulations.* Agency regulations are those regulations that are specific to awards made through the Agency and they may also be specific to a program. They are codified in the CFR. A selection of applicable regulations is identified as follows:

(1) *7 CFR part 1900.* This part covers delegations of authority, adverse decisions and administrative appeals, applicability of Federal law, and processing and servicing grant awards.

(2) *7 CFR part 1901, subpart E.* This subpart covers civil rights compliance requirements.

(3) *7 CFR part 1951.* This part covers servicing grant awards, including unauthorized assistance.

(4) *7 CFR part 1970.* This part covers environmental policies and procedures.

(5) *7 CFR part 990.* This part applies to Applicants who are proposing to produce, procure, supply or market any component of the hemp plant or hemp related by-products. Applicable Food and Drug Administration and Drug Enforcement Administration regulatory requirements must also be met.

(e) *Access to laws and regulations.* (1) Laws may be accessed through the U.S.C. At the time this subpart was published, the U.S.C. may be accessed electronically at this website: *https://uscode.house.gov/.*

(2) Regulations may be accessed through the CFR. At the time this subpart was published, the CFR may be accessed electronically at this website: *https://www.ecfr.gov/.*

§§ 4284.909–4284.915 [Reserved]

§ 4284.916 Reserved funds.

(a) The following reserved funds will be made available each Fiscal Year:

(1) 10 percent of total program funding to fund Projects that benefit Beginning Farmers or Ranchers or Socially-Disadvantaged Farmers or Ranchers; and

(2) 10 percent of total program funding to fund Projects where a majority of the requested grant amount goes to improving Food Safety for the purpose of enhancing market access; and

(3) 10 percent of total program funding to fund Projects that propose development of Mid-Tier Value Chains.

(b) Reserved funds not obligated by September 30 of each Fiscal Year shall be available to the Secretary in the next Fiscal Year to make grants under this subpart to eligible Applicants in the general funds competition.

§§ 4284.917–4284.919 [Reserved]

§ 4284.920 Eligible Applicants.

Applicants are eligible for assistance through this program if all of the following requirements are met:

(a) *System for Award Management (SAM) registration, General Certifications and Representations and unique entity identifier (UEI).* At the time of application, each Applicant must have an active registration in SAM before submitting its application in accordance with 2 CFR part 25. This registration must remain current, accurate and complete at all times during which the Applicant has an active Federal award or an application under consideration. The Applicant must also obtain a UEI through *SAM.gov*.

(b) *Legal authority.* Applicants must certify that they have the legal authority to carry out the purpose of the grant, and/or their business is in good standing in the State where it is incorporated and/or in the State that is the primary location of an applicant's business operations for the VAPG Project.

(c) *Applicant type.* The Applicant meets the definition for one of the following Applicant types—Agricultural Producer, Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture.

(1) *Agricultural Producer.* An Applicant applying as an Agricultural Producer must identify each owner member by name or class, provide the percentage of ownership of each owner member, and discuss how each owner member meets the definition of Agricultural Producer.

(i) A Steering Committee must apply as an Agricultural Producer and discuss how it intends to form a program-eligible legal entity prior to execution of the Financial Assistance Agreement by the Agency.

(ii) A Harvester must apply as an Agricultural Producer and document its legal right to access and harvest the Agricultural Commodity that will be used for the Value-Added Agricultural Product.

(2) *Agricultural Producer Group.* An Applicant applying as an Agricultural Producer Group must identify each Agricultural Producer member by name or class, provide the percentage of ownership of each member, discuss how each member meets the definition of Agricultural Producer, and discuss how the Applicant meets the definition of Agricultural Producer Group.

(3) *Farmer or Rancher Cooperative.* An Applicant applying as a Farmer or Rancher Cooperative must discuss how they meet the definition of Farmer or Rancher Cooperative.

(4) *Majority-Controlled Producer-Based Business Venture.* An Applicant applying as a Majority-Controlled Producer-Based Business Venture must discuss how it meets the definition of Majority-Controlled Producer-Based Business Venture.

(d) *Ownership and control.* (1) For the Project, the Applicant must produce and own more than 50 percent of the Agricultural Commodity to which value will be added. Agricultural Producers must maintain ownership of the Agricultural Commodity or product from its raw state through the production and marketing of the Value-Added Agricultural Product. All Applicants applying for Working Capital Grant funds must document the quantity of each Agricultural Commodity that will be used for the Value-Added Agricultural Product, expressed in an appropriate unit of measure (pounds, tons, bushels, etc.) to demonstrate the scale of the Applicant's Project. This quantification must include an estimated total quantity of each Agricultural Commodity needed for the Project, the quantity that will be provided (produced and owned) by the Agricultural Producers of the Applicant organization, and the quantity that will be purchased or donated from third-party sources.

(2) Applicants who produce the Agricultural Commodity under contract for another entity, but do not own the Agricultural Commodity or Value-Added Agricultural Product produced, are not considered Agricultural Producers. Entities that contract out the production of an Agricultural Commodity are not considered Agricultural Producers. Agricultural Producer entities must confirm their owner members as eligible and must identify them by name or class.

(3) The Agency will determine the Agricultural Producer status of Tribes or Tribal entities without regard to ownership of the commodity to which value will be added so long as the Tribal member participant, Tribal entity and/or Tribe own and control more

than 50 percent of the Agricultural Commodity necessary for the Project.

(e) *Emerging Market*. An Applicant that is an Agricultural Producer Group, a Farmer or Rancher Cooperative, or a Majority-Controlled Producer-Based Business Venture must demonstrate that it is entering into an Emerging Market as a result of the Project. An Agricultural Producer Applicant type that has produced and marketed the Value-Added Agricultural Product for less than two (2) years must also demonstrate that it is entering an Emerging Market.

(f) *Citizenship*. An Applicant must certify that it is more than 50 percent owned by individuals who are either a citizen or national of a State or reside in the United States after legal admittance for permanent residence.

(g) *Multiple grants*. An Applicant must submit only one application in response to a solicitation and may have only one active VAPG award at any given time unless the Applicant is also applying as a member of a Farmer or Rancher Cooperative or an Agricultural Producer Group. In addition, the following restrictions apply:

(1) Applicants who have already received a Planning Grant for the Project cannot receive another Planning Grant for the same Project; and

(2) Applicants who have already received a Working Capital Grant for the Project cannot receive any additional grants for that Project.

(h) *Current VAPG award*. If an Applicant has a current VAPG award at the time of subsequent competition, the Applicant must exhaust all VAPG award funds and submit final financial and performance reports to the Agency by the application submission deadline for the subsequent VAPG competition. If VAPG award funds will not be spent by the subsequent VAPG application submission deadline, the Applicant must request a cancellation of the current VAPG award prior to the subsequent application submission deadline.

§ 4284.921 Ineligible Applicants.

Applicants are ineligible for assistance through this program if one or more of the following has occurred:

(a) The Applicant is debarred or suspended or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

(b) An outstanding judgement has been obtained against the Applicant by the United States in a Federal court (other than U.S. Tax Court).

(c) The Applicant is delinquent on the payment of Federal income taxes or is delinquent on Federal debt.

(d) The Applicant has been convicted of a felony criminal violation under any Federal law within the past 24 months.

(e) The Applicant has unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(f) The Applicant submits multiple applications from separate entities, owners, and/or owner(s) of the legal entity (regardless of ownership percentage), or from a parent, subsidiary or affiliated organization (with ''affiliation'' defined by the Small Business Administration regulation 13 CFR 121.103, or successor regulation) during the same grant cycle. This is not applicable to Applicants who are also applying as a member of a Farmer or Rancher Cooperative or an Agricultural Producer Group.

§ 4284.922 Project eligibility.

Eligible Projects must meet all of the following requirements. Failure to meet one or more of these requirements means that the application will not be eligible for funding.

(a) *Project focus*. The Project must focus on allowable Planning or Working Capital Grant activities as described at § 4284.925, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject Value-Added Agricultural Product.

(b) *Project type*. The Project must fit one of the following purposes:

(1) Emerging Market Project as defined in § 4284.903.

(2) Market Expansion Project as defined in § 4284.903.

(3) Food Safety Project as defined in § 4284.903.

(c) *Product(s).* Each product that is the subject of the Project must meet the definition of a Value-Added Agricultural Product. The Applicant must be currently producing the Agricultural Commodity for each Value-Added Agricultural Product that is the subject of the Project. All Applicants seeking Working Capital Grant funds must also be marketing the subject Value-Added Agricultural Product(s) or ready to implement the Working Capital Grant activities in accord with the budget and work plan timeline.

(d) *Amount requested.* The amount requested must not exceed any maximum amounts specified in the annual notification issued on the program website, per § 4284.930.

(e) *Period of Performance.* The Period of Performance cannot exceed three (3) years.

(f) *Matching Funds.* Matching Funds must come from eligible sources without a real or apparent conflict of interest and be used for eligible Project expenses during the Period of Performance. Matching Funds must be confirmed and provided in the form of:

(1) Applicant or third-party cash;

(2) Applicant loan, or line of credit;

(3) Non-Federal grant sources (unless otherwise provided by law); or

(4) Applicant, family member, or third-party in-kind contribution.

(i) In-kind contributions must be appropriately valued with an adequate explanation of the basis for the valuation (*e.g.,* reference comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms).

(ii) Applicant in-kind contributions may include the value of the Agricultural Commodity inventory to be used in the Project and can be used to satisfy up to 100 percent of the Matching Funds requirement. Third-party in-kind contributions of the Agricultural Commodity inventory to be used in the Project can be used to satisfy up to 49 percent of the Matching Funds requirement.

(iii) Applicant in-kind contributions may also include Applicant or family time spent on eligible tasks; however, the valuation cannot exceed 50 percent of the Matching Funds required for the Project. Final valuation for Applicant or family member in-kind contributions is at the discretion of the Agency.

§ 4284.923 Reserved funds eligibility.

Applicants must meet the applicable requirements in this section to compete for reserved funds.

(a) *Beginning Farmer or Rancher.* Applicants must demonstrate that they meet the definition of a Beginning Farmer or Rancher. The Applicant must self-certify that more than 50 percent of its owners are a Beginning Farmer or Rancher.

(b) *Socially-Disadvantaged Farmer or Rancher.* Applicants must demonstrate that an individual or individuals that qualify as a Socially-Disadvantaged Farmer or Rancher own more than 50 percent of the Applicant Farm or Ranch organization. Applicants must provide a self-certification from the individual owner(s) indicating they are a member of a Socially-Disadvantaged Group.

(c) *Food Safety.* If the Applicant is applying for Food Safety reserved funds, the Applicant must describe the need or requirement for training, certifications, and/or supplies and equipment. This reserve is for Applicants where more than 50 percent of the Project Cost is for post-harvest Food Safety purposes related to the processing and/or marketing of a Value-Added Agricultural Product.

(d) *Mid-Tier Value Chain.* The Applicant must:

(1) Provide documentation demonstrating that the Project meets the definition of Mid-Tier Value Chain;

(2) Demonstrate that the Project proposes development of a Local or Regional Supply Network of an interconnected group of entities (including nonprofit organizations, as appropriate) through which Agricultural Commodities and Value-Added Agricultural Products move from production through consumption in a local or regional area of a State, including a description of the network, its component members, either by name or by class, and its purpose. Applicant ownership of the Agricultural Commodity and Value-Added Agricultural Product from raw through value-added stages is not necessarily required;

(3) Describe at least two alliances, linkages, or partnerships within the value chain that link Agricultural Producers with businesses, cooperatives, or consumers that market value-added Agricultural Commodities or Value-Added Agricultural Products in a manner that benefits Small- or Medium-Sized Farms and Ranches that are structured as a Family Farm, including the names of the parties and the nature of their collaboration;

(4) Demonstrate how the Project, due to the manner in which the Value-Added Agricultural Product is marketed, will increase the profitability and competitiveness of at least two eligible, Small- or Medium-Sized Farms or Ranches that are structured as a Family Farm, including a description of the two Farms or Ranches confirming they meet the Family Farm definition;

(5) Document that the eligible Agricultural Producer Group/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture Applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible Agricultural Producer Applicant has obtained at least one agreement from an eligible Agricultural Producer Group/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture engaged in the value-chain on a marketing strategy;

(i) For Planning Grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a description of the nature of their collaboration. For Working Capital Grants, demonstration of the actual existence of the executed agreements is required; and

(ii) Agricultural Producer Applicants must provide documentation to confirm that the non-Applicant Agricultural Producer Group/Farmer or Rancher Cooperative/majority-controlled partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the Agricultural Commodity for the Project;

(6) Demonstrate that the members of the Applicant organization that are benefiting from the Project currently own and produce more than 50 percent of the Agricultural Commodity that will be used for the Value-Added Agricultural Product that is the subject of the Project; and

(7) Demonstrate that the Project will result in an increase in customer base and an increase in revenue returns to the Applicant Producers supplying more than 50 percent of the Agricultural Commodity for the Project.

§4284.924 Priority points eligibility.

Applicants that demonstrate eligibility may apply for priority points if their applications: propose Projects that contribute to increasing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or operators of Small- or Medium-Sized Farms or Ranches that are structured as a Family Farm or propose Mid-Tier Value Chain Projects; or are a Farmer or Rancher Cooperative. A Harvester is eligible for priority points only if the Harvester is proposing a Mid-Tier Value Chain Project.

(a) Applicants seeking priority points as Beginning Farmers or Ranchers or as Socially Disadvantaged Farmers or Ranchers must provide certifications specified in §4284.923(a) or (b), as applicable.

(b) Applicants seeking priority points as Veteran Farmers or Ranchers must provide a self-certification that they meet the definition of a Veteran Farmer or Rancher.

(c) Applicants seeking priority points as operators of Small- or Medium-Sized Farms or Ranches that are structured as a Family Farm must provide a self-certification that they meet the definition of a Small- or Medium-Sized Farm or Ranch that is structured as a Family Farm; that the owners meet the definition of Immediate Family and are primarily responsible for the daily physical labor and management of the Farm or Ranch with hired help merely supplementing the family labor.

(d) Applicants seeking priority points for Mid-Tier Value Chain Projects

must be one of the four eligible Applicant types and provide the documentation specified in § 4284.923(d)(1) through (7), demonstrating that the Project meets the Mid-Tier Value Chain definition.

(e) Applicants seeking priority points for a Farmer or Rancher Cooperative must:

(1) Demonstrate that it is a business owned and controlled by Agricultural Producers that is legally incorporated as a cooperative; or that it is a business owned and controlled by Agricultural Producers that is not legally incorporated as a cooperative, but is identified by the State in which it operates as a cooperatively operated business;

(2) Identify by name or class, and confirm that the Agricultural Producers on whose behalf the value-added work will be done meet the definition requirements for an Agricultural Producer, including that each member is an individual Agricultural Producer, or an entity that is solely owned and controlled by Agricultural Producers, that substantially participates in the production of more than 50 percent of the Agricultural Commodity to which value will be added; and

(3) Provide a self-certification statement that the entity is owned and controlled by Agricultural Producers that are incorporated, or otherwise identified by the State in which they operate, as a cooperatively owned business(es); that the owner(s)/member(s) substantially participate in the production of more than 50 percent of the Agricultural Commodity to which value will be added; is in ''good standing'' as a cooperatively operated business in the State of incorporation or operations, as applicable.

(f) Applicants applying as Agricultural Producer Groups, Farmer or Rancher Cooperatives, or Majority-Controlled Producer-Based Business Ventures (group Applicants) may request additional priority points for Projects that ''best contribute to creating or increasing marketing opportunities'' for operators of Small- and Medium-Sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers. See § 4284.940(c)(6) for instructions and documentation requirements for group Applicants to apply for these additional priority points.

§ 4284.925 Allowable uses of grant and Matching Funds.

(a) *Planning grants.* Funds may only be used to pay a Qualified Consultant to conduct and develop a Feasibility Study, Business Plan, and/or Marketing Plan associated with the post-harvest processing and/or marketing of a Value-Added Agricultural Product.

(b) *Working capital grants.* Funds may be used to pay the Project's eligible post-harvest operational costs directly related to the processing and/or marketing of the Value-Added Agricultural Product. Examples of eligible working capital expenses include purchasing a financial accounting system for the Project; paying salaries of employees (excluding owners and Immediate Family) to process and/or market and deliver the Value-Added Agricultural Product to consumers; paying for additional Agricultural Commodity inventory (less than 50 percent of the amount required for the Project) from an unaffiliated third party, necessary to produce the Value-Added Agricultural Product; paying for a marketing campaign for the Value-Added Agricultural Product; paying costs incurred in obtaining post-harvest Food Safety certification; and using up to $6,500 of the amount of a grant to purchase or upgrade post-harvest Equipment to improve Food Safety.

§ 4284.926 Unallowable uses of grant and Matching Funds

(a) Unallowable uses of grant and Matching Funds awarded under this subpart include, but are not limited to:

(1) Support costs for services or goods going to or coming from a person or entity with a real or apparent conflict of interest, such as paying the salary of an Immediate Family member of a Recipient owner, employee, officer, or Agency, except as specifically noted for in-kind Matching Funds in § 4284.922;

(2) Pay costs for scenarios with non-competitive trade practices;

(3) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(4) Purchase, lease purchase, or install fixed Equipment, including processing Equipment, except as specifically noted in § 4284.925(b);

(5) Purchase or repair vehicles, including boats;

(6) Pay for the preparation of the grant application;

(7) Pay expenses not directly related to the funded Project for the processing and marketing of the Value-Added Agricultural Product;

(8) Fund research and development;

(9) Fund any activities prohibited by 2 CFR parts 200 through 400, and 48 CFR part 31, subpart 31.2;

(10) Fund architectural or engineering design work;

(11) Fund expenses related to the production of any Agricultural Commodity or product, including, but not limited to production planning, purchase of seed or rootstock or other production inputs, labor for cultivation or harvesting crops, labor for repotting and/or maintenance of live plants, and delivery of Agricultural Commodity to a processing facility;

(12) Conduct activities on behalf of anyone other than a specifically identified Agricultural Producer or group of Agricultural Producers, as identified by name or class. The Agency considers conducting industry-level Feasibility Studies or Business Plans, that are also known as Feasibility Study templates or guides or Business Plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Agricultural Producers;

(13) Duplicate activities charged to another Federal award or previous VAPG Planning or Working Capital Grant Project by an Applicant;

(14) Pay any costs of the Project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;

(15) Pay any judgment or debt owed to the United States;

(16) Purchase or improve real property;

(17) Pay for costs associated with illegal activities;

(18) Purchase the Agricultural Commodity to which value will be added from the Applicant entity; Applicant-owned or related entity, or members of the Applicant entity;

(19) Use Planning Grant funds to evaluate the agricultural production of the commodity itself, or compensate Applicants or family members for participation in Feasibility Studies; or

(20) Indirect Costs.

(b) Applications that propose unallowable costs in excess of 10 percent of Project Costs will be deemed ineligible to compete for funds. Applicants who submit applications containing ineligible expenses totaling less than 10 percent of Project Costs must remove those expenses from the Project budget or replace with eligible expenses, if selected for an award.

§ 4284.927 [Reserved]

§ 4284.928 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the Project Costs, subject to the limitations established for the maximum total grant amount.

(b) The maximum grant amount provided to a Recipient in any one (1) year shall not exceed the amount announced in an annual notification issued on the program website pursuant to § 4284.930, but in no event may the total amount of grant funds provided to a grant Recipient exceed $500,000.

(c) The aggregate amount of awards to Majority-Controlled Producer-Based Business Ventures may not exceed 10 percent of the total funds obligated under this subpart during any Fiscal Year.

(d) Not more than 2.5 percent of funds appropriated each year may be used to fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to Agricultural Producers and processors.

§ 4284.929 [Reserved]

§ 4284.930 Notifications.

The Agency will issue any public notifications on the program website.

(a) *Amount of funding available.* The Agency will publish the amount of

funding available for awards during each Fiscal Year within 30 calendar days of notification from OMB of the amount available.

(b) *Administrator/State Director points.* The Agency will publish the priority categories to be used for awarding Administrator or State Director points no later than the date the application period opens. Priority categories may include any of the following:

(1) Unserved or underserved areas;

(2) Geographic diversity;

(3) Emergency conditions; or

(4) Priority Department and mission area priorities, goals, and objectives.

(c) *Other.* The Agency will publish any other additional requirements or programmatic changes no later than the date the application period opens.

§ 4284.931 Application requirements.

All applications must include the following items:

(a) *Application forms.* The application must include the following forms (or their successor) and any additional forms listed in the annual notification for the program.

(1) *SF–424, ''Application for Federal Assistance.''* This form must be filled out completely and signed by an authorized representative of the Applicant organization.

(2) *SF–424A, ''Budget Information-Non-Construction Programs.''* This form must be filled out completely.

(b) *Executive summary.* Applications must include a one-page executive summary containing the legal name of the Applicant entity, application type (Planning or Working Capital Grant), Applicant type, amount of grant request, a Project summary, whether a simplified application is being submitted, and must explicitly state whether reserved funds are being requested.

(c) *Eligibility discussion.* The Applicant must discuss how:

(1) Applicant eligibility requirements in § 4284.920 are met;

(2) Project eligibility requirements in § 4284.922 are met; and

(3) Allowable use of grant and Matching Funds requirements in § 4284.925 are met.

(d) *Proposal evaluation criteria.* Applicants for both Planning and Working Capital Grants must address each proposal evaluation criterion identified in § 4284.940 in narrative form.

(e) *Certification of Matching Funds.* Applicants must certify that:

(1) Matching Funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of Matching Funds will have been expended prior to submitting the request for reimbursement; and

(2) If Matching Funds are proposed in an amount exceeding the grant amount, those Matching Funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the budget.

(f) *Reserved funds/priority points documentation.* Applicants must identify their priority category, as applicable, and provide the required supporting documentation indicated in §§ 4284.923 and 4284.924 for that category to demonstrate eligibility.

(g) *Business Plan.* For Working Capital Grant applications, Applicants must provide a copy of the Business Plan that was completed for the value-added Project, except as provided for in § 4284.932. The Agency must concur in the acceptability or adequacy of the Business Plan.

(h) *Feasibility Study.* Applicants for Working Capital Grants must provide a copy of a Feasibility Study prepared by a Qualified Consultant that was completed for the value-added Project, except as provided for at § 4284.932. The name and credentials of the Qualified Consultant must be provided along with the date the Feasibility Study was completed. The Feasibility Study must demonstrate a viable Project with a likelihood of success and be a thorough assessment of the practicality of the Project. The thorough assessment must include an analysis of the proposed Project that discusses its strengths and weaknesses, potential opportunities and threats, and resources required to carry it out. The Agency must concur in the acceptability or adequacy of the Feasibility Study and whether the Qualified Consultant who prepared the Feasibility Study possesses the necessary knowledge, expertise, and experience.

(i) *Customer Base and Revenue Increase Metrics.* Applicants must include a discussion on how their Project will result in an expanded market to new customers and increased revenue to the Agricultural Producer Applicant. Working Capital Grant Applicants must also provide estimates for increases in customer base and revenue returns and must include a description of the direct or indirect producer or food business benefits intended by the eligible entity to result from the proposed Project within a reasonable period of time after the receipt of a grant.

§ 4284.932 Simplified application.

Applicants that will submit an application where paragraphs (a), (b), and/or (c) of this section apply may submit a simplified application, which means submission of a Feasibility Study or Business Plan for the Project is not required. The waiver of the requirement to submit a Feasibility Study and Business Plan does not change the proposal evaluation or scoring criteria that pertain to issues that might be supported by a Feasibility Study or Business Plan, so Applicants are encouraged to thoroughly document applications with their Project plans and expectations for success. All other eligibility requirements remain the same.

(a) *Working Capital Grant request of less than $50,000.* Applicants requesting less than $50,000 may submit a Market Expansion or Emerging Market simplified application. These types of applications must provide adequate documentation to demonstrate the expected increases in customer base and revenues resulting from the Project that will benefit the Applicant(s) supplying more than 50 percent of the Agricultural Commodity for the Project.

(b) *Market Expansion request of $50,000 or more.* Agricultural Producers who can demonstrate that their Project meets the definition of Market Expansion, may submit a simplified application. Applicants must submit a Marketing Plan with their simplified application. However, a Business Plan may be submitted in lieu of a Marketing Plan. Agricultural Producer Group, Farmer or Rancher Cooperative, and Majority-Controlled Producer-Based Business Venture applicant types are not eligible for Market Expansion Projects.

(c) *Food Safety.* Applicants that will submit an application where more than 50 percent of the Project Costs will be used for post-harvest Food Safety purposes related to the processing and/or marketing of a Value-Added Agricultural Product may submit a simplified application.

§ 4284.933 Submission requirements.

Unless otherwise specified in a notification issued under § 4284.930, the following requirements apply to all applications.

(a) *Submission period.* (1) The application period opens November 1. Applications received prior to the opening date in a given Fiscal Year will automatically be considered ineligible and will not be evaluated further.

(2) The application period closes on February 15. Applications received after the closing date will not be considered for funding. Thus, applicants are encouraged to submit their applications well in advance of the closing date to ensure timely receipt by the Agency. Revisions or additional information will not be accepted after the application period closes on February 15.

(b) *Submission process.* All items required for the application must be submitted in a single application. No attachments other than the required items will be considered. Incomplete applications will automatically be considered ineligible and will not be evaluated further. The annual notification for the program will be published on the OMB-designated governmentwide website and will provide instructions on how and where to submit completed applications for VAPG funding.

§§ 4284.934–4284.939 [Reserved]

§ 4284.940 Application processing.

(a) *Eligibility evaluation.* The Agency will review all applications to determine if they are eligible for assistance based on the requirements in this subpart and other applicable Federal laws and regulations. An application must include all application requirements identified in § 4284.931, or the Agency

will determine that it is not eligible for assistance.

(b) *Risk evaluation.* (1) The Agency will review those applications that are determined to be eligible for the program for risk based on the following information. Typically, the Agency will not determine that an application is ineligible for funding based on the results of the risk evaluation, unless the Agency cannot find a way to reasonably mitigate the risk posed by making an award. However, if risk evaluation findings identify significant shortcomings in the Applicant's ability to manage Federal funds, the Agency may determine that the application is not eligible for funding.

(2) The Agency will determine if the Applicant has satisfactory performance for all Federal awards received in the last five (5) years, based upon review of deficiencies reported in the Federal Awardee Performance and Integrity Information System, or its successor system, the Do Not Pay system, or its successor system, and the Agency's own internal financial and record-keeping systems and files. Satisfactory performance includes timely submission of required reports and documents, timely completion of tasks, and proper use of funds.

(c) *Merit evaluation.* The Agency will conduct a merit evaluation for those applications that are determined to be eligible for the program. The maximum number of points that will be awarded to an application is 100 points. The Agency's annual notification will provide additional instructions to assist Applicants when responding to the criteria in paragraphs (c)(1) through (7) of this section. The merit evaluation will be based on the following criteria, but may be amended at the Agency's discretion:

(1) *Nature of the proposed venture (0 to 30 points).* Applicants must describe the technological feasibility, operational efficiency, and profitability and economic sustainability of the Project. Applications that demonstrate a high likelihood of success in these areas will receive higher points. In response to this criterion, Working Capital Grant Applicants must provide accurate and factual information for the Project that demonstrates a viable Project ready to be implemented upon award. Planning Grant Applicants only need to discuss anticipated needs and expected outcomes for the Project.

(i) Technological feasibility should include discussion of the value-added process; the Applicant's expectations for sufficient Agricultural Commodity as well as the value to be added to the Agricultural Commodity through the value-added process; potential markets and distribution channels; Applicant's experience in marketing the proposed or similar product; and any other relevant information that supports the feasibility of the Project.

(ii) Operational efficiency should include discussion of the cost of inputs; cost of processing commodity; sufficient labor and expertise; use of own facility, shared space, or contracted processing; adequate processing equipment; and logistics for storage, distribution, transportation, and/or shipping of the Value-Added Agricultural Product. Applicants should also address any anticipated challenges or risks associated with the Project.

(iii) Profitability and economic sustainability should include discussion of the market expansion strategy and break-even point analysis completed for the Project. Include a summary of historical financial and pro forma financial projections, as applicable, to support the viability of the Project. Other relevant sources such as a Business Plan or Feasibility Study may be cross-referenced.

(2) *Qualifications of Key Personnel (0 to 20 points).* Applicants must provide the qualifications and expertise of all identified Key Personnel. If staff or consultants have not been hired at the time of application, Applicants must provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate Key Personnel with strong credentials will receive higher points.

(3) *Work plan and budget (0 to 20 points).* Applicants must submit a comprehensive work plan and budget. Applications that provide a clear, comprehensive work plan detailing all Project goals, tasks, timelines, costs, and Key Personnel in a logical and realistic manner demonstrating a high

likelihood of success will receive higher points. The Project work plan and budget must demonstrate eligible sources and allowable uses of funds and must:

(i) Present a detailed narrative description of the eligible activities and tasks related to the processing and/or marketing of the Value-Added Agricultural Product along with a detailed breakdown of all estimated costs allocated to those activities and tasks;

(ii) Identify the Key Personnel that will be responsible for overseeing and/or completing the activities or tasks and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and Matching Funds for all activities and tasks specified in the budget; and indicate that Matching Funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Identify the basis of the valuation of the grant and Matching Funds for all activities and tasks specified in the budget.

(4) *Matching Funds commitment (up to 5 points).* Applications that demonstrate financial commitment in the form of cash matching contributions will receive more points. Applications with a higher percentage of cash match will receive more points.

(5) *Prior VAPG assistance (up to 5 points).* The Applicant must disclose the number of prior VAPG awards they have received. Applicants that have not received a VAPG award will receive more points.

(6) *Priority points (0 to 10 points).* Priority points may be awarded in both the general funds and the reserved funds competitions. Points will be awarded as follows:

(i) 5 priority points will be awarded if the Applicant meets the requirements for one of the following categories and provides the documentation described in §§ 4284.923 and 4284.924, as applicable: Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, Veteran Farmer or Rancher, or operator of a Small- or Medium-Sized Farm or Ranch that is structured as a Family Farm, Farmer or Rancher Cooperative, or are proposing a Mid-Tier Value Chain Project. Applicants will not be awarded more than five (5) points even if they qualify for more than one of the priority categories.

(ii) 5 additional priority points will be awarded if the Applicant is an Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture whose Project ''best contributes to creating or increasing marketing opportunities'' for operators of Small- and Medium-Sized Farms or Ranches that are structured as Family Farms, Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, or Veteran Farmers or Ranchers.

(7) *Administrator/State Director priority categories (0 to 10 points).* Unless otherwise specified in a notification issued under § 4284.930, the Administrator of the Agency or State Director has discretion to award up to 10 points to an application to improve the geographic diversity of recipients in a Fiscal Year, fund unserved or underserved areas, assist areas experiencing emergency conditions, or prioritize Projects that advance the Department or Agency's key priorities, goals, and objectives. In the event of a national competition, the Administrator will award points and for a State-allocated competition, the State Director will award points.

§ 4284.941 Application withdrawal.

During the period between the submission of the application and award approval, the Applicant must notify the Agency if the Project is no longer viable or the Applicant is no longer requesting financial assistance for the Project. When the Applicant notifies the Agency, the application will be withdrawn from consideration for funding.

§§ 4284.942–4284.949 [Reserved]

§ 4284.950 Award selection.

(a) Applications will be selected for further processing and consideration of an award after the merit evaluation process is completed for all eligible applications. Each eligible application will be scored on criteria 1 through 6 as detailed in the annual notification. The scores will be ranked highest to lowest

and this will comprise the initial application ranking. Applications will be ranked solely on the points awarded by the reviewers, unless there is a tie. In that case, the Administrator of the Agency (or State Director) will break the tie at his or her discretion based on evaluation criterion 7.

(b) Applications for reserved funds will be funded in rank order until funds are depleted. Unfunded reserve applications will then compete for general funds where applications will be funded in rank order until available funds are expended or the minimum score for funding of 50 points is reached. Funding for Majority Controlled Producer-Based Business Ventures is limited to 10 percent of total grant funds expected to be obligated each funding cycle. These applications will be funded in rank order until the funding limitation has been reached.

(c) If an application cannot be fully funded, the Agency will offer partial funding to the extent funds are available. If the Applicant offered partial funding does not accept, the Agency will offer the funding to the next highest-ranked Applicant until an Applicant is found that accepts the funding or no additional eligible Applicants exist. If an application is ranked and not funded, it will not be carried forward into the next Fiscal Year competition.

§ 4284.951 Notification of successful Applicants.

(a) The Agency will notify the Applicants whose applications can be funded with a Letter of Conditions. The Letter of Conditions will provide the conditions under which an award can be approved as well as a copy of the term of the award. Applicants receiving a Letter of Conditions will have up to 90 calendar days to meet the conditions of the award. If the Applicant agrees with the conditions, the Applicant must complete an applicable Form RD 1942–46, Letter of Intent to Meet Conditions. If the Applicant believes that certain conditions cannot be met, the Applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the Applicant before the application will be processed further. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made. However, if an Applicant does not meet the conditions, the Agency will discontinue processing the application.

(b) All successful Applicants must complete the following additional forms and provide the following additional documentation:

(1) *Form RD 1942–46, ''Letter of Intent to Meet Conditions.''* Completion of this form confirms the Applicant's commitment to meeting the conditions of the award.

(2 *Form RD 400–4, ''Assurance Agreement.''* Completion of this form confirms the Applicant's commitment to complying with Federal laws and policies regarding prohibition of discrimination.

(3) *Form SF–LLL, ''Disclosure of Lobbying Activities.''* Completion of this form is only required for those entities that engage in lobbying activities.

(4) *Form RD 4280–2, ''Rural Business-Cooperative Service Financial Assistance Agreement.''* This form must be filled out completely and signed by an authorized representative of the Applicant organization and an authorized representative from the Agency for the grant award to be considered a valid agreement between the parties.

(5) *Performance evaluation criteria.* The overall goal of this program and the Projects it supports is to create and serve new markets, with a resulting increase in jobs, customer base and revenues returning to the Producer. Specific information must be provided about plans to track and evaluate progress toward these outcomes as a way for the Agency to determine whether or not the primary program goals and Project goals included in the work plan are likely to be accomplished during the Period of Performance as specified in § 4284.960.

(6) *Verification of Matching Funds.* Provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the requirements for Matching Funds in § 4284.922.

(7) *Valid permit/license.* If the Project will produce and market a Value-Added Agricultural Product in the industries of wine, beer, distilled spirits or other alcoholic merchandise, a valid TTB Permit must be provided. If the Project will market a Value-Added Agricultural Product made from hemp, a copy of a valid producer license issued by a State, Tribe, or USDA must be provided, as applicable in accordance with 7 CFR part 990. If the Applicant applied as a Harvester, the Applicant must provide executed copies of contracts, licensing or equivalent documentation establishing ''legal rights'' to access and harvest the subject Agricultural Commodity.

(8) *Organizational documents.* Provide a copy of Applicant's organizational documents that demonstrate legal authority and good standing such as bylaws, articles of incorporation or organization, and Letter or Certificate of Good Standing from your Secretary of State or equivalent agency. Sole Proprietors must submit a copy of their IRS tax forms showing farm income.

§ 4284.952 Notification of unsuccessful Applicants.

Applicants whose applications are not eligible for financial assistance or did not score high enough to be funded will be notified. The notification will be in writing using an adverse decision letter. This letter will outline the reason(s) for the Agency's decision and provide dispute resolution alternatives.

§§ 4284.953–4284.959 [Reserved]

§ 4284.960 Reporting requirements.

Recipients are required to submit financial reports and performance reports on a semiannual basis. Semiannual periods end on March 31st and September 30th. Reports are due 30 calendar days after the end of the semiannual period. A final financial report and performance report must also be submitted within 120 days after the expiration or termination of the grant. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(a) *Financial reports.* Form SF–425, ''Federal Financial Report,'' must be used for financial reporting. Financial reports must also include evidence of receipt of Matching Funds. Recipients must complete the Project per the terms and conditions specified in the approved work plan and budget, the Financial Assistance Agreement, and Letter of Conditions. Recipients will expend funds only for eligible purposes and will be monitored by the Agency for compliance. Recipients must maintain a financial management system and property and procurement standards in accordance with 2 CFR parts 400 through 499.

(b) *Performance reports.* All performance reports must include a discussion on the performance benchmarks suggested in the application to determine whether the primary goals and objectives proposed in the approved work plan and budget were accomplished during the reporting period. In the section of the report that compares actual accomplishments to the objectives for that reporting period, objectives should be reported by specific task breakdown as described in the approved work plan and budget.

(1) For Working Capital Grant Projects, final performance reports must include the following metrics:

(i) Expansion of customer base as a result of the Project;

(ii) Increased revenue returned to the Producer as a result of the Project; and

(iii) Jobs created or saved as a result of the Project.

(2) For all Projects, we may request additional information, including but not limited to, the following:

(i) Information that will enable evaluation of the economic impact of program awards, such as:

(A) Business starts and clients served; and

(B) Data associated with Producer market expansion, new market penetration, and changes in customer base or revenues.

(ii) Information that would promote greater understanding of the key determinants of the success of individual Projects or inform program administration and evaluation, such as:

(A) The Producer's experience related to financial management, budgeting, and running a business enterprise;

(B) The nature of, and advantages or disadvantages of, supply chain arrangements or equitable distribution of rewards and responsibilities for Mid-Tier Value Chain Projects; and

(C) Recommendations from Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, and/or Veteran Farmers or Ranchers.

(iii) Information that would inform or enable the aggregation of data for program administration or evaluation purposes.

(3) If any special conditions have been placed on the use of award funds, compliance with those conditions must be discussed in each performance report.

§ 4284.961 Grant monitoring.

Awards will be monitored by Agency personnel in accordance with applicable laws, regulations, and policies (see § 4284.908 for more information). The Agency may terminate or suspend the award for lack of adequate or timely progress, reporting, documentation, or for failure to comply with Agency requirements.

§ 4284.962 Transfer of obligations.

At the discretion of the Agency and on a case-by-case basis, an obligation of funds established for an Applicant may be transferred to a different (substituted) Applicant provided:

(a) The substituted Applicant:

(1) Is eligible;

(2) Has a close and genuine relationship with the original Applicant; and

(3) Has the authority to receive the assistance approved for the original Applicant.

(b) The Project continues to meet all product, purpose, and reserved funds eligibility requirements so that the need, purpose(s), and scope of the Project for which the Agency funds will be used remain substantially unchanged.

§§ 4284.963–4284.999 [Reserved]

§ 4284.1000 OMB control number.

The reporting and recordkeeping requirements contained in this subpart have been approved by the OMB and have been assigned OMB control number 0570–0064 in accordance with the Paperwork Reduction Act of 1995.

Subpart K—Agriculture Innovation Center Demonstration Program

SOURCE: 89 FR 75789, Sept. 16, 2024, unless otherwise noted.

§ 4284.1001 Purpose.

This subpart implements the Agriculture Innovation Center Demonstration (AIC) program. Through the AIC program, the Agency makes grants to Centers that provide Producer Services to Agricultural Producers seeking to develop and market Value-Added Agricultural Products.

§ 4284.1002 Organization of subpart.

The information in this subpart is organized into seven main topics:

(a) *General information.* Sections 4284.1001 through 4284.1019 discuss the purpose of the program, definitions, exception authority, conflict of interest, and compliance with other laws and regulations.

(b) *Eligibility information.* Sections 4284.1020 through 4284.1029 discuss the eligibility requirements for the program. These sections include information on applicant eligibility, project eligibility, and the use of funds. See § 4284.1022 for information about the award amounts, Period of Performance, and Matching Funds requirements.

(c) *Application requirements information.* Sections 4284.1030 through 4284.1039 discuss the requirements for submitting an application. These sections include information on what forms and other information are required for a complete application as well as the format of the application, the application deadline, and how to submit the application.

(d) *Application processing information.* Sections 4284.1040 through 4284.1049 discuss how the Agency will process applications. These sections include information on how applications will be reviewed for eligibility, how applications will be evaluated for merit, and how an applicant can withdraw an application from consideration.

(e) *Award information.* Sections 4284.1050 through 4284.1059 discuss how the Agency will make awards. These

sections include information about how applications will be selected for funding, how applicants will be notified whether their applications have been selected for funding, how applicants can resolve disputes regarding funding selections, and the requirements for an applicant to accept an award and be approved as a Recipient of an award.

(f) *Post-award information.* Sections 4284.1060 through 4284.1061 discuss the reporting requirements for Recipients after an award is approved as well as monitoring procedures that the Agency will use.

(g) *Other.* (1) Sections 4284.1062 through 4284.1099 are reserved.

(2) Section 4284.1100 includes the Office of Management and Budget (OMB) control number for reporting and recordkeeping requirements under this subpart.

§ 4284.1003 Definitions.

These are the definitions for terms used in this subpart. Additional terms used in this subpart are found in the applicable laws and regulations, in particular 2 CFR part 200 and 7 CFR part 11.

Adverse Decision has the meaning located at 7 CFR 11.1.

Adverse Decision Letter means a letter issued by the Agency to the Applicant or Recipient that explains the Adverse Decision.

Agency means the Rural Business-Cooperative Service (RBCS or the Agency), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agricultural Commodity has the meaning located at § 4284.903.

Agricultural Commodity Organization means an organization that exclusively represents a single Agricultural Commodity or group of similar commodities either on behalf of the commodity itself or on behalf of the Agricultural Producers who grow or raise it. The representation can be at a local, State, regional, or national level. Examples are Agricultural Commodity Marketing Boards established by States, a national association representing corn growers, and a regional association representing fruit and vegetable growers.

Agricultural Food Product has the meaning located at § 4284.903.

Agricultural Producer has the meaning located at § 4284.903.

Applicant means the entity that is applying for funding through the AIC program.

Board of Directors means the group of individuals who govern the Center.

Business Plan has the meaning located at § 4284.903.

Center means the Agriculture Innovation Center to be established and operated by a Recipient of the AIC program. It must be governed by a Qualified Board of Directors.

Change in Physical State has the meaning located at § 4284.903.

Commercial Organization means any business that sells goods or services for the purpose of making a profit.

Equipment has the meaning located at 2 CFR 200.1.

Family Farm has the meaning located at § 4284.903.

Farm or Ranch has the meaning located at § 4284.903.

Farm- or Ranch-Based Renewable Energy has the meaning located at § 4284.903.

Feasibility Study has the meaning located at § 4284.903.

Federal Award has the meaning located at 2 CFR 200.1.

Financial Assistance Agreement means Form RD 4280–2 and any attachments, as executed by RBCS and the Recipient.

General Agricultural Organization means an organization that represents agriculture in general, without restriction to any specific group, commodity, or sector. The sole purpose of the organization must be representing agriculture through policymaking, education, and/or marketing. The organization must represent Agricultural Producers, although it may represent processors and other stakeholders as well. The representation can occur at the State, regional, or national level. Examples include organizations that represent farmers and ranchers and organizations that represent organic or sustainable farming. Note that credit organizations are not included in this definition.

Harvester has the meaning located at § 4284.903.

Indian Tribe has the meaning located at 2 CFR 200.1.

Indirect Costs has the meaning located at 2 CFR 200.1.

Institutions of Higher Education has the meaning located at 2 CFR 200.1.

Key Personnel means the employees and/or contractors of the Center who provide Producer Services. It also includes the Project Director.

Letter of Conditions means the letter that the Agency issues to an entity whose application is selected for funding. The letter outlines all the conditions of the award that must be met before the award can be approved. Other agencies may call this letter an award letter or award notice.

Local Government has the meaning located at 2 CFR 200.1.

Local Agricultural Producer means an Agricultural Producer located within 400 miles of the Center or in the same State.

Locally-Produced Agricultural Food Product has the meaning located at § 4284.903.

Matching Funds has the meaning located at 2 CFR 200.1.

Nonprofit Organization has the meaning located at 2 CFR 200.1.

Period of Performance has the meaning located at 2 CFR 200.1.

Physical Segregation has the meaning located at § 4284.903.

Produced in a Manner That Enhances the Value of the Agricultural Commodity has the meaning located at § 4284.903.

Producer Services means services provided by the Centers to Agricultural Producers seeking to develop and market Value-Added Agricultural Products. The services provided must directly assist the Agricultural Producer with the process of developing and/or marketing a Value-Added Agricultural Product. The services include the following:

(1) Business development services, such as Feasibility Studies, Business Plans, and other types of technical assistance that supports business development.

(2) Market development services, such as marketing plans, branding, and customer identification.

(3) Organizational assistance, such as legal and technical advisory services related to the development, expansion, or operation of a business.

(4) Financial advisory services related to the development, expansion, or operation of a business, such as assistance with obtaining credit for operating costs, training on using financial management software, and guidance on use of cash flow.

(5) Process development services, such as the following:

(i) Engineering services, including scale-up of production systems (not to include cost of renovating or constructing a facility or system);

(ii) Scale production assessments, which are studies that analyze processing facilities to determine the size that optimizes construction and other cost efficiencies associated with manufacturing or processing a Value-Added Agricultural Product;

(iii) Systems development; and

(iv) Other technical assistance and applied research related to development, implementation, improvement and operations of processes and systems to develop and market a Value-Added Agricultural Product.

(6) Product development, such as idea generation, concept testing, feasibility and cost analysis, product taste-testing, demographic and other types of consumer analysis, production analysis, recipe development, evaluation of packaging and labeling options, and brand development for a Value-Added Agricultural Product.

(7) Value chain coordination, or directly working with an Agricultural Producer to connect that producer to a distribution system, processing facility, or commercial kitchen.

(8) Grants to Agricultural Producers for the services in paragraphs (1) through (7) of this definition, where the individual award does not exceed $5,000 and the aggregate amount of grants made by the Center does not exceed $50,000. Note that these grants are considered pass-through awards. Therefore, Centers and subrecipients must comply with all Federal and programmatic requirements for pass-through entities and awards, as described in 2 CFR part 200. Additionally, subrecipients of these grants must be eligible to receive a Federal Award, use

grant and Matching Funds for allowable costs, provide at least one-third of the Project Cost in Matching Funds, and meet all other Federal and program requirements for the AIC program.

Program Income has the meaning located at 2 CFR 200.1.

Project Cost has the meaning located at 2 CFR 200.1.

Qualified Board of Directors means a Board of Directors that includes, but is not limited to, representatives from each of the groups identified in paragraphs (1) through (3) of this definition. It should be noted that no representative may represent more than one group or organization and Board of Director representatives must not have any conflicts of interest. See § 4284.1006 for additional information on conflicts of interest.

(1) Two General Agricultural Organizations with the greatest number of members in the State in which the Center is located;

(2) The department of agriculture, or similar State department or agency, or a State legislator, of the State in which the Center is located; and

(3) Four Agricultural Commodity Organizations representing different Agricultural Commodities produced in the State in which the Center is located.

Real Property has the meaning located at 2 CFR 200.1.

Recipient has the meaning located at 2 CFR 200.1.

State has the meaning located at 2 CFR 200.1.

State Office means the USDA Rural Development (RD) offices located in each State.

Third-Party In-Kind Contributions has the meaning located at 2 CFR 200.1.

Underserved and Economically Distressed Area means an area so designated on the program website.

Value-Added Agricultural Product has the meaning located at § 4284.903.

§ 4284.1004 Exception authority.

The Administrator of the Agency may, on a case-by-case basis, approve an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot conflict with applicable laws.

§ 4284.1005 [Reserved]

§ 4284.1006 Conflict of interest.

No conflict of interest or appearance of a conflict of interest will be allowed.

(a) *Description.* A conflict of interest occurs in a situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or entity to act impartially. For the purposes of this subpart, relationships that can include conflict of interest include, but are not limited to:

(1) Parent, Applicant, or Recipient Board of Directors, employees, consultants, and contractors.

(2) Center Board of Directors, employees, consultants, and contractors.

(3) Subrecipients and their employees, consultants, and contractors.

(4) Immediate family members of those listed in paragraphs (a)(1) through (3) of this section.

(b) *State Departments of Agriculture.* A conflict of interest does not include the situation when the State's Secretary of Agriculture or an employee of the State's Department of Agriculture, or similar agency, acts as a member of the Center's board of directors because this representation is a requirement for the program.

(c) *Written disclosure.* Recipients must comply with 2 CFR 400.2(b), which includes providing written disclosure to the Agency of any potential conflicts of interest and maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award, and administration of Federal Awards.

(d) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(e) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; provided, however, that this provision shall not be construed to bar, as a contractor under the Federal Award, a

publicly held corporation whose ownership might include a member of Congress.

§ 4284.1007 [Reserved]

§ 4284.1008 Compliance with other laws and regulations.

The Agency, Applicants, and Recipients must comply with all applicable laws and regulations. An effort has been made to identify the most-commonly cited laws and regulations and reference them as follows:

(a) *Federal laws.* Federal laws are codified in the United States Code (U.S.C.). A selection of laws applicable to this program is identified as follows:

(1) Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

(2) Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

(3) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(4) The Civil Rights Act of 1964, Title VI (42 U.S.C. 2000d *et seq.*).

(5) The Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794).

(b) *Federal regulations.* Federal regulations are codified in the Code of Federal Regulations (CFR). In particular, 2 CFR parts 1 through 200 are applicable to all Federal grant programs. These parts address items such as universal entity identifiers, reporting subaward and executive compensation, debarment and suspension, drug-free workplaces, administrative requirements, cost principles, and audit requirements. We particularly advise Applicants and Recipients to become familiar with 2 CFR part 200 in its entirety.

(c) *Departmental regulations.* Departmental regulations are those regulations that are specific to awards made through USDA. They are codified in the CFR. A selection of applicable regulations is identified as follows:

(1) *2 CFR parts 400 through 499.* These parts include USDA's adoption of Federal administrative requirements and cost principles. They also include regulations on debarment and suspension, lobbying, drug-free workplaces, and research awards.

(2) *7 CFR part 11.* This part includes USDA's procedures for administrative appeals, as handled by its National Appeals Division.

(3) *7 CFR part 15.* This part includes USDA's procedures for compliance with nondiscrimination laws and regulations.

(d) *Agency regulations.* Agency regulations are those regulations that are specific to awards made through the Agency and they may also be specific to a program. They are codified in the CFR. A selection of those regulations is as follows:

(1) *7 CFR part 1900.* This part covers delegations of authority, Adverse Decisions and administrative appeals, applicability of Federal law, and processing and servicing grant awards.

(2) *7 CFR part 1901, subpart E.* This subpart covers civil rights compliance requirements.

(3) *7 CFR part 1951.* This part covers servicing grant awards, including unauthorized assistance.

(4) *7 CFR part 1970.* This part covers environmental policies and considerations.

(e) *Access to laws and regulations.* (1) Laws may be accessed through the U.S.C. At the time this subpart was published, the U.S.C. may be accessed electronically at this website: *https://uscode.house.gov/.*

(2) Regulations may be accessed through the CFR. At the time this subpart was published, the CFR may be accessed electronically at this website: *https://www.ecfr.gov/.*

§§ 4284.1009–4284.1019 [Reserved]

Eligibility Information

§ 4284.1020 Applicant eligibility.

Applicants must meet certain requirements to be eligible for funding through this program. Those requirements are described as follows:

(a) *Eligible entities.* Entities are eligible for assistance through this program if all the following requirements are met:

(1) *System for Award Management (SAM) registration and unique entity identifier (UEI).* Entities must have an active registration in SAM. This registration must remain current, accurate, and complete at the time of application, while the application is under consideration for funding, and while a Recipient has an active Federal Award.

This registration includes obtaining a UEI, or its successor, through *SAM.gov*.

(2) *Entity type*. The entity is organized or incorporated in a State, and it is one of the following types of organizations: Commercial Organization, Indian Tribe, Institution of Higher Education, Local Government, Nonprofit Organization, or State government. A consortium is also eligible to apply, but it must select a single organization to represent the consortium as the Applicant. Only the Applicant organization must meet the eligibility requirements.

(3) *Board of Directors*. The entity proposes to create or to continue to operate a Center that is governed by a Qualified Board of Directors.

(4) *Experience/capability to provide services*. The entity demonstrates that it has provided at least three (3) years of Producer Services prior to application or that it has the capability to provide Producer Services by hiring at least two Key Personnel who have at least three (3) years of experience providing Producer Services.

(5) *Financial capability*. The entity has the financial capability for the proposed project. In particular, the following must be true:

(i) The most recent independent audit confirms that the entity has a current ratio of at least 1:1 at the end of the fiscal year; and

(ii) The most recent independent audit confirms that the entity has sufficient cash on hand at the end of the fiscal year to cover at least three months of expenses for the proposed project.

(b) *Ineligible entities*. Entities are ineligible for assistance from this program if any of the following occurs:

(1) An outstanding judgment has been obtained against the entity by the United States in a Federal Court (other than in the United States Tax Court). The entity is ineligible for assistance until the judgment is paid in full or otherwise satisfied. Funds from this program may not be used to satisfy the judgment.

(2) The entity is delinquent on the payment of Federal income taxes.

(3) The entity is delinquent on Federal debt.

(4) The entity is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' (See 2 CFR part 417 for more information.)

(5) The entity has been convicted of a felony criminal violation under any Federal law within the past 24 months.

(6) The entity has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, unless a Federal agency has considered suspension or debarment of the organization and has made a determination that this further action is not necessary to protect the interests of the Government.

(7) The entity is an individual.

(8) The entity has an award through this program that is not scheduled to end until after September 30 of the year in which the application is submitted.

§ 4284.1021 Ultimate beneficiary eligibility.

Centers must provide Producer Services only to Agricultural Producers. The Agricultural Producers may purchase or intend to purchase up to 49 percent of the primary Agricultural Commodity needed for the Value-Added Agricultural Product that is being developed and/or marketed. Note that the primary Agricultural Commodity is considered the commodity for which the greatest volume is required to produce the Value-Added Agricultural Product. The Agricultural Producers must maintain ownership of the primary Agricultural Commodity from production through the sale of the Value-Added Agricultural Product. See § 4284.1003 for the definitions of Agricultural Commodity, Agricultural Producer, and Value-Added Agricultural Product.

§ 4284.1022 Project eligibility.

Projects must meet certain requirements to be eligible for funding

through this program. Those requirements are as follows:

(a) *Eligible projects.* Eligible projects must meet all of the following requirements. Failure to meet one or more of these requirements will render the application ineligible for funding.

(1) *Project purpose.* The sole purpose of the project must be to increase and improve the ability of Agricultural Producers to market Value-Added Agricultural Products, with at least one goal related to increasing and improving the ability of Local Agricultural Producers to market Value-Added Agricultural Products

(2) *Amount requested.* The minimum amount requested for an award must be $600,000 and the maximum amount that can be requested is $1,000,000.

(3) *Matching Funds.* Matching Funds are required for at least one-third of the Project Cost. For example, if the Project Cost is $1,500,000, Matching Funds must be at least $500,000. Matching Funds must be from non-Federal sources (unless otherwise provided by statute) and may be provided in cash by the applicant or by a third party or in-kind by a third party. They must be available for use during the Period of Performance, and they must be used for allowable expenses. Applicants may not use unrecovered Indirect Costs as Matching Funds.

(4) *Allowable use of funds.* The project must use award and Matching Funds for allowable purposes. See §4284.1025 for additional information.

(5) *Agricultural support.* The project has the support of at least three organizations whose primary mission is to support agriculture in the State in which the Center is located.

(6) *Period of Performance.* The Period of Performance must be three (3) years. The Period of Performance must start within 90 days of award approval, unless otherwise authorized by the Agency.

(7) *Contracts with other Centers.* Contracts and/or subawards with other Centers funded through this program must be limited to 10 percent or less of total Project Costs.

(b) *Ineligible projects.* Projects are ineligible for assistance through this program if the application:

(1) Includes a conflict of interest (see §4284.1006 for more information), where the expenses associated with the conflict of interest exceed 10 percent of the Project Cost. If the costs associated with the conflict of interest are 10 percent or less, the process in paragraph (b)(5) of this section will be followed.

(2) Requests less than the minimum or more than the maximum grant amount.

(3) Focuses assistance on only one Agricultural Producer or business.

(4) Earns revenue from processing or selling a product as part of the project. Centers may charge fees for services provided, but they cannot earn revenue from processing a product or from sales associated with a product they helped develop.

(5) Includes unallowable costs totaling more than 10 percent of Project Costs. If the application includes 10 percent or less of Project Costs in unallowable costs, and the application is otherwise eligible and selected for funding, those unallowable costs must be removed. If time permits, the Agency may allow those unallowable costs to be replaced with allowable costs. Otherwise, the amount of the Award will be reduced accordingly. If we cannot determine the percentage of unallowable costs, your application will not be considered for funding.

§§ 4284.1023–4284.1024 [Reserved]

§ 4284.1025 Use of funds.

Allowable and unallowable uses of funds are described as follows:

(a) *Allowable uses of funds.* The following types of activities and expenses are allowable:

(1) Producer Services as defined in §4284.1003.

(2) Costs associated with establishing and operating a Center, including legal services, accounting services, clerical assistance, technical services, office supplies, hiring employees, monitoring contracts, professional development for staff, attending conferences related to value-added agriculture and marketing food products, and Board of Directors travel.

(3) Additional information on allowability of costs can be found at 2 CFR

part 200, subpart E, for all organization types.

(b) *Unallowable uses of funds.* The following types of activities and expenses are unallowable:

(1) Provide services to entities other than Agricultural Producers.

(2) Fund manufacturing or processing expenses, including test, trial, or initial production runs.

(3) Pay for interns or internships.

(4) Provide tuition remission or other financial support to students at any level of education.

(5) Provide participant support costs outside of the grants to Agricultural Producers.

(6) Fund any direct expenses for the production of any Agricultural Commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility; to include the purchase of an Agricultural Commodity.

(7) Plan, fund architectural work, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility.

(8) Purchase Real Property.

(9) Purchase, rent, or install Equipment.

(10) Purchase or repair vehicles, including boats.

(11) Pay for the preparation of the grant application.

(12) Pay expenses not directly related to the funded project.

(13) Pay for any goods or services from a person or entity who has a conflict of interest with the Recipient (see § 4284.1006).

(14) Duplicate activities paid for by another Federal grant program.

(15) Pay costs of the project incurred prior to the date of award approval, unless authorized by the Agency at the time of award approval.

(16) Pay for assistance to any private business enterprise that does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

(17) Pay any judgment or debt owed to the United States.

(18) Fund any activities considered unallowable by the applicable cost principles, most of which are included in 2 CFR part 200, subpart E.

§§ 4284.1026–4284.1029 [Reserved]

§ 4284.1030 Notifications.

The Agency will issue any program notifications identified in paragraphs (a) through (c) of this section on the program website. An annual notification will also be published on the OMB-designated governmentwide website.

(a) *Amount of funding available.* The Agency will publish the amount of funding available for awards during each fiscal year within 30 calendar days of receiving notification from OMB of the amount of funding available.

(b) *Priority points.* The Agency will publish the priorities applicable to the program no later than the application period opening date each year. Points will be awarded in accordance with § 4284.1040(d).

(c) *Other.* The Agency will publish any other additional requirements or programmatic changes no later than the date the application period opens.

APPLICATION REQUIREMENTS

§ 4284.1031 Application requirements.

All applications must include the following items:

(a) *Form SF–424, ''Application for Federal Assistance.''* This form must be filled out completely and signed by an authorized representative of the Applicant organization.

(b) *Form RD 4284–1, ''Application for the Agriculture Innovation Center Program.''* This form must be filled out completely. Failure to complete any section on the form will result in the application being determined ineligible for funding.

§ 4284.1032 [Reserved]

§ 4284.1033 Submission requirements.

The following information identifies when applications can be submitted, where applications must be submitted, and the format of applications.

(a) *Submission period.* (1) The application period opens on November 1. Applications received prior to the opening date in a given fiscal year will not be considered.

(2) The application period closes at 11:59 p.m. Eastern time (ET) on January 31 of the following year. Applications received after the closing date will not be considered. This means that if the application is emailed prior to 11:59 p.m. ET on the closing date, but the Agency's system does not receive it until after the deadline, the application will not be considered for funding. Thus, applicants are encouraged to submit their applications well in advance of the closing date to ensure timely receipt by the Agency.

(b) *Submission address.* Applications must be submitted electronically to the email address listed on the program website.

(c) *Submission format.* All items required for the application must be submitted in a single application. No attachments other than the required items will be considered. Incomplete applications will be rejected.

§§ 4284.1034–4284.1039 [Reserved]

APPLICATION PROCESSING

§ 4284.1040 Application processing.

The following information describes the way the Agency will process applications, including evaluating eligibility, risk, and merit.

(a) *Eligibility evaluation.* The Agency will review all complete applications to determine if they are eligible for assistance based on the requirements in this subpart and other applicable Federal laws and regulations. In particular, the Agency will check the OMB-designated repository of government information, and Applicants that are excluded from Federal funding will be determined ineligible (see 2 CFR 200.206 for more information). An application must include all application requirements identified in §4284.1031, or the Agency will determine that it is ineligible for assistance.

(b) *Risk evaluation.* The Agency will review those applications that are determined to be eligible for the program for risk based on financial risk and satisfactory past performance as described in paragraphs (b)(1) and (2) of this section. Typically, the Agency will not determine that an application is ineligible for funding based on the results of the risk evaluation, unless the Agency cannot find a way to reasonably mitigate the risk posed by making an award. For example, if an Applicant lacks appropriate internal controls, but has not experienced significant audit findings as a result, the Agency may choose to mitigate the lack of internal controls by requiring funds to be disbursed on a reimbursement basis until adequate internal controls are in place. However, if audit findings identify significant shortcomings in the Applicant's ability to manage Federal funds, the Agency may determine that the application is not eligible for funding.

(1) *Financial risk.* The Agency will review the organization's most recent independent audit and financial statements, provided that the most recent audit and financial statements have been created during the previous year.

(2) *Satisfactory past performance.* The entity has satisfactory performance for all Federal Awards received within the last five (5) years, based on a review of deficiencies reported by the Federal Awardee Performance and Integrity Information System, or its successor system, the Do Not Pay system, or its successor system, and the Agency's own internal financial and record-keeping systems and files. Satisfactory performance includes timely submission of required reports and documents, timely completion of tasks, and proper use of funds.

(c) *Merit evaluation.* The Agency will conduct a merit evaluation for those applications that are determined to be eligible for the program. The merit evaluation will be conducted by a panel of USDA employees, who will convene to reach a consensus on the merit of each eligible application. The total points available are 90. The merit evaluation will be based on the following criteria:

(1) *Federal Award management (0 to 10 points).* Applicants who have managed Federal Awards with the primary purpose of providing technical assistance with Periods of Performance that have start and end dates within the last five (5) years of the date of application will receive points as described in paragraphs (c)(1)(i) through (iii) of this section. Note that an award for which a performance deficiency is identified

will not be scored. The Agency will use *USASpending.gov*, or its successor system, to verify the award information provided in the application. The Agency will also use SAM.gov, or its successor system, in addition to USDA internal systems to check for performance deficiencies. Examples of performance deficiencies are performance and/or financial reports that are more than 90 calendar days overdue and failure to accomplish the approved scope of work.

(i) *Amount (0 to 3 points).* Zero points will be awarded if no Federal Awards are identified. Applications that identify multiple Federal Awards for amounts greater than $600,000 will receive more points.

(ii) *Time period (0 to 3 points).* Zero points will be awarded if no Federal Awards are identified. Applications that identify multiple Federal Awards for time periods of at least three (3) years will receive more points.

(iii) *Provision of technical assistance (0 to 4 points).* Zero points will be awarded if no Federal Awards are identified. Applications that identify multiple Federal Awards in which the Applicant provided technical assistance will receive more points.

(2) *Qualifications of Key Personnel (0 to 20 points).* Projects that have qualified Key Personnel will receive points as described in paragraphs (c)(2)(i) through (v) of this section. Only Key Personnel that are currently employed or on contract with the Center will be considered. Key Personnel are considered qualified if they have at least five (5) years of experience in providing at least one Producer Service that the Center proposes to offer in its application. The Agency will consider years of experience, the number of times a service has been provided, the number of services provided, the complexity of the role the person played in providing the service, and the outcomes of the services when awarding points for qualifications.

(i) *Zero Key Personnel (0 points).* No qualified Key Personnel are identified.

(ii) *One Key Personnel (0 to 5 points).* One qualified person is identified. Zero points will be awarded if the person identified is not qualified. One point will be awarded to applications that demonstrate the person meets the qualifications. Two to three points will be awarded to applications that demonstrate the person exceeds the qualifications. Four to five points will be awarded to applications that demonstrate the person has exceptional qualifications.

(iii) *Second Key Personnel (0 to 5 points).* A second qualified person is identified. Zero points will be awarded if the person identified is not qualified. One point will be awarded to applications that demonstrate the person meets the qualifications. Two to three points will be awarded to applications that demonstrate the person exceeds the qualifications. Four to five points will be awarded to applications that demonstrate the person has exceptional qualifications.

(iv) *Third Key Personnel (0 to 5 points).* A third qualified person is identified. Zero points will be awarded if the person identified is not qualified. One point will be awarded to applications that demonstrate the person meets the qualifications. Two to three points will be awarded to applications that demonstrate the person exceeds the qualifications. Four to five points will be awarded to applications that demonstrate the person has exceptional qualifications.

(v) *Fourth Key Personnel (0 to 5 points).* A fourth qualified person is identified. Zero points will be awarded if the person identified is not qualified. One point will be awarded to applications that demonstrate the person meets the qualifications. Two to three points will be awarded to applications that demonstrate the person exceeds the qualifications. Four to five points will be awarded to applications that demonstrate the person has exceptional qualifications.

(3) *Outreach plan (0 to 20 points).* Applications that have a well-designed outreach plan will receive points as described in paragraphs (c)(3)(i) through (iii) of this section.

(i) *Goals (0 to 6 points).* The goals are clear and include a way to measure the success of the project in a quantitative way, including the baseline of the metric, and a target for the metric. Zero points will be awarded if the application does not include at least one goal, performance measurement, baseline of

the metric, and target for the metric. One or two points will be awarded if the application has at least one goal, one metric, the baseline of the metric, and a target for the metric. Three or four points will be awarded to applications that exceed this threshold. Five or six points will be awarded to applications that exceed the threshold and have exceptional goals, metrics, baselines, and targets.

(ii) *Identified need (0 to 8 points).* The application identifies a clear need in the proposed service area that connects to the goals of the project. Zero points will be awarded if the application does not identify a clear need in the proposed service area that connects to the goals of the project. One to five points will be awarded to applications that identify clear needs in the proposed service area that connect to the goals of the project. One or two additional points will be awarded to applications that describe how the need was identified. One additional point will be awarded to applications that describe an identified need in an Underserved and Economically Distressed Area.

(iii) *Customer identification (0 to 6 points).* The application describes how the Center will identify customers for the Producer Services it proposes to provide. Zero points will be awarded if the application does not identify how the Center will identify its customers. One to five points will be awarded to applications that describe a basic plan for identifying customers. One additional point will be awarded to applications that describe a plan for identifying customers in an Underserved and Economically Distressed Area.

(4) *Coordination, collaboration, and partnerships (0 to 20 points).* Coordination, collaboration, or a partnership exists if there is a formal arrangement between the Center and another organization to either provide one or more Producer Services or for the other organization to provide a different type of service that supports one or more project goals. (Note that a formal arrangement means a written agreement that is signed by both parties and includes a purpose statement.) One example is a Center that provides product development but does not have a commercial kitchen. The Center could coordinate with a commercial kitchen to work with producers on recipe development or consumer taste testing. Another example is providing a contribution to the project in the form of Matching Funds, where the contribution from a third party is Key Personnel or expert consulting services to provide Producer Services. Applicant organizations who demonstrate that they will coordinate, collaborate, or partner with other organizations for the proposed project will receive more points, based on the description as follows:

(i) *Coordination, collaboration, or partnership with one other organization (0 to 4 points).* The Agency will evaluate the complexity of the relationship, the significance of the gap in the Center's services that the relationship fills, the quality of the services that the partner will provide, and the quantity of the services that the partner will provide.

(ii) *Coordination, collaboration, or partnership with a second organization (0 to 4 points).* The Agency will evaluate the complexity of the relationship, the significance of the gap in the Center's services that the relationship fills, the quality of the services that the partner will provide, and the quantity of the services that the partner will provide.

(iii) *Coordination, collaboration, or partnership with a third organization (0 to 4 points).* The Agency will evaluate the complexity of the relationship, the significance of the gap in the Center's services that the relationship fills, the quality of the services that the partner will provide, and the quantity of the services that the partner will provide.

(iv) *Coordination, collaboration, or partnership with a fourth organization (0 to 4 points).* The Agency will evaluate the complexity of the relationship, the significance of the gap in the Center's services that the relationship fills, the quality of the services that the partner will provide, and the quantity of the services that the partner will provide.

(v) *Underserved and Economically Distressed Area (0 to 4 points).* The Agency will award one point for each coordination, collaboration, or partnership that connects the project to an Underserved and Economically Distressed Area.

(5) *Scope of the project (0 to 20 points).* The scope of the project will be evaluated based on the service area, the types of services offered, the uniqueness of the services offered, and the number of commodities assisted.

(i) *Service area (0 to 4 points).* Projects that propose to provide Producer Services to a larger service area will receive more points, based on the following structure:

(A) *Few counties (0 points).* Projects that propose to provide services to up to 10 percent of the counties in the State will receive 0 points.

(B) *Some counties (1 point).* Projects that propose to provide services to more than 10 percent and up to 25 percent of the counties in the State will receive 1 point.

(C) *Many counties (2 points).* Projects that propose to provide services to more than 25 percent and up to 50 percent of the counties in the State will receive 2 points.

(D) *Majority of State (3 points).* Projects that propose to provide services to more than 50 percent and less than 100 percent of the counties in the State will receive 3 points.

(E) *State-wide (4 points).* Projects that propose to provide services to all counties in a State will receive 4 points.

(ii) *Types of services (0 to 8 points).* Projects that offer a greater variety of Producer Services will receive more points. See § 4284.1003 for the definition of Producer Services. Each category of Producer Service offered will receive one point. If no proposed services fit into one of the categories, zero points will be awarded. The categories are as follows:

(A) Financial advisory services.
(B) Organizational assistance.
(C) Value chain coordination.
(D) Process development.
(E) Product development.
(F) Business development services.
(G) Marketing assistance.
(H) Grants to Agricultural Producers.

(iii) *Number of commodities (0 to 3 points).* Projects that have the capacity to provide services to support Value-Added Agricultural Products from multiple Agricultural Commodities in addition to the four represented on the Board of Directors of the Center will receive more points.

(iv) *Unique services (0 to 3 points).* Projects that will contribute unique services in the proposed service area will receive more points. Unique means that the services are not already provided in the service area.

(v) *Physical location (0 to 2 points).* Projects that will provide services at more than one physical location will receive more points.

(d) *Priority Points (0 to 10 points).* Each year, RBCS will select up to two priorities from the current published priorities for the RD mission area that are applicable to the program. These priorities will be published on the program website and in the annual notice no later than the date that the application period is open. Projects will be awarded five points for each priority that they meet, based on the information provided in the application, for a maximum of ten points.

§ 4284.1041 Application withdrawal.

During the period between the submission of the application and award approval, the Applicant must notify the Agency in writing if the project is no longer viable or if the Applicant is no longer requesting financial assistance for the project. When the Applicant notifies the Agency, the application will be withdrawn from consideration for funding.

§§ 4284.1042–4284.1049 [Reserved]

AWARD

§ 4284.1050 Award selection.

(a) The Agency will review applications to determine if they are eligible for assistance based on requirements in this subpart, and other applicable Federal laws and regulations. If the Agency determines that your application meets the requirements, it will be scored by a panel of USDA employees in accordance with the merit evaluation criteria and point allocation specified in § 4284.1040(c). The review panel will convene to reach a consensus on the scores for each of the eligible applications. Applications will be ranked solely based on the points awarded, and they will be funded in rank order until available funds are expended or a minimum score of 40 points is reached. If

an application cannot be fully funded, the Agency may offer partial funding to the extent funds are available.

(b) If an application is ranked and not funded, it will not be carried forward into the next funding competition.

§ 4284.1051 Notification of successful Applicants.

(a) The Agency will notify the Applicants whose applications can be funded using available funds with a Letter of Conditions. The Letter of Conditions will provide the conditions under which an award can be approved as well as a copy of the terms of the award.

(b) An Applicant receiving a Letter of Conditions will have 60 calendar days to meet the conditions of the award. If the applicant does not meet the conditions, the Agency will discontinue processing the application and offer funding to another Applicant based on the ranking from the merit review panel if sufficient time exists for the application to be fully processed and an award approved by September 30 of the current fiscal year. If sufficient time does not exist, the funds will not be awarded.

(c) To view the standard conditions for all awards, please visit the program website.

§ 4284.1052 Notification of unsuccessful applicants.

Applicants whose applications are not eligible for financial assistance or did not score high enough to be funded will be notified as soon as it is practicable. The notification will be in writing using an Adverse Decision Letter. This letter will outline the reason(s) for the Agency's decision and what dispute resolution alternatives the Applicant has. (See also 7 CFR part 11.)

§ 4284.1053 Award approval.

The Agency will approve an award once the Applicant has met all the conditions of the award. The approval will be conveyed through the execution of Form RD 4280–2, which is the Financial Assistance Agreement, and provides all terms of the award. Once the award has been approved, the Recipient may begin work on the project and incur costs.

§§ 4284.1054–4284.1059 [Reserved]

POST-AWARD

§ 4284.1060 Reporting requirements.

Recipients are required to submit financial reports and performance reports based on the following requirements.

(a) *Financial reports.* Financial reports are required on a semi-annual basis and after the Period of Performance has ended.

(1) *Semi-annual report.* Reporting periods are October 1 through March 31 and April 1 through September 30. Reports are due 30 calendar days after the reporting period ends. The report must include the submission of the SF–425, ''Federal Financial Report,'' and any additional information specified in the Financial Assistance Agreement.

(2) *Final report.* The final financial report is due 120 calendar days after the reporting period ends. The report must include the submission of the SF–425, ''Federal Financial Report,'' and any additional information specified in the Financial Assistance Agreement.

(b) *Performance reports.* Performance reports are required on a semi-annual basis and after the Period of Performance has ended.

(1) *Semi-annual reports.* Reporting periods are October 1 through March 31 and April 1 through September 30. Reports are due 30 calendar days after the reporting period ends. The report must use the format specified in the Financial Assistance Agreement.

(2) *Final report.* The final report is due 120 calendar days after the end of the Period of Performance. The report must use the format specified in the Financial Assistance Agreement.

§ 4284.1061 Monitoring awards.

Awards will be monitored by Agency personnel in accordance with applicable laws, regulations, and policies (see § 4284.1008 for more information). The Agency will designate a contact person for each award. The Agency may terminate or suspend the award for lack of adequate or timely progress, reporting,

documentation, or for failure to comply with Agency requirements.

OTHER

§ 4284.1062–4284.1099 [Reserved]

§ 4284.1100 OMB control number.

The reporting and recordkeeping requirements contained in this subpart have been approved by OMB and have been assigned OMB control number 0570–0045 in accordance with the Paperwork Reduction Act of 1995.

Subpart L—Rural Innovation Stronger Economy (RISE) Grant Program

SOURCE: 86 FR 31589, June 15, 2021, unless otherwise noted.

§ 4284.1101 Purpose.

This subpart contains the procedures and requirements for providing the following financial assistance under the Rural Innovation Stronger Economy (RISE) program:

(a) Grants for the purpose of constructing, purchasing, or equipping a building to serve as an innovation center in order to establish job accelerators.

(b) Grants for the purpose of establishing and supporting job accelerators and related programs.

§ 4284.1102 Organization of subpart.

This subpart is organized into distinct sections as described in paragraphs (a) and (b) of this section.

(a) Sections 4284.1103 through 4284.1111 discuss definitions; exception authority; review or appeal rights; conflict of interest; USDA departmental regulations; other applicable laws; ineligible applicants; general applicant, application, and funding provisions; and notifications, which are applicable to funding the program under this subpart.

(b) Sections 4284.1112 and 4284.1113 discuss, respectively, applicant and project eligibility. Section 4284.1114 addresses funding provisions for these grants. Sections 4284.1115 through 4284.1120 address grant application content and required documentation, scoring, selection, awarding and administering grant applications, and servicing of grant awards.

§ 4284.1103 Definitions.

The following definitions are applicable to the terms used in this subpart.

Administrator means the Administrator of Rural Business-Cooperative Service (RBCS) within the Rural Development mission area of the U.S. Department of Agriculture (USDA).

Agency means RBCS or its successor agency assigned by the Secretary of Agriculture to administer the RISE grant program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by ''Agency'' or ''Rural Development'' as applicable.

Applicant means the lead applicant acting on behalf of a rural jobs accelerator partnership as stated in 4282.1112, that is seeking a RISE grant. The lead applicant will enter into a financial assistance agreement with the Agency, receive the RISE grant funding and take ownership of any assets purchased with grant funds.

Broadband service. Defined within the meaning of Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), broadband service means any technology identified by the Administrator as having the capacity to provide transmission facilities and capacity that enable the subscriber to receive a minimum level of broadband service. The minimum level of broadband service for the purpose of reviewing the application will be defined by the minimum transmission capacity that was required by Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) at the time the application was received by the Agency.

Complete application means an application that contains all parts necessary for the Agency to determine applicant and project eligibility, the financial feasibility and technical merit of the project, and contains sufficient information to determine a priority score for the application.

Departmental regulations mean the regulations of the Agency's Office of Chief Financial Officer (or successor office) as codified in 2 CFR chapter IV.

District organization means an organization as defined in Section 300.3 of

Title 13, Code of Federal Regulations (or a successor regulation).

Eligible project costs means the portion of total project costs approved by the Agency for projects that are eligible to be paid with RISE funds.

Federal fiscal year (FY) means the 12-month period beginning October 1 of any given year and ending on September 30 of the following year; it is designated by the calendar year in which it ends.

Financial assistance agreement means Form RD 4280–2, ''Rural Business-Cooperative Service Financial Assistance Agreement, or successor form and is an agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

High-wage job means a job that provides a wage that is greater than the median wage for the applicable region, as determined by the Department of Labor.

Indian tribe means the term as defined in 25 U.S.C. 5304(e).

Industry cluster means a broadly defined network of interconnected firms and supporting institutions in related industries that accelerate innovation, business formation, and job creation by taking advantage of assets and strengths of a region in the business environment.

Innovation center means a cross-functional place for the planning and creation of new ideas and opportunities for individual and group collaboration that leads to supporting deployment of innovative processes, technologies, services and products for economic development. Innovation centers may be utilized for a wide array of purposes including short-term housing for business owners or workers; co-working space, which may include space for remote work; space for business utilization with a focus on entrepreneurs and small and disadvantaged businesses but may include collaboration with companies of all sizes; job training programs; and efforts to utilize the innovation center as part of the development of a community, among other uses deemed appropriate by the Agency.

Institution of higher education means the term as defined in 20 U.S.C. 1002(a).

Instrumentality means an organization recognized, established, and controlled by a State, Tribal, or local government for a public purpose or to carry out special purposes.

Jobs accelerator means a center or program located in or serving a rural low-income community that may provide co-working space, in-demand skills training, entrepreneurship and business support, and other initiatives as described in Part 4284.1113(b).

Lead applicant means an entity as defined in Part 4284.1112(b) and is responsible for the rural jobs accelerator partnership plus administration of the grant proceeds and activities.

Letter of conditions means a document prepared by the Agency establishing conditions that must be agreed to by the applicant before any obligation of grant funds can occur.

Low income community means a community as defined in section 45D(e) of the Internal Revenue Code of 1986, and any amendments thereto.

Matching funds means non-federal funds provided to meet the total eligible project costs that are not covered by the RISE grant proceeds.

Person means an individual or an entity organized under the laws of a state or a Tribe.

Region means an area identified by the applicant that meets the criteria of § 4284.1112(d) with a population of 50,000 or fewer inhabitants, or for a region with a population of more than 50,000 inhabitants, is comprised of rural areas and urbanized areas, if any, are the subject of a positive determination by the Under Secretary for Rural Development with respect to a rural-in-character petition, including such a petition submitted concurrently with the application of the partnership for a grant under this section.

Rural and rural area means any area of a state not in a city or town that has a population of more than 50,000 inhabitants according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. A rural and rural area shall be determined as defined in 7 U.S.C. 1991(a)(13).

Rural in character means:

(1) A determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development in compliance with 7 U.S.C. 1991(a)(13)(D). The process to request a determination under this provision is outlined in this definition. Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to the Administrator on behalf of the Under Secretary. The petition shall document why the petitioner believes the area is ''rural in character'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Administrator will review its merits and consult with the applicable governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The petition will be forwarded to the Under Secretary who will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's website. The Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

(2) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is ''rural in character.'' A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements and discusses why the State Director believes the area is ''rural in character'' including, but not limited to, the area's population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the ''rural in character'' provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable governor or leader in a similar position and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in a local newspaper and the request will be posted on the Agency's website. There is no appeal process for requests made on the initiative of the State Director.

Rural jobs accelerator partnership means a partnership formed on or after December 20, 2018, which meets eligibility criteria found in § 4284.1112.

Secretary means the Secretary of Agriculture and, to the extent of delegated authorities, the Under Secretary for Rural Development.

Small and disadvantaged business means a small business concern owned and controlled by socially and economically disadvantaged individuals as defined in Section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

Small business means:

(1) An entity that meets Small Business Administration (SBA) size standards in accordance with 13 CFR part 121 and criteria of 13 CFR 121.301 as applicable to financial assistance programs, including paragraph (i) or (ii) of this definition. The size of the concern alone and the size of the concern combined with other entity(ies) it controls or entity(ies) it is controlled by, must not exceed the size standard thresholds designated for the industry in which the concern alone or the concern and its controlling entity(ies), whichever is higher, is primarily engaged.

(2) To be considered a small business, either of the following conditions must be met:

(i) The concern's tangible net worth is not in excess of $15 million and average net income (excluding carry-over losses) for the preceding two completed

fiscal years is not in excess of $5.0 million; or

(ii) The size of the concern does not exceed the SBA size standard thresholds designated for the industry in which it is primarily engaged, as measured by number of employees or annual receipts. Industry size standard designations to be utilized are listed in the SBA's table of size standards found in 13 CFR 121.201. Number of employees and annuals receipts are calculated as follows:

(A) Number of employees is calculated as the average number of all individuals employed by a concern on a full-time, part-time, or other basis, based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(B) Annual receipts are calculated as average total income plus cost of goods sold for the five most recent years. If a concern has been in operation for less than 60 months, average annual receipts for as long as the concern has been in operation are used.

State means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Total project costs mean the sum of all costs associated with a completed project.

§ 4284.1104 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal government. Exercise of this authority cannot conflict with applicable law.

§ 4284.1105 Review or appeal rights.

Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

§ 4284.1106 Conflict of interest.

(a) *General.* A situation in which a person has competing personal, professional, or financial interests that prevents the person from acting impartially.

(b) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(c) *Member/Delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

§ 4284.1107 Statute and regulation references.

All references to statutes and regulations are to include any and all successor statutes and regulations.

§ 4284.1108 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.

(a) *Departmental regulations.* All projects funded under this subpart are subject to the provisions of the departmental regulations, as applicable, which are incorporated by reference herein.

(b) *Equal opportunity and nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); because all or part of the applicant's income derives from

any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq*.

(c) *Civil rights compliance*. Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq*., Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq*., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated.

(2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

(d) *Environmental analysis*. 7 CFR part 1970 outlines environmental procedures and requirements for this subpart. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency. The applicant will be notified of all specific compliance requirements, including:

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds or the applicant taking any action;

(2) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review. An environmental review may include the publication of public notices, and consultation with State and Tribal Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(e) *Discrimination complaints*—(1) *Who may file*. Persons or a specific class of persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250.

(2) *Time for filing*. A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless a request for a waiver of the 180-day timeline is requested and the time for filing is extended by the designated officials of USDA or the Agency.

(3) *Filing a complaint*. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(i) *Mail:* U.S. Department of Agriculture, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(ii) *Fax:* (202) 690–7442; or

(iii) *Email: OAC@usda.gov*.

§ 4284.1109 Ineligible applicants.

Applicants will be ineligible to receive funds under this subpart as discussed in paragraphs (a) and (b) of this section.

(a) If the applicant has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant is not eligible to receive a grant until the judgment is paid in full or otherwise satisfied or the delinquency is resolved. The Agency will check the Do Not Pay System to verify this information.

(b) If the applicant is debarred or suspended from receiving Federal assistance, the applicant is not eligible to receive a grant under this subpart. The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended.

§ 4284.1110 General applicant, application, and funding provisions.

(a) *Satisfactory progress*. A lead applicant that has received one or more

grants under this program must make satisfactory progress toward completion of any previously funded projects before the lead applicant will be considered for subsequent funding. Satisfactory progress is defined as 50% or greater of the previous RISE award being expended at the time the Agency makes its eligibility determination for a subsequent application.

(b) *Application submittal.* Applications must be submitted in accordance with the provisions of this subpart unless otherwise specified in a FEDERAL REGISTER notice. Grant applications for financial assistance under this subpart may be submitted at any time with awards made annually based on the application's score and subject to available funding.

(c) *Limit on number of applications.* An applicant can apply for and compete only one RISE project under this subpart per Federal fiscal year, unless otherwise noted in a FEDERAL REGISTER notice.

(d) *Application modification.* Once submitted and prior to Agency award, if an applicant significantly modifies its application or scope of work, the application will be treated as a new application. The submission date of record for such modified applications will be the date the Agency receives the modified application, and the application will be processed by the Agency as a new application under this subpart. Applications that are modified due only to partial funding being available for the selected award are not subject to this provision.

(e) *Incomplete applications.* Applicants must submit a complete application in compliance with § 4284.1115 in order to be considered for funding. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and return the documents, with a written explanation, to the applicant for possible future resubmission. Upon receipt of a complete application by the appropriate Agency office, the Agency will complete its evaluation and will compete the application in accordance with the procedures specified in § 4284.1118, as applicable.

(f) *Application withdrawal.* During the period between the submission of an application and the execution of grant award documents for an application selected for funding, the applicant must notify the Agency, in writing, if the project is no longer viable or the applicant is no longer requesting financial assistance for the project. When an applicant withdrawal request is received by the Agency, the selection will be rescinded and/or the application withdrawn from further processing and funding consideration.

(g) *Time limit on use of grant funds.* Except as provided in paragraph (g)(1) of this section, grant funds not expended within the initial grant term of 4 years from the date the financial assistance agreement was signed by the Agency will be returned to the Agency.

(1) *Time extensions.* The Agency may extend the 4-year grant time limit if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control and that the grantee has established an active jobs accelerator and related programming. Grantees must submit a request for the no-cost extension no later than 90 days before the expiration date of the Financial Assistance Agreement. This request must describe the extenuating circumstances that were beyond its control to complete the project for which the grant was awarded, elements of completion that are required and their timeframe, and why an approval is in the government's best interest. The Agency may extend the grant term up to an additional two-year period. Additional extensions will not be granted.

(2) *Return of funds to the Agency.* Funds that exceed the amount the grantee is entitled to receive under the financial assistance agreement or that are remaining after grant closeout will be returned to the Agency.

§ 4284.1111 Notifications.

(a) *Eligibility.* If an applicant or its project is determined by the Agency to be ineligible at any time, the Agency will inform the applicant, as applicable, in writing of the decision, reasons therefore, and any applicable appeal

rights. No further processing of the application or disbursement of grant proceeds, if funds have been previously awarded, will occur.

(b) *Funding determinations.* Each applicant, as applicable, will be notified of the Agency's funding decision on its application. If the Agency's decision is to not fund an application, the Agency will notify the applicant in writing including the reasons for the determination and any applicable appeal or review rights.

§ 4284.1112 Rural jobs accelerator partnership eligibility.

A rural jobs accelerator partnership (Partnership) organizes key community and regional stakeholders into a working group that focuses on the shared goals and needs of the targeted industry cluster(s). To be eligible for a RISE grant under this subpart, the Partnership must be formed on or after December 20, 2018, and meet each of the criteria specified in paragraphs (a) through (d) of this section. The Agency will determine a Partnership's eligibility based on the criteria herein.

(a) The Partnership must include one or more representatives of the following:

(1) A State, Tribal or local government;

(2) A State, Tribal, or local government entity;

(3) A land-grant college or university or other institution of higher education, as defined in the Higher Education Act of 1965 (20 U.S.C. 1001);

(4) A rural non-profit cooperative; or

(5) A private entity, which may include a business in an industry cluster, economic development or community development organization, financial institution including a community development financial institution, philanthropic organization or labor organization.

(b) The Partnership must have a lead applicant represented by one of the following:

(1) A district organization;

(2) An Indian Tribe or a political subdivision of a Tribe, including a special purpose unit of a tribal government engaged in economic development activities, or a consortium of Indian Tribes;

(3) A State or a political subdivision of a State, including a special purpose unit of a State or local government engaged in economic development activities, or a consortium of political subdivisions;

(4) An institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a consortium of institutions of higher education; or

(5) A public or private nonprofit organization.

(c) The Partnership and its project must serve a rural region, as defined.

(d) The Partnership must clearly define the region that the partnership represents and ensure that the Region encompasses each of the following:

(1) Is large enough to contain critical elements of the industry cluster prioritized by the partnership;

(2) Is small enough to enable close collaboration among members of the partnership;

(3) Includes a majority of communities that are located in the following:

(i) A nonmetropolitan area that qualifies as a low-income community; and

(ii) An area that has access to or has a plan to achieve broadband service, as defined; and

(4) Has a population of 50,000 or fewer inhabitants or, for a region with a population of more than 50,000 inhabitants, is comprised of rural areas and urbanized areas, if any, are the subject of a positive determination by the Under Secretary for Rural Development with respect to a rural-in-character petition, including such a petition submitted concurrently with the application of the partnership for a grant under this section.

(e) One or more members of the Partnership must be located in the targeted region. The Partnership may consist of industry entities and other partners outside of the targeted region.

§ 4284.1113 Project eligibility.

For a project to be eligible to receive a RISE grant under this subpart, the proposed project must meet the requirements specified in paragraphs (a) through (e) of this section. The applicant project outcome must accelerate the formation of new businesses with

high-growth potential, improve the ability of rural businesses and distressed rural communities to create high-wage jobs, and strengthen rural regional economies by engaging in one or more of the following eligible uses:

(a) The construction or purchase of a building to serve as an innovation center located in a rural low-income community which establishes and/or supports a jobs accelerator and any equipment needs of the innovation center to support the jobs accelerator;

(b) Be for the support of programs to be carried out at or in direct partnership with the jobs accelerator or in support of jobs accelerator initiatives including one or more of the following:

(1) Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high-wage job creation, new business formation, business expansion, and economic growth of rural communities;

(2) Integrating rural small businesses into a supply chain;

(3) Creating or expanding commercialization activities for new business formation in rural areas;

(4) Identifying and building assets in rural communities that are crucial to supporting regional economies;

(5) Facilitating the repatriations of high-wage jobs to the United States;

(6) Supporting the deployment of innovative processes, technologies, and products;

(7) Enhancing the capacity of rural small businesses in regional industry clusters, including small and disadvantaged businesses;

(8) Increasing United States exports and business interaction with international buyers and suppliers;

(9) Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners in the region to meet the needs of employers and prepare workers for high-wage jobs in the identified industry clusters, including the upskilling of incumbent workers;

(10) Ensuring rural communities have the capacity and ability to carry out projects relating to housing, community facilities, infrastructure, or community and economic development to support regional industry cluster growth;

(11) Any activities that the Agency may determine to be appropriate, as specified in a FEDERAL REGISTER notice.

(c) Not more than 10 percent of a RISE grant awarded under this section shall be used for indirect costs of the applicant associated with administering the RISE grant. The Agency may increase this percentage as a documented exception on a case by case basis.

(d) The innovation center may be physically located in a rural area as defined in § 4284.1103 or in a non-rural area; as long as assistance being provided is to residents located in a rural area. The innovation center must be located in a rural low-income community if grant funds are used for the construction or purchase of an innovation center.

(e) The applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility. Projects involving the construction of an innovation center as an eligible purpose are subject to the environmental requirements of 7 CFR part 1970.

§ 4284.1114 RISE grant funding.

(a) *Grant amounts.* The amount of grant funds that will be made available to a Partnership under this subpart will not exceed 80 percent of eligible project costs. The Federal share of the cost of any activity carried out using a grant under this section shall not be greater than 80 percent.

(1) *Minimum request.* Unless otherwise specified in a FEDERAL REGISTER notice, the minimum request for a RISE grant application is $500,000.

(2) *Maximum request.* Unless otherwise specified in a FEDERAL REGISTER notice, the maximum request for a RISE grant application is $2,000,000.

(b) *Matching funds.* The applicant is responsible for securing the matching funds for total eligible project costs that are not covered by grant funds. The non-Federal share of the total eligible project costs of any activity carried out using a grant under this section may be in the form of third-party equity contributions including donations and in-kind contributions of fairly-valued goods or services.

(c) *Eligible project costs.* Eligible project costs are only those costs incurred after a complete application has been received by the Agency and are associated with the items identified in paragraphs (c)(1) through (6) of this section. The applicant is responsible for any expenses incurred in developing its application. Each item identified in paragraphs (c)(1) through (6) of this section is only an eligible project cost if it is directly related to, and its use and purpose is limited to the RISE grant project. Any building or equipment purchased with grant proceeds must be owned and controlled by the lead applicant. The following is a list of eligible project costs:

(1) Costs directly related to the purchase or construction of an innovation center;

(2) Costs directly related to operations of an innovation center including purchase of equipment, office supplies, and administrative costs including salaries directly related to the project;

(3) Costs directly associated with support programs to be carried out at or in direct partnership with job accelerators;

(4) Reasonable and customary travel expenses directly related to job accelerators and at rates in compliance with 2 CFR 200.474;

(5) Utility costs, operating expenses of the innovation center and job accelerator programs and associated programs;

(6) Administrative costs of the grantee will not exceed 10% of the grant amount for the duration of the project.

(d) *Ineligible project costs.* Ineligible project costs and uses of funds for RISE projects include, but are not limited to:

(1) Costs associated with preparation of an application package under this notice;

(2) Costs incurred prior to Agency receipt of a complete application for the grant request made under a funding notice;

(3) Funding of any political or lobbying activities;

(4) Payment for assistance to any private business enterprise which does not create and/or support jobs in a rural area of the United States;

(5) Payment of any judgment or debt owed to the United States;

(6) Duplicate current services or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(7) To fund a part of a project that is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the project;

(8) Pass through grants; and

(9) costs associated with hemp production, unless a hemp producer has a valid license issued from an approved State, Tribal or Federal plan as per Section 10113 of the Agriculture Improvement Act of 2018, Public Law 115–334 (verification of valid hemp licenses will occur at the time of award).

§ 4284.1115 RISE grant applications—content.

(a) A potential applicant for RISE may submit a concept proposal not less than 60 days in advance of the application submittal deadline as published in the FEDERAL REGISTER for review by the Agency. This concept proposal will be evaluated, and an encouragement or discouragement letter will be issued to the potential applicant. If a discouragement letter is issued, it will detail any weaknesses evaluated in the Agency's review, though a complete application may still be submitted prior to the application deadline. The concept proposal may be up to 10 pages in length using a minimum of 11-point font. The concept proposal should be in a narrative format and must include the following:

(1) Partnership information including the members and structure of the Partnership, the date formalized, and the governance or leadership board. The information will identify the lead applicant and each partner's ties to the region, their roles in the delivery of the RISE program and any history of previous collaboration between partners. The amount and source of anticipated matching funds will also be provided.

(2) Describe the geographic region to be served including the total population, economic characteristics of the region such as unemployment rates and income levels. Industry sectors, their status, size and economic contribution to the region and all communities including metropolitan statistical areas and nonmetro low income communities within the region should be identified. The availability and planned enhancements of broadband service and other assets of the region should also be identified. If the region to be served has a population of more than 50,000 inhabitants, the applicant must document why they believe the area is ''rural in character'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base.

(3) Identify the industry cluster(s) that will be prioritized by the Partnership with information on the firms and support industries in those clusters. Describe the status of the industry (as emerging, existing, or declining) any existing interconnection and networks within the industry cluster and describe participation and scale of small and disadvantaged businesses within the industry cluster. Describe the opportunities or potential of industry growth in the region and competitive advantages of the region and industry cluster should be highlighted along with opportunities within the industry for the creation of or upgrading to high-wage jobs.

(4) An executive summary, project plan and scope of work must be provided with the applicant's strategy, activities, budget, goals and objectives for the use of RISE funds. The applicant should also provide information on the sustainability of the partnership and jobs accelerator at the conclusion of the RISE grant period.

(b) Unless otherwise specified in a FEDERAL REGISTER notice, applicants may only submit one RISE grant application each Federal fiscal year.

(1) The lead applicant must be registered in the System for Award Management (SAM) and is responsible for submitting a complete application as specified in (b)(2)(i) through (b)(2)(xiv) of this section.

(2) There are no specific limitations on the number of pages or other formatting requirements of an application. Applicants, who submitted a concept proposal to the Agency, will not need to resubmit the information found in (b)(2)(ix) below. The Agency will review and retain this information for application submittal. A complete application will consist of the following components unless otherwise specified in a FEDERAL REGISTER notice:

(i) Form SF–424, ''Application for Federal Assistance;''

(ii) Form SF–424A, ''Budget Information—Non-Construction Programs,'' if applicable;

(iii) Form SF–424C, ''Budget Information—Construction Programs,'' if applicable;

(iv) Form SF–424D, ''Assurances—Construction Programs,'' if applicable;

(v) RD Form 400–1, ''Equal Opportunity Agreement,'' for construction projects only;

(vi) Identify the ethnicity, race, and gender characteristics of the lead applicant's leadership. This information is optional and is not a required component for a complete application;

(vii) Certification that the lead applicant is a legal entity in good standing (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the applicant exists;

(viii) The lead applicant must identify whether or not the lead applicant has a known relationship or association with an Agency employee and, if there is a known relationship, the lead applicant must identify each Agency employee with whom the lead applicant has a known relationship;

(ix) All items required in paragraph (a) of this section must be provided with the application (applicants must provide updates, as appropriate, to any

items previously submitted as a concept proposal under paragraph (a));

(x) Readiness demonstration, which shall be comprised of the following items:

(A) Description of readiness of all partners of the Partnership to contribute to the project including their ability to coordinate activities, finances and outcomes of the project.

(B) Evidence of a formal agreement among partners of the Partnership for delivery of the RISE program.

(C) Evidence of demonstrated readiness in administering the RISE grant, if awarded, including demonstration of potential success in establishment of a jobs accelerator project, which targets an industry cluster and the initiatives of the RISE grant. The application should indicate when activities related to the expected outcomes will commence.

(D) Description of how the project will be marketed in the region and how the Partnership will capture any program impacts and success stories; and

(E) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task.

(xi) Provide documentation on how the RISE project will impact the initiatives below, as applicable, including a brief description of how and when the initiative will be delivered:

(A) Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high-wage job creation, new business formation, business expansion, and economic growth;

(B) Integrating small businesses into a supply chain;

(C) Creating or expanding commercialization activities for new business formation;

(D) Identifying and building assets in rural communities that are crucial to supporting regional economies;

(E) Facilitating the repatriation of high-wage jobs to the United States;

(F) Supporting the deployment of innovative processes, technologies, and products;

(G) Enhancing the capacity of small businesses in regional industry clusters, including small and disadvantaged businesses;

(H) Increasing United States exports and business interaction with international buyers and suppliers;

(I) Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners to meet the needs of employers and prepare workers for high-wage jobs in the identified industry clusters, including the upskilling of incumbent workers;

(J) Ensuring rural communities have the capacity and ability to carry out projects related to housing, community facilities, infrastructure, or community and economic development to support regional industry cluster growth;

(xii) Potential to produce high-wage jobs and benefit rural small and disadvantaged businesses, including a description of the following:

(A) Describe how the project will develop the skills and expertise of the local workforce, entrepreneurs and institutional partners to meet the needs of employers and prepare high-wage jobs in the targeted industry cluster(s), which may also include the upskilling of incumbent worker;

(B) Demonstrate how the project will benefit the skills and expertise of small and disadvantaged businesses, as applicable;

(C) Demonstrate any participation of higher education, applied research institutions, workforce development entities and community-based organizations, that are willing to partner with the project to provide workers with skills relevant to the industry cluster needs of the region, with an emphasis on the use of on-the-job training, classroom occupational training or incumbent worker training, as applicable; and

(D) Demonstrate any participation of investment organizations, venture development organizations, venture capital firms, revolving loan funders, angel investment groups, community lenders, community development financial institutions, rural business investment companies, small business companies (as defined in Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662)), philanthropic organizations, and other institutions focused on expanding access to capital,

are committed partners in the job accelerator partnership and willing to potentially invest in projects emerging from the jobs accelerator.

(xiii) Describe the targeted region, including the following information:

(A) Provide the latest Census Bureau information on the targeted region's median household income.

(B) Provide the latest Census Bureau information on the targeted region's educational attainment, specifically the percentage of the population who hold a bachelor's degree.

(C) Discuss how any direct career training will be provided to existing residents of the region (existing residents being those persons who live in the region at the time of application submission).

(D) Discuss any local support for the RISE project.

(E) Discuss the entrepreneurial commitment to the RISE project.

(F) Discuss any innovative processes and technologies to be utilized in the targeted industry cluster(s) of the RISE project.

(G) Discuss the initial and continuing capital investment in the RISE project.

(H) Discuss any demand for regional and global markets of the product and/or service provided by the targeted industry cluster.

(I) Discuss if the region contains any areas or communities that qualify for federal initiatives.

(J) Elaborate on the current broadband service within the region and any plans to leverage the current broadband service or enhance broadband service in the region through the RISE project.

(xiv) Financial information, including the following:

(A) Identification of matching funds and other sources of funds for the project. Provide written commitments for matching funds and other sources of funds at the time the application is submitted.

(B) Current financial statements and a narrative description demonstrating financial feasibility and sustainability of the project, all of which demonstrate sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion.

(c) Upon receipt of a complete application, the Agency will determine if the applicant and project are eligible and whether the intended outcomes described meet the requirements of the RISE program. If the application is ineligible or not feasible, the Agency will inform the applicant in writing of the reasons for the Agency's determination and no further evaluation of the application will occur.

§ 4284.1116 [Reserved]

§ 4284.1117 Scoring RISE grant applications.

The Agency will score each complete and eligible RISE application using the criteria specified in paragraphs (a) through (g) of this section, unless otherwise specified in a FEDERAL REGISTER notice, with a maximum score of 100 points possible. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. Points shall be awarded at the discretion of the Agency to scoring criteria with a minimum and maximum number of points available. Applicants that demonstrate the experience or ability to deliver the stated criteria will be awarded higher points in that criteria.

(a) *Demonstrated readiness.* The Partnership demonstrated readiness in administering the RISE grant successfully and shows strong documentation indicating the potential for success in establishing a jobs accelerator project which targets an industry cluster and the initiative(s) of the RISE grant program. Points are awarded on a scale of 0 to 10 with a maximum of 10 points being awarded.

(b) *Targeted initiatives.* A maximum of 15 points will be awarded for this criterion based on meeting the targeted initiatives as stated in § 4284.1115(b)(2)(xi) with action narratives outlined in the application on how and when the initiatives will be delivered. More points will be awarded for reasonable initiatives that can be delivered within 12 months of the grant award and for those projects leveraging improvements in high-speed broadband service to the region.

(c) *Project support.* Points will be awarded for the strength of local support of the RISE project and entrepreneurial commitment. A maximum of 15 points can be awarded for application materials that indicate the strength of support for the RISE project. Points will be awarded from the partnership's demonstration of its sources of funding, personnel and technical resources committed to the project, and a focus on the inclusion of institutional partners expanding access to capital and willingness to potentially invest in projects emerging from the jobs accelerator. Points shall also be awarded for demonstrated resources that will sustain the project beyond the term of the RISE grant period.

(d) *Targeted region.* A maximum of 20 points will be awarded for this criterion based on the region's demographics according to the latest census information. The applicant must provide adequate documentation to the latest census information to receive points.

(1) If the targeted region has a median household income of:

(i) 50% or less of state median household income; 5 points will be awarded;

(ii) Over 50% and up to 80% of state median household income; 3 points will be awarded.

(2) If the targeted region residents have the educational attainment of a bachelor's degree by:

(i) 10% or less of the population; 5 points will be awarded;

(ii) Over 10% and up to 30% of the population; 3 points will be awarded.

(3) Existing residents of the targeted region will receive direct career training for new employment or upscaling to a high-wage job; 5 points will be awarded.

(4) If the identified region has fewer than 50,000 residents according to the most recent decennial census; 5 points will be awarded.

(e) *RISE grant funds requested.* A maximum of 10 points will be awarded for this criterion if:

(1) The RISE grant request is for $500,000 to $750,000; 10 points will be awarded.

(2) The RISE grant request is for over $750,000 and up to $1,000,000; 5 points will be awarded.

(f) *Regional impact.* Points are awarded on a scale of 0 to 5 points for each category, with a total maximum of 20 points being awarded for this criterion. To receive points, the applicant must provide documentation to warrant strength on the following criteria, with points awarded for each:

(1) Targeted industry(ies) in the region is classified as an emerging industry;

(2) Applicant demonstrates that the targeted industry(ies) in the region hold a competitive advantage or will enhance their competitive advantage through the RISE project;

(3) Applicant demonstrates that industry provides significant support of regional assets, including broadband, and provides community and economic development support within the region;

(4) The RISE project's forecasted outcomes align with RISE objectives; and

(5) The RISE project will target support to existing industry(ies), whose significance in the region may be stagnant or on the decline but can be enhanced through the benefits of the RISE project.

(g) *Administrator points.* A maximum of 10 points will be awarded, with justification, at the discretion of the Agency Administrator, as announced in a FEDERAL REGISTER notice.

§ 4284.1118 Selecting RISE grant applications for award.

Unless otherwise provided for in a FEDERAL REGISTER notice, RISE grant applications will be evaluated, assigned priority points as described in § 4284.1117 and ranked from highest to lowest score for funding consideration, subject to the availability of funding.

§ 4284.1119 Awarding and Administering RISE Grants.

The Agency will award and administer RISE grants in accordance with departmental regulations and with the procedures and requirements specified in this part.

(a) *Bonding and insurance.* The applicant must provide satisfactory evidence to the Agency that all officers of the applicant organization are authorized to receive and/or disburse Federal funds and are covered by such bonding

and/or insurance requirements as are normally required by the applicant.

(b) *Letter of conditions.* A letter of conditions will be prepared by the Agency, establishing conditions that must be agreed to by the applicant before any obligation of funds can occur. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return the Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' and Form RD 1940–1, ''Request for Obligation of Funds,'' to the Agency if it accepts the conditions of the grant; or if certain conditions cannot be met, the applicant may propose alternate conditions in writing to the Agency. The Agency must resolve or concur with any changes proposed by the applicant to the letter of conditions before the application will be further processed.

(c) *Evidence of matching funds.* The applicant is responsible for providing documentation that the required matching funds for the project have been received or remain committed at the date a financial assistance agreement is executed with the Agency.

(d) *SAM requirements.* Each applicant applying for grant funds (unless an exception, as outlined in 2 CFR 25.110(a) through (d), is approved by the Agency) is required to:

(1) Be registered in SAM before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

(e) *Financial assistance agreement.* Once the requirements specified in paragraphs (a) through (d) of this section have been met, the financial assistance agreement can be executed by the lead applicant and the Agency. The applicant must abide by all requirements contained in the financial assistance agreement, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements might result in termination of the grant and adoption of other available remedies.

(f) *Grant approval.* The lead applicant will be sent an executed copy of the executed Form RD 1940–1, ''Obligation of Funds,'' and the financial assistance agreement.

§ 4284.1120 Servicing RISE grants.

The Agency will service RISE grants in accordance with the requirements specified in departmental regulations, the financial assistance agreement, 7 CFR part 1951, subparts E and O, other than 7 CFR 1951.709(d)(1)(i)(B)(iv), and the requirements in § 4284.1120, except as specified in paragraphs (a) through (d) of this section.

(a) *Inspections.* Grantees must permit periodic inspection of the project records and operations by a representative of the Agency.

(b) *Programmatic changes.* Grantees may make changes to an approved project's costs, scope, contractor, or vendor subject to the provisions specified in paragraphs (b)(1) through (3) of this section. If the changes result in lowering the project's score to below what would have qualified the application for an award, the Agency will not approve the changes.

(1) *Prior Agency approval.* The grantee must obtain prior Agency approval for any change to the scope, contractor, or vendor of the approved project. Changes in project cost will require Agency approval as outlined in paragraph (b)(1)(iii) of this section.

(i) Grantees must submit requests for programmatic changes in writing to the Agency for Agency approval.

(ii) Failure to obtain prior Agency approval of any such change could result in such remedies as suspension, termination, and recovery of grant funds.

(iii) Prior Agency approval is required for all increases in project costs. Prior Agency approval is required for a decrease in project cost only if the decrease would have a negative effect on the long-term viability of the project. A decrease in project cost that does not have a negative impact on long-term viability requires Agency notification prior to disbursement of funds. If project costs decrease, the Agency will reduce the grant amount, if necessary, to maintain a maximum grant amount of no greater than 80 percent of total

project activities as required in § 4284.1114(a).

(2) *Changes in project cost or scope.* If there is a significant change in project cost or any change in project scope, then the grantee's funding needs, eligibility, and scoring, as applicable, will be reassessed. Any decreases in Agency funds will be based on revised project costs and other factors, including Agency regulations used at the time of grant approval.

(3) *Change of contractor or vendor.* When seeking a change, the grantee must submit a written request to the Agency for approval. The proposed new contractor or vendor must have qualifications and experience acceptable to the Agency. The written request must contain sufficient information to demonstrate to the Agency's satisfaction that such change maintains project integrity. If the Agency determines that project integrity continues to be demonstrated, the grantee will be allowed to make the change. If the Agency determines that project integrity is no longer demonstrated, the change will not be approved and the grantee has the following options:

(i) Continue with the original contractor or vendor;

(ii) Find another contractor or vendor that has qualifications and experience acceptable to the Agency to complete the project; or

(iii) Terminate the grant by providing a written request to the Agency. No additional funding will be available from the Agency if costs for the project have increased. Any Agency decision will be provided in writing to the lead applicant.

(c) *Transfer of Applicant or Ownership.* Any change to the jobs accelerator partnership prior to the obligation of funds must be approved by the Agency and will only be considered if the partnership entities are eligible in accordance with § 4284.1112. After the project is obligated and operational, the applicant grantee may request, in writing, a transfer of the financial assistance agreement to another entity. Subject to Agency approval provided in writing, the financial assistance agreement may be transferred to another entity provided:

(1) The entity is determined by the Agency to be an eligible lead applicant entity under this subpart; and

(2) The scope of the project for which the Agency funds will be used remain unchanged.

(d) *Disposition of acquired property.* Grantees must abide by the disposition of acquired asset requirements as outlined in 2 CFR part 200 and departmental regulations.

(e) *Financial management system and records.* The grantee must provide for financial management systems and maintain records as specified in paragraphs (e)(1) and (2) of this section.

(1) *Financial management system.* The grantee will provide for a financial system that will include:

(i) Accurate, current, and complete disclosure of the financial results of each grant;

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income; and

(iii) Effective control over and accountability for all funds. The grantee must adequately safeguard all such assets and must ensure that funds are used solely for authorized purposes.

(2) *Records.* The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three (3) years after completion of the grant period, except that the records must be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(f) *Audit requirements.* If applicable, grantees must provide an annual audit in accordance with 2 CFR part 200, subpart F. The Agency may exercise its right to do a program audit after the

end of the project to ensure that all funding supported eligible project costs.

(g) *Grant disbursement.* The Agency will determine, based on the applicable departmental regulations, whether disbursement of a grant will be by advance or reimbursement. Any funds disbursed in advance of the expense shall be used within three months and the financial need substantiated in writing by the grantee. Form SF–270 or Form SF–271 must be completed by the grantee and submitted to the Agency no more often than monthly to request either an advance or reimbursement of funds.

(h) *Reporting Requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (h) (1) and (2) of this section.

(1) *Federal Financial Reports.* Between grant approval and completion of project (*i.e.*, construction), SF–425, ''Federal Financial Report'' will be required of all grantees as applicable on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency.

(2) *Performance reports.* Grantees shall submit a performance report semi-annually for the first two years, and then annually thereafter, with the first report submitted no later than six months after receiving a grant under this section. This report will include, but not be limited to, the following:

(i) All activities funded with the grant funds;

(ii) Evaluation of progress towards strategic initiatives identified in the application for the grant, including a discussion of any issues which may have occurred;

(iii) Measurement of progress using performance measures during the project period, which may include the following:

(A) High-wage jobs created;

(B) High-wage jobs retained;

(C) Private investment leveraged;

(D) Businesses improved;

(E) Businesses retained;

(F) New business formations;

(G) New products, prototypes and/or services commercialized;

(H) Improvement of the value of existing products or services under development;

(I) Regional collaboration as measured by the number of organizations actively engaged in the industry cluster and/or the number of symposia held by the industry cluster, including organizations that are not located in the immediate region defined by the partnership and/or the number of further cooperative agreements;

(J) Number of educations and training activities relating to the innovation;

(K) Number of innovative products, services and/or prototypes launched;

(L) Number of jobs relocated from outside of the United States to the region;

(M) Amount and number of new equity investments in industry cluster firms;

(N) Amount and number of new loans to industry cluster firms;

(O) Dollar increase in exports resulting from the project activities;

(P) Percentage of employees for which training was provided;

(Q) Improvement in sales of participating businesses;

(R) Improvement in wages paid at participating businesses;

(S) Improvement in income of participating workers;

(T) Any measure determined appropriate by the Agency; and

(U) Broadband development in the targeted region.

(iv) Initiatives and timetable established for the next reporting period; and

(v) Any additional information as found in the annual FEDERAL REGISTER notice.

§§ 4284.1121—4284.1130 [Reserved]

§ 4284.1131 OMB control number.

The information collection requirements in this subpart are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0570–0075.

PART 4285—COOPERATIVE AGREEMENTS

Subpart A—Federal-State Research on Cooperatives Program

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AUTHORITY: 7 U.S.C. 1623; Public Law 103–111, 107 Stat. 1046; 7 U.S.C. 2201; USDA Secretary's Memorandum 1020–39, dated September 30, 1993; and Public Law 103–211, 108 Stat. 3.

SOURCE: 59 FR 38342, July 28, 1994, unless otherwise noted.

Subpart A—Federal-State Research on Cooperatives Program

§ 4285.1 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Federal-State Research on Cooperatives cooperative agreement funds to finance programs of research on cooperatives as authorized under Section 204 (b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). The primary purpose of this matching fund program, via cooperative agreements, is to encourage State Departments of Agriculture and State Agricultural Experiment Stations in conducting research related to agricultural cooperatives.

§ 4285.2 Cooperative agreement purposes.

Rural Development Administration (RDA) or its successor agency may enter into a cooperative agreement with a State agency to provide funds to the State agency to:

(a) Conduct marketing research related to agricultural cooperatives.

(b) Assist other organizations in conducting marketing research related to agricultural cooperatives.

§ 4285.3 Definitions.

As used in this part:

Agreement period. The total period of time approved by the Assistant Administrator for Cooperative Services for conducting the proposed project as outlined in an approved application. The time period is normally no more than 3 years, renewable for cause not to exceed a total of 4 fiscal years.

Agricultural products. Agricultural products include agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed or manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof.

Assistant Administrator for Cooperative Services. The Assistant Administrator for Cooperative Services, Rural Development Administration or its successor agency, USDA or any authorized delegate.

Awarding official. The Assistant Administrator for Cooperative Services or authorized delegate.

Cooperative agreement. A legal instrument reflecting a relationship between the United States Government and a State where:

(1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State agency to carry out research related to cooperatives; and

(2) Substantial involvement is anticipated between RDA or its successor agency, acting for the Federal Government, and the State or other recipient during performance of the research in the agreement.

Cooperator. The State agency designated in the cooperative agreement

award document as the responsible legal entity to whom a cooperative agreement is awarded under this part.

Department. The U.S. Department of Agriculture.

Methodology. The research approach to be followed to carry out the project.

Principal investigator. A single individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the cooperative agreement application and approved by the Assistant Administrator for Cooperative Services.

Project. The particular activity within the scope of one or more of the research program areas identified in the annual program solicitation that is supported by a cooperative agreement under this part.

State agencies. State agencies include, among others, State Agricultural Experiment Stations and State Departments of Agriculture in the 50 States, the Virgin Islands, and Guam, and other appropriate State agencies. Final determination of whether certain 1890 or 1862 Land Grant institutions qualify as state agencies will be determined on a case-by-case basis by the Office of the General Counsel (OGC), USDA.

§§ 4285.4–4285.23 [Reserved]

§ 4285.24 Eligibility.

To enter into a cooperative agreement for these funds, the applicant must:

(a) Be a State Agency as defined in § 4285.3 of this subpart;

(b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of economic, business management, or other needed research area; or

(2) Have the necessary administrative and supervisory controls in place to assure an agreed upon contracting organization has the proven ability to perform responsibly in the field of economic, business management, or other needed research area;

(c) Legally obligate itself to administer cooperative agreement funds, provide adequate accounting of the expenditure of such funds, and comply with the cooperative agreement;

(d) Provide at least 50 percent of the funds necessary to conduct the research from non-federal funds; and

(e) Agree to conduct proposed research related to cooperatives and agricultural marketing.

§ 4285.25 Authorized use of cooperative agreement funds.

Funds received for research under cooperative agreements in this program shall only be used for:

(a) Payment of salaries and necessary employee benefits of personnel as agreed upon in the Cooperative Agreement. Included are salaries and benefits of State employees assigned full-time to one or more projects, or the percent of the salaries and benefits related to project work for State employees assigned part-time to research on one or more projects. Salaries and benefits include basic salary, other compensation such as holiday pay, sick or annual leave, and personnel benefits (quarters allowance, payments to other funds such as employees' life insurance, health benefits, retirement, Federal Insurance Contributions Act (FICA), accident compensation, and similar payments). For any of the benefit items when the State usually pays the employer share, Federal funds may be used to pay the proportionate share of such employer contributions.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment rental. The purchase of office equipment is permissible when the cooperator determines it to be more economical than renting. However, as a general rule, these types of expenses would be classified as indirect costs in multiple funded organizations and would not be an allowable expense. Planned purchases of equipment costing more than $200 per unit must be approved by RDA or its successor agency. Equipment purchased becomes State property pursuant to the cooperative agreement.

(c) Payment of necessary and reasonable costs of printing publications of

research project results. However, all such publications should show the RDA or its successor agency as cooperator in the project and bear the following statement: ''State funds for this project (publication) were matched with Federal funds under the Federal-State Research on Cooperatives Program of the U.S. Department of Agriculture, Rural Development Administration or its successor agency, Cooperative Services, as provided by the Agricultural Marketing Act of 1946 and (appropriate) fiscal year appropriations.''

(d) Purchase of office supplies (such as paper, pens, pencils, and trade magazines) and postage needed for project activities.

(e) Payment of necessary and reasonable travel expenses.

§§ 4285.26–4285.45 [Reserved]

§ 4285.46 Prohibited use of cooperative agreement funds.

(a) The Agricultural Marketing Act prohibits the use of Federal funds to pay for newspaper or periodical space and radio and television time, either directly to the media or indirectly though an advertising agency or other firm. County and State fair exhibits, as well as commodity months and weeks, are also excluded as the research on cooperatives program activities.

(b) Federal funds cannot be used to purchase products or samples of products to give away to the public.

(c) Federal program funds cannot be used to purchase:

(1) Promotional pieces such as point-of-sale materials, promotional kits, billboard space and signs, streamers, automobile stickers, table tents, and placemats; or

(2) Promotion items of a personal gift nature.

(d) Cooperative agreement funds cannot be used to conduct general publicity or information programs designed to build the image of the State's agriculture or of a particular State Department of Agriculture or Agricultural Experiment Station.

(e) Project funds cannot be used to pay for the salary and travel of employees of cooperatives, trade associations, commodity groups, and other industry organizations, or of State personnel while engaged in managing market orders, cooperatives, or other group endeavors.

(f) Commissioners, Directors, and Secretaries of State Departments of Agriculture, Agricultural Experiment Stations, and other State agencies cannot charge their salaries and travel to project funds, with the exception of travel to workshops or conferences devoted to the Federal-State Research On Cooperatives Program.

(g) Funds made available for this program shall not be subject to reduction for indirect costs or for tuition remission.

§ 4285.47 Limitations.

The amount of funds available for the cooperative agreements under this program is limited to the amount appropriated for the fiscal year.

§§ 4285.48–4285.57 [Reserved]

§ 4285.58 How to apply for cooperative agreement funds.

(a) A program solicitation will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, and/or any other appropriate means, as early as practicable each fiscal year in which funds are appropriated for the program.

(b) The annual program solicitation will contain information sufficient to enable all eligible applicants to prepare proposals including:

(1) Desired research topics. The FY–94 solicitation will encourage studies:

(i) To improve the efficiency and effectiveness of marketing of agricultural cooperatives;

(ii) To measure the impact of rural cooperatives on the local economies;

(iii) That help identify opportunities to develop cooperatives for new or alternative market uses of agricultural products;

(iv) That help identify ways to develop agricultural marketing cooperatives; and

(v) Addressing other cooperative marketing objectives;

(2) Explanation of eligibility requirements as outlined in § 4285.24 of this subpart;

(3) The notice of availability of application forms and instructions for submission of applications;

(4) The notice of deadline dates for postmarking proposal packages.

(c) *Format for proposals.* Unless otherwise indicated by the Department in the annual program solicitation, the following information must be submitted for the preparation of proposals under this program:

(1) Form SF–424, ''Application for Federal Assistance.''

(2) Form SF–424A, ''Budget Information—Non-Construction Programs.''

(3) Form SF–424B, ''Assurances—Non-Construction Programs.''

(4) *Statement of Work.* The application must include a narrative statement describing the nature of the proposed research. The Statement of Work must include at least the following:

(i) Title of the Project. The title of the proposal must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the name(s) of the principal investigator(s). Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale behind the proposed research must be presented. The need for the proposed research must be clearly related to marketing and to the needs of agricultural cooperatives.

(iv) Objectives of the project. The specific description of the overall project goal(s) and supporting objectives must be presented.

(v) Procedures for conducting the research. The hypotheses or questions being asked and the methodology being applied to the proposed project must be described. A description of any subcontracting arrangements that will be used for conducting the research must be included. A tentative schedule for conducting major steps involved in the investigation must also be included.

(vi) The expected output of the project. A description of how the results of the research will be disseminated should be presented. Responsibility for publishing any research reports or other types of output should also be identified.

(5) *Collaborative arrangements.* If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (*i.e.*, letters of intent) should be provided to assure reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(6) *Personnel support.* To assist reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following must be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum Vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, it should not include meetings attended, seminars given, or personal data such as birth date, martial status, or community activities; and

(iii) Publication List(s). A chronological list of all publications in refereed journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Also list other non-refereed technical publications that have relevance to the proposed project. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

§§ 4285.59–4285.68 [Reserved]

§ 4285.69 Evaluation and disposition of applications.

(a) *Evaluation.* (1) All proposals received from eligible applicants and

postmarked in accordance with deadlines established in the annual program solicitation shall be evaluated by the Assistant Administrator for Cooperative Services through an RDA or its successor agency staff panel. The Assistant Administrator for Cooperative Services will select the evaluation panel from staff determined to be highly qualified in the subject matter areas that were emphasized in the current year's solicitation and from those with no potential conflict of interest with the applicants.

(2) Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (e.g., relationship of proposal to research topic(s) listed in solicitation). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(3) Proposals will be ranked based on evaluation criteria established in § 4285.70 of this subpart, and financial support levels will be recommended to the Assistant Administrator for Cooperative Services by the panel within the limitation of the total funding available in the fiscal year. The purpose of these evaluations is to provide information upon which the Assistant Administrator for Cooperative Services may make informed judgments in selecting proposals. Such recommendations are advisory only and are not binding on the awarding official of RDA or its successor agency. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* (1) On the basis of the Assistant Administrator for Cooperative Services's evaluation of an application in accordance with paragraph (a) of this section, the Assistant Administrator for Cooperative Services will either:

(i) Approve support using currently available funds;

(ii) Defer support due to lack of funds or need for further evaluation; or

(iii) Disapprove support for the proposed project in whole or in part.

(2) With respect to any approved project, the Assistant Administrator for Cooperative Services will determine the project period during which the project may be funded.

(3) Any deferral or disapproval of an application will not preclude its reconsideration or reapplication during subsequent fiscal years. However, applicants must reapply if reconsideration is desired.

(4) The Assistant Administrator for Cooperative Services will not make a cooperative agreement funding award, based upon an application covered by this part, unless the application has been properly reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

§ 4285.70 Evaluation criteria.

(a) In evaluating the proposal, the RDA or its successor agency staff review panel and the awarding official will take into account the degree to which the proposal demonstrates the following:

(1) Focus on a practical solution to a significant problem involving one or more of the following on a cooperative business basis: the preparation for market, processing, packaging, handling, storing, transporting, distributing, or marketing of agricultural products. (35%)

(2) Adequacy, soundness, and appropriateness of the proposed approach to solve the identified problem. (30%)

(3) Feasibility and probability of success of project solving the problem. (10%)

(4) Qualifications, experience in related work, competence, and availability of project personnel to direct and carry out the project. (25%)

(b) In addition, the cost relative to the expected research results will be considered in determining the awarding of the agreements.

§§ 4285.71–4285.80 [Reserved]

§ 4285.81 Cooperative agreement awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make awards for cooperative agreements to those applicants

whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Assistant Administrator for Cooperative Services as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this part shall be expended solely in accordance with the methods identified in approved application and budget, the regulations of this part, the terms and conditions of the award, the Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, and 421.

(b) *Cooperative agreement award document and notice of award*—(1) *Cooperative agreement award document.* The award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Assistant Administrator for Cooperative Services has competitively awarded funds under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying cooperative agreement number assigned by RDA or its successor agency;

(v) Project period, specifying the amount of time the Agency intends to support the project without requiring recompetition for funds;

(vi) Total amount of Agency financial assistance approved by the Assistant Administrator for Cooperative Services during the project period;

(vii) Legal authority(ies) under which the cooperative agreement is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the cooperative agreement award; and

(ix) Other information or provisions deemed necessary by RDA or its successor agency to carry out its agreement activities or to accomplish the purpose of a particular cooperative agreement.

(2) *Notice of award.* The notice of award of funds for the cooperative agreement will be in the form of a letter providing pertinent instructions or information to the cooperator.

(c) *Types of cooperative agreement instruments.* The types of cooperative agreements shall be as follows:

(1) *New agreement.* This is an agreement instrument by which RDA or its successor agency agrees to support a specified level of effort for a project not supported previously under this program. This type of agreement is approved on the basis of an RDA or its successor agency Staff evaluation review and recommendation.

(2) *Renewal agreement.* This is an agreement instrument by which RDA or its successor agency agrees to provide additional funding for a project beyond the period approved in an original or amended agreement, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it must include a summary of progress to date from the previous agreement period. A renewal agreement shall be based upon new application, de novo review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Supplemental agreement.* This is an instrument by which RDA or its successor agency agrees to provide small amounts of additional funding under a new or renewal cooperative agreement as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually one year or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature will not require additional review.

(d) *Obligation of the Federal Government.* The approval of any application or the award of any funds for a cooperative agreement shall not commit nor obligate the United States in any way to make any renewal, supplemental,

continuation, or other award with respect to any approved application or portion of an approved application.

(e) *Obligation of the cooperator.* The cooperator shall be responsible for:

(1) Making a brief quarterly progress reports at the end of each December, March, June and September to the FSROC program staff for the duration of the research project;

(2) Presenting a final administrative report on the project at the end of the research project; and

(3) Preparing and publishing a report(s) of research findings for dissemination to interested producers, cooperatives, and agencies. Include recognition to financial and other assistance received from the FSROC program.

[59 FR 38342, July 28, 1994, as amended at 79 FR 76018, Dec. 19, 2014]

§ 4285.82 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The cooperator may not, in whole or in part, delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement funds.

(b) *Change in project plans.* (1) The permissible changes by the cooperator, principal investigator(s), or other key project personnel in the approved cooperative agreement shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the cooperator and/or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the Assistant Administrator for Cooperative Services for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes. Normally, no requests for such changes outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or realignment of other key project personnel shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes, except as may be allowed in the terms and conditions of a cooperative agreement award.

(c) *Changes in project period.* The project period determined pursuant to § 4285.81(b) of this subpart may be extended by the Assistant Administrator for Cooperative Services without additional financial support, for such additional period(s) as the Assistant Administrator for Cooperative Services determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall not exceed four (4) years and shall be further conditioned upon prior request by the cooperator and approval in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, except as may be allowed in the terms and conditions of a cooperative agreement award.

(d) *Changes in approved budget.* The terms and conditions of a cooperative agreement will prescribe circumstances under which written Agency approval must be requested and obtained prior to instituting changes in an approved budget.

§§ 4285.83–4285.92 [Reserved]

§ 4285.93 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to cooperative agreement proposals considered for review or to agreements awarded under this part. These include but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

(c) 7 CFR Part 15, Subpart A—USDA implementation of title VI of the Civil Rights Act of 1964 in order to assure nondiscrimination;

(d) 7 CFR Part 1473—National Agricultural, Research, Extension, and Teaching Policy Act Amendments of 1981 if the project involves a college or university;

(e) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(f) 2 CFR part 415, General Program Administrative Regulations;

(g) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(h) 2 CFR part 418, New Restrictions on Lobbying;

(i) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance);

(j) 7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions; 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

(k) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

[59 FR 38342, July 28, 1994, as amended at 79 FR 76018, Dec. 19, 2014]

§ 4285.94 Other conditions.

Post-award requirements. Upon awarding the cooperative agreement, the post-award and audit requirements of 2 CFR part 200, as adopted by USDA in 2 CFR part 400 apply.

[79 FR 76018, Dec. 19, 2014]

§§ 4285.95–4285.99 [Reserved]

§ 4285.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0005. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 36 hours per response with an average of 3.48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0570–0005), Washington, DC 20503.

PART 4287—SERVICING

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4287.400 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1932(a); 7 U.S.C. 1989.

SOURCE: 61 FR 67648, Dec. 23, 1996, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Servicing Business and Industry Guaranteed Loans

SOURCE: 81 FR 36020, June 3, 2016, unless otherwise noted.

§ 4287.101 Introduction.

(a) As of October 1, 2020, this subpart is specifically applicable to and only contains regulations for servicing Business and Industry (B&I) Loans guaranteed by the Agency prior to October 1, 2020 and Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID–19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Other than B&I CARES Act Program Loans and B&I loans guaranteed by the Agency prior to October 1, 2020, this subpart is no longer used for servicing B&I loans guaranteed by the Agency. Requirements for B&I loans guaranteed by the Agency after October 1, 2020 (other than B&I CARES Act Loans) may be found at 7 CFR part 5001.

(b) The lender is responsible for servicing the entire loan and must remain mortgagee and secured party of record, notwithstanding the fact that another party may hold a portion of the loan.

(c) Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms and regulations referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *http://www.rd.usda.gov/publications*. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the Agency.

[81 FR 36020, June 3, 2016, as amended at 85 FR 62196, Oct. 2, 2020]

§ 4287.102 Definitions and abbreviations.

The definitions and abbreviations contained in § 4279.2 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of this chapter applies to this subpart.

§§ 4287.104–4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of this chapter applies to this subpart.

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The lender may contract for services but is ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations. Form RD

4279–4, ''Lender's Agreement,'' is the contractual agreement between the lender and the Agency that sets forth some of the lender's loan servicing responsibilities. These responsibilities include, but are not limited to, periodic borrower visits, the collection of payments, obtaining compliance with the covenants and provisions in the loan agreement, obtaining and analyzing financial statements, ensuring payment of taxes and insurance premiums, maintaining liens on collateral, keeping an inventory accounting of all collateral items, and reconciling the inventory of all collateral sold during loan servicing, including liquidation.

(a) *Lender reports and annual renewal fee.* The lender must report the outstanding principal and interest balance and the current loan classification on each guaranteed loan semiannually (at June 30 and December 31), using either the USDA Lender Interactive Network Connection (LINC) system or Form RD 1980–41, ''Guaranteed Loan Status Report.'' The lender must transmit the annual renewal fee to the Agency in accordance with § 4279.120(b) of this chapter calculated based on the December 31 semiannual status report.

(b) *Loan classification.* The lender must provide the loan classification or rating under its regulatory standards as of loan closing, using either the LINC system or Form 1980–19, ''Guaranteed Loan Closing Report.'' When the lender changes the loan classification in the future, the lender must notify the Agency within 30 days, in writing, of any change in the loan classification.

(c) *Agency and lender conference.* At the Agency's request, the lender must consult with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan agreement are being enforced.

(d) *Borrower financial reports.* The lender must obtain, analyze, and forward to the Agency the borrower's and any guarantor's annual financial statements required by the loan agreement within 120 days of the end of the borrower's fiscal year. States, local government, Indian tribes, institution of higher education, and nonprofit organization borrowers who meet the Federal awards expended threshold established in 2 CFR part 200, subpart F, during their fiscal year must submit an audit conducted in accordance with 2 CFR part 200, subpart F. When the borrower's audit is conducted in accordance with 2 CFR part 200, subpart F, audits must be submitted no later than nine months after the end of the borrower's fiscal year or 30 days after the borrower's receipt of the auditor's report, whichever is earlier. The lender must analyze these financial statements and provide the Agency with a written summary of the lender's analysis, ratio analysis, and conclusions, which, at a minimum, must include trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the lender, any routine servicing actions performed, and other indications of the financial condition of the borrower. Spreadsheets of the financial statements must also be included. Following the Agency's review of the lender's financial analysis, the Agency will provide a written report of any concerns to the lender. Any concerns based upon the Agency's review must be addressed by the lender. If the lender makes a reasonable attempt to obtain financial statements but is unable to obtain the borrower's cooperation, the failure to obtain financial statements will not impair the validity of the Loan Note Guarantee.

(e) *Protection of Agency interests.* If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency to rectify the situation. In determining any loss, the Agency will assess against the lender any cost to the Agency associated with such action.

[81 FR 36020, June 3, 2016, as amended at 87 FR 58021, Sept. 23, 2022]

§§ 4287.108–4287.111 [Reserved]

§ 4287.112 Interest rate changes.

(a) The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The lender must obtain prior Agency concurrence and provide a copy of the modification agreement to the Agency. If any of the guaranteed portion has been purchased by the Agency, the Agency (as a holder) will affirm or reject interest rate change proposals in writing.

(b) No increases in interest rates will be permitted, except the normal fluctuations in approved variable interest rates, unless a temporary interest rate reduction occurred or to change from a variable rate to a fixed rate. Variable rates can be changed to a fixed rate at the request of the borrower, lender, agreement of the holder, if any, and with the Agency's prior written concurrence. After the rate change, the rate must meet the requirements of 7 CFR 4279.125.

(c) The interest rate, after adjustments, must comply with the interest rate requirements set forth in § 4279.125 of this chapter.

(d) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes shall be issued. The lender must provide copies of all legal documents to the Agency.

[81 FR 36020, June 3, 2016, as amended at 87 FR 58021, Sept. 23, 2022]

§ 4287.113 Release of collateral.

(a) Within the parameters of paragraph (c) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) without Agency concurrence if the proceeds generated are used to pay down debt in order of lien priority, reduce the guaranteed loan or to acquire replacement collateral. Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and proceeds used for the normal course of business operations may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan is not in monetary default or liquidation.

(b) If a release of collateral does not meet the requirements of paragraph (a) of this section, the lender must complete a written evaluation to justify the release and obtain written Agency concurrence in advance of the release.

(c) Collateral must remain sufficient to provide for adequate collateral coverage for the outstanding guaranteed loan(s). For a release of collateral request when the Borrower is not in monetary default or liquidation, the lender must support all releases of chattel collateral with a value exceeding $250,000 and real estate collateral with a value exceeding $500,000 with a current appraisal on the collateral being released and otherwise meets the requirements of § 4279.144 of this chapter. All other release of collateral requests must meet the appraisal requirements of § 4279.144 of this chapter. The cost of this appraisal will not be paid for by the Agency. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it has been determined that the Agency may be adversely affected by the release of collateral. The sale or release of the collateral must be based on an arm's length transaction, and there must be adequate consideration for the release of collateral. Such consideration may include, but is not limited to:

(1) Application of the net proceeds from the sale of collateral to the borrower's debts in order of their lien priority against the sold collateral;

(2) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value for which the lender will obtain as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of collateral to the borrower's business operation in such a manner that a significant improvement to the borrower's debt service ability will be clearly demonstrated. The lender's written request must detail how

the borrower's debt service ability will be improved; or

(4) Assurance that the release of collateral is essential for the success of the business, thereby furthering the goals of the program. Such assurance must be supported by written documentation from the lender acceptable to the Agency.

[81 FR 36020, June 3, 2016, as amended at 87 FR 58021, Sept. 23, 2022]

§§ 4287.114–4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred with in writing by the Agency in advance of the subordination. The lender's subordination proposal must include a financial analysis of the servicing action and be fully supported by current financial statements of the borrower and guarantors that are less than 90 days old.

(a) The subordination of lien position must enhance the borrower's business and not adversely affect the potential for collection of the B&I loan through repayment or liquidation.

(b) The lien to which the guaranteed loan is subordinated is for a fixed dollar limit and for a fixed term after which the guaranteed loan lien priority will be restored.

(c) Collateral must remain sufficient to provide for adequate collateral coverage. The Agency may require a current independent appraisal in accordance with § 4279.144 of this chapter.

(d) Lien priorities must remain for the portion of the collateral that was not subordinated.

(e) A subordination to a line of credit cannot exceed 1 year. The term of the line of credit cannot be extended.

§ 4287.124 Alterations of loan instruments.

The lender must neither alter nor approve any alterations or modifications of any loan instrument without the prior written approval of the Agency.

§§ 4287.125–4287.132 [Reserved]

§ 4287.133 Sale of corporate stock.

Any sale or transfer of corporate stock must be approved by the Agency in writing and must be to an eligible individual or entity in accordance with § 4279.108(a) and 4279.108(b) of this chapter. In the event a portion of the borrower's stock is sold or transferred, the Agency may require personal or corporate guarantees from those then owning a 20 percent or more interest in the borrower in accordance with § 4279.132 of this chapter.

§ 4287.134 Transfer and assumption.

The lender may request a transfer and assumption of a guaranteed loan in situations where the total indebtedness, or less than the total indebtedness, is transferred to another eligible borrower on the same or different terms. A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted. Additionally, no transfer and assumption is permitted when the Agency has repurchased 100 percent of the guaranteed portion of the loan.

(a) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to an eligible borrower. The lender must provide credit reports for each individual or entity owning 20 percent or more interest in the transferee, along with such other documentation as the Agency may request to determine eligibility. In accordance with § 4279.132 of this chapter, the Agency will require personal and/or corporate guarantee(s) from all owners that have a 20 percent or more ownership interest in the transferee. When warranted by an Agency assessment of potential financial risk, the Agency may also require guarantees of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and may require security for any guarantee. The new borrower must sign Form RD 4279–1, ''Application for Loan Guarantee,'' and any

guarantors of the guaranteed loan must sign Form RD 4279–14, ''Unconditional Guarantee.''

(b) *Terms.* Loan terms may be changed with the concurrence of the Agency, all holders, and the transferor (including guarantors) if the transferor has not been or will not be released from liability. Any new loan terms must be within the terms authorized by §4279.126 of this chapter.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the fair market value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement of the transferee. The Agency will not pay for the appraisal. If the transfer is for less than the debt, for a release of liability, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) *Proceeds.* The lender must credit any proceeds received from the sale of collateral before a transfer and assumption to the transferor's guaranteed loan debt in order of lien priority before the transfer and assumption is closed.

(e) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered a new loan application, which requires submission of a complete Agency application in accordance with §4279.161(b) of this chapter.

(f) *Credit quality.* The lender will provide a credit analysis of the proposal that addresses capacity (sufficient cash flow to service the debt), capital (net worth), collateral (assets to secure the debt), conditions (of the borrower, industry trends, and the overall economy), and character (integrity of the transferee management) in accordance with §4279.131 of this chapter.

(g) *Appraisals.* If the proposed transfer and assumption is for the full amount of the Agency guaranteed loan, the Agency will not require an appraisal, unless a guarantor is being released from liability in accordance with paragraph (c) of this section. If the proposed transfer and assumption is for less than the full amount of the Agency guaranteed loan, the Agency will require an appraisal on all of the collateral being transferred, and the amount of the assumption must not be less than this appraised value. The lender is responsible for obtaining this appraisal, which must conform to the requirements of §4279.144 of this chapter. The Agency will not pay the appraisal fee or any other costs associated with this transfer.

(h) *Documents.* Prior to Agency approval, the lender must provide the Agency a written legal opinion that the transaction can be properly and legally transferred and assurance that the conveyance instruments will be appropriately filed, registered, and recorded.

(1) The lender must not issue any new promissory notes. The assumption must be completed in accordance with applicable law and must contain the Agency case number of the transferor and transferee. The lender must provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new loan agreement, consistent in principle with the original loan agreement, must be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) Upon execution of the transfer and assumption, the lender must provide the Agency with a written legal opinion that the transfer and assumption is completed, valid, and enforceable, and certification that the transfer and assumption is consistent with the conditions outlined in the Agency's conditions of approval for the transfer and complies with all Agency regulations.

(i) *Loss/repurchase resulting from transfer.* (1) Any resulting loss must be processed in accordance with §4287.158.

(2) If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with §4279.78 of this chapter.

(j) *Related party*. If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(k) *Cash downpayment*. The lender may allow the transferee to make cash downpayments directly to the transferor provided:

(1) The transfer and assumption is made for the total indebtedness;

(2) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(3) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan, as well as any other indebtedness; and

(4) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(l) *Annual renewal fees*. The lender must pay any annual renewal fee published in the FEDERAL REGISTER and then in effect at the time the loan is closed for the duration of the Loan Note Guarantee. Annual renewal fees are due for the entire year even if the Loan Note Guarantee is terminated before the end of the year.

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender is prohibited from selling or transferring the entire loan without the prior written approval of the Agency. Because the Loan Note Guarantee is associated with a specific promissory note and cannot be transferred to a new promissory note, the lender must transfer the original promissory note to the new lender, who must agree to its current loan terms, including the interest rate, secondary market holder (if any), collateral, loan agreement terms, and guarantors. The new lender must also obtain the original Loan Note Guarantee, original personal and corporate guarantee(s), and the loan payment history from the transferor lender. If the new lender wishes to modify the loan terms after acquisition, the new lender must submit a request to the Agency.

(a) The Agency may approve the substitution of a new lender if:

(1) The proposed substitute lender:

(i) Is an eligible lender in accordance with § 4279.29 of this chapter and is approved as such;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) The substitution of the lender is requested in writing by the borrower, the proposed substitute lender, and the original lender of record, if still in existence.

(b) The Agency will not pay any loss or share in any costs (*e.g.*, appraisal fees and environmental assessments) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes situations where a lender is merged with or acquired by another lender and situations where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(c) Where the lender has failed and been taken over by the FDIC and the loan is liquidated by the FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if the FDIC were an approved substitute lender.

(d) In cases where there is a substitution of the lender, the Agency and the new lender must execute a new Form RD 4279–4, ''Lender's Agreement,'' unless a valid Lender's Agreement already exists with the new lender.

§ 4287.136 Lender failure.

(a) *Uninsured lender*. The lender or insuring agency cannot arbitrarily change the Lender's Agreement and related documents on the guaranteed

loan, and the Agency will make the successor to the failed institution aware of the statutory and regulatory requirements. If the acquiring institution is not an eligible lender as set forth in §4279.29 of this chapter, the Loan Note Guarantee will not be enforceable, and the institution must promptly apply to become an eligible lender. The failure of the uninsured lender to become an eligible lender will result in the Loan Note Guarantee being unenforceable. A new lender approved by the Agency will be afforded the benefits of the Loan Note Guarantee in the sharing of any loss and eligible expenses subject to the limits that are set forth in the regulations governing the program.

(b) *Insured lender.* The FDIC and the Agency have entered into an Inter-Agency Agreement and all parties are to abide by this Agreement or successor document(s). This document sets forth the duties and responsibilities of each Agency when an institution fails. The lender must take such action that a reasonably prudent lender would take if it did not have a Loan Note Guarantee to protect the lender and Agency's mutual interest.

§§4287.137–4287.144 [Reserved]

§4287.145 Default by borrower.

The lender's primary responsibilities in default are to act prudently and expeditiously, to work with the borrower to bring the account current or cure the default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in a manner that will minimize any potential loss. The lender may initiate liquidation subject to submission and approval of a complete liquidation plan.

(a) The lender must notify the Agency when a borrower is more than 30 days past due on a payment and the delinquency cannot be cured within 30 days or when a borrower is otherwise in default of covenants in the loan agreement by promptly submitting Form RD 1980–44, ''Guaranteed Loan Borrower Default Status,'' or processing the Default Status report in LINC. The lender must update the loan's status each month using either Form RD 1980–44 or the LINC Default Status report until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender must meet with the Agency and, if practical, the borrower to discuss the situation.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Curative actions (subject to the rights of any holder and Agency concurrence) include, but are not limited to:

(i) Deferment of principal and/or interest payments;

(ii) An additional unguaranteed temporary loan by the lender to bring the account current;

(iii) Reamortization of or rescheduling the payments on the loan;

(iv) Transfer and assumption of the loan in accordance with §4287.134;

(v) Reorganization;

(vi) Liquidation; and

(vii) Changes in interest rates with the Agency's, the lender's, and any holder's approval. Any interest payments must be adjusted proportionately between the guaranteed and unguaranteed portion of the loan.

(2) The term of any deferment, rescheduling, reamortization, or moratorium will be limited to the lesser of the remaining useful life of the collateral or remaining limits as set forth in §4279.126 of this chapter (excluding paragraph (c)). During a period of deferment or moratorium on the guaranteed loan, the lender's unguaranteed loan(s) and any stockholder loans must also be under deferment or moratorium. Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for success and the remaining life of the collateral supports the action.

(3) In the event of a loss or a repurchase, the lender cannot claim default or penalty interest, late payment fees, or interest on interest. If the restructuring includes the capitalization of interest, interest accrued on the capitalized interest will not be covered by the guarantee. Consequently, it is not eligible for repurchase from the holder and cannot be included in the loss claim.

(c) Debt write-downs for an existing borrower, where the same principals retain control of and decisionmaking authority for the business, are prohibited, except as directed or ordered under the Bankruptcy Code.

(d) For loans closed on or after August 2, 2016, in the event of a loss, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date.

(e) For loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual. The guarantee will not cover interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter.

(f) For repurchases of guaranteed loans, refer to §4279.78 of this chapter.

§§ 4286.146–4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Lenders must exercise sound judgment in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Lenders cannot make protective advances in lieu of additional loans. A protective advance claim will be paid only at the time of the final report of loss payment.

(a) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued interest times the percentage of guarantee regardless of any protective advances made.

(b) In the event of a final loss, protective advances will accrue interest at the note rate and will be guaranteed at the same percentage of guarantee as provided for in the Loan Note Guarantee. The guarantee will not cover interest on the protective advance accruing after 90 days from the most recent delinquency effective date.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when the cumulative total of protective advances exceeds $200,000 or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less.

§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure within a reasonable period of time, the lender, with Agency consent, must liquidate the loan. In accordance with §4287.145(d), for loans closed on or after August 2, 2016, in the event of a loss, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date.

(a) *Decision to liquidate.* A decision to liquidate must be made when the lender determines that the default cannot be cured through actions such as those contained in §4287.145, or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when one or more of the following exist:

(1) A loan is 90 days behind on any scheduled payment and the lender and the borrower have not been able to cure the delinquency through actions such as those contained in §4287.145.

(2) It is determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender is uncooperative in resolving the problem or the Agency or lender has reason to believe the borrower is not acting in good faith, and it would improve the position of the guarantee to liquidate immediately.

(b) *Repurchase of loan.* When the decision to liquidate is made, if any portion of the loan has been sold or assigned under §4279.75 of this chapter and not already repurchased, provisions will be made for repurchase in accordance with §4279.78 of this chapter.

(c) *Lender's liquidation plan.* The lender is responsible for initiating actions immediately and as necessary to assure

a prompt, orderly liquidation that will provide maximum recovery. Within 30 days after a decision to liquidate, the lender must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include at least the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger, if available, that reflects the current loan balance, accrued interest to date, and the method of computing the interest;

(2) A full and complete list of all collateral, including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from guarantors;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's most recently available financial statements;

(6) Copies of each guarantor's most recently available financial statements;

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the Agency on the progress of liquidation, not to exceed every 60 days;

(9) Estimated protective advance amounts with justification;

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined. A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and must be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens;

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(12) Legal opinions, if needed by the lender's legal counsel; and

(13) An estimate of fair market and potential liquidation value of the collateral. If the value of the collateral is $250,000 or more, the lender must obtain an independent appraisal report meeting the requirements of §4279.144 of this chapter for the collateral securing the loan, which reflects the fair market value and potential liquidation value. For collateral values under this threshold, lenders must follow their primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value. The liquidation appraisal of the collateral must evaluate the impact on market value of any release of hazardous substances, petroleum products, or other environmental hazards. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender. In order to assure prompt action, the liquidation plan can be submitted with an estimate of collateral value, and the liquidation plan may be approved by the Agency subject to the results of the final liquidation appraisal.

(d) *Approval of liquidation plan.* The lender's liquidation plan must be approved by the Agency in writing. The lender and Agency must attempt to resolve any Agency concerns. If the liquidation plan is approved by the Agency, the lender must proceed expeditiously with liquidation and must take all legal action necessary to liquidate the loan in accordance with the approved liquidation plan. The lender must update or modify the liquidation plan when conditions warrant, including a change in value based on a liquidation appraisal. If the liquidation plan is not approved by the Agency, the lender must take such actions that a reasonably prudent lender would take without a guarantee and keep the Agency informed in writing. The lender

must continue to develop a liquidation plan in accordance with this section.

(e) *Acceleration.* The lender will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other legal actions required. The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower. The lender must obtain Agency concurrence prior to the acceleration of the loan if the sole basis for acceleration is a nonmonetary default. In the case of monetary default, prior approval by the Agency of the lender's acceleration is not required, although Agency concurrence must still be given not later than at the time the liquidation plan is approved. The lender will provide a copy of the acceleration notice or other acceleration document to the Agency.

(f) *Filing an estimated loss claim.* When the lender owns any of the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation is expected to exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, for loans closed on or after August 2, 2016, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date. The Agency will promptly process the loss claim in accordance with applicable Agency regulations as set forth in § 4287.158.

(g) *Accounting and reports.* The lender must account for funds during the period of liquidation and must, in accordance with the Agency-approved liquidation plan, provide the Agency with reports on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(h) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender must transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds using Form RD 1980–43, ''Lender's Guaranteed Loan Payment to Rural Development.''

(i) *Abandonment of collateral.* When the lender adequately documents that the cost of liquidation would exceed the potential recovery value of certain collateral and receives Agency concurrence, the lender may abandon that collateral. When the lender makes a recommendation for abandonment of collateral, it must comply with 7 CFR part 1970, ''Environmental Policies and Procedures.''

(j) *Personal or corporate guarantees.* The lender must take action to maximize recovery from all personal and corporate guarantees, including seeking deficiency judgments when there is a reasonable chance of future collection.

(k) *Compromise settlement.* Compromise settlements must be approved by the lender and the Agency. Complete current financial information on all parties obligated for the loan must be provided. At a minimum, the compromise settlement must be equivalent to the value and timeliness of that which would be received from attempting to collect on the guarantee. The guarantor cannot be released from liability until the full amount of the compromise settlement has been received. In weighing whether the compromise settlement should be accepted, among other things, the Agency will weigh whether the comparison is more financially advantageous than collecting on the guarantee.

(l) *Litigation.* In all litigation proceedings involving the borrower, the lender is responsible for protecting the rights of the lender and the Agency with respect to the loan and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the lender is not adequately protecting the rights of the lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the lender, on behalf of the lender, or the Agency with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated

with such action will be assessed against the lender.

§4287.158 Determination of loss and payment.

Unless the Agency anticipates a future recovery, the Agency will make a final settlement with the lender after the collateral is liquidated or after settlement and compromise of all parties has been completed. The Agency has the right to recover losses paid under the guarantee from any party that may be liable.

(a) *Report of loss form.* Form RD 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for reporting and calculating all estimated and final loss determinations.

(b) *Estimated loss.* In accordance with the requirements of §4287.157(f), the lender must prepare an estimated loss claim, based on liquidation appraisal value, and submit it to the Agency. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral.

(1) Such estimate will be prepared and submitted by the lender on Form RD 449–30 using the basic formula as provided on the report, except that the liquidation appraisal value will be used in lieu of the amount received from the sale of collateral. Interest accrual eligible for payment under the guarantee on the defaulted loan will be discontinued when the estimated loss is paid.

(2) A protective advance claim will be paid only at the time of the final report of loss payment.

(c) *Final loss.* Within 30 days after liquidation of all collateral is completed (except for certain unsecured personal or corporate guarantees as provided for in this section), the lender must prepare a final report of loss and submit it to the Agency. If the lender holds all or a portion of the guaranteed loan, the Agency will not guarantee interest to the lender accruing after 90 days from the most recent delinquency effective date. The Agency will not guarantee interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender must make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts reported as losses on Form RD 449–30.

(1) The lender must make a determination regarding the collectability of unsecured personal and corporate guarantees. If reasonably possible, the lender must promptly collect or otherwise dispose of such guarantees in accordance with §4287.157(j) prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the lender must file the report of loss when all other collateral has been liquidated. Unsecured personal or corporate guarantees outstanding at the time of the submission of the final loss claim will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency. Debts owed to the Agency (Federal debt) may be collected using DCIA authority. The Agency may consider a compromise settlement of Federal debt after it has processed a final report of loss and issued a 60 day due process letter. Any funds collected on Federal debt will not be shared with the lender.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been accounted for and applied correctly to the loan.

(3) The lender must provide receipts and a breakdown of any protective advance amount as to the payee, purpose

of the expenditure, date paid, and evidence that the amount expended was proper.

(4) The lender must provide receipts and a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper. Liquidation expenses are recoverable only from liquidation proceeds. The Agency may approve attorney/legal fees as liquidation expenses provided that the fees are reasonable, require the assistance of attorneys, and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its employees.

(5) The lender must support accrued interest by documenting how the amount was accrued. If the interest rate was a variable rate, the lender must include documentation of changes in both the selected base rate and the loan rate.

(6) The Agency will pay loss payments within 60 days after it has reviewed the complete final loss report and accounting of the collateral.

(d) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Liquidation expenses.* The Agency will deduct liquidation expenses from the liquidation proceeds of the collateral. The lender cannot claim any liquidation expenses in excess of liquidation proceeds. Any changes to the liquidation expenses that exceed 10 percent of the amount proposed in the liquidation plan must be approved by the Agency. Reasonable attorney/legal expenses will be shared by the lender and Agency equally, including those instances where the lender has incurred such expenses from a trustee conducting the liquidation of assets. The lender cannot claim the guarantee fee or the annual renewal fee as authorized liquidation expenses, and no in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(f) *Rent.* The lender must apply any net rental or other income that it receives from the collateral to the guaranteed loan debt.

(g) *Payment.* Once the Agency approves Form RD 449–30 and supporting documents submitted by the lender:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

§§ 4287.159–4287.168 [Reserved]

§ 4287.169 Future recovery.

Unless notified otherwise by the Agency, after the final loss claim has been paid, the lender must use reasonable efforts to attempt collection from any party still liable on any loan that was guaranteed. Any net proceeds from that effort must be split pro rata between the lender and the Agency based on the percentage of guarantee. Any collection of Federal debt made by the United State from any liable party to the guaranteed loan will not be split with the lender.

§ 4287.170 Bankruptcy.

(a) *Lender's responsibilities.* It is the lender's responsibility to protect the guaranteed loan and all of the collateral securing it in bankruptcy proceedings, including taking actions that result in greater recoveries and not taking actions that would not likely be cost-effective. These responsibilities include, but are not limited to, the following:

(1) Monitoring confirmed bankruptcy plans to determine borrower compliance, and, if the borrower fails to comply, seeking a dismissal of the bankruptcy plan;

(2) Filing a proof of claim, where necessary, and all the necessary papers and pleadings concerning the case;

(3) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(4) Requesting modifications of any bankruptcy plan whenever it appears that additional recoveries are likely; and

(5) Keeping the Agency adequately and regularly informed in writing of all aspects of the proceedings.

(6) The lender must submit a default status report when the borrower defaults and every 30 days until the default is resolved or a final loss claim is paid by the Agency. The default status report will be used to inform the Agency of the bankruptcy filing, the plan confirmation date, when the plan is complete, and when the borrower is not in compliance with the plan.

(7) With written Agency consent, the lender and Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings.

(b) *Reports of loss during bankruptcy.* In bankruptcy proceedings, payment of loss claims will be made as provided in this section. Attorney/legal fees and protective advances as a result of a bankruptcy are only recoverable from liquidation proceeds.

(1) *Estimated loss payments.* (i) If a borrower has filed for bankruptcy and all or a portion of the debt has been discharged, the lender must request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the bankruptcy. All subsequent claims of the lender during bankruptcy will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the bankruptcy plan. Once the bankruptcy plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the bankruptcy plan.

(ii) The lender must use Form RD 449–30 to request an estimated loss payment and to revise any estimated loss payments during the course of the bankruptcy plan. The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim.

(iii) Upon completion of a bankruptcy plan, the lender must complete Form RD 1980–44 and forward it to the Agency.

(iv) Upon completion of the bankruptcy plan, the lender must provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the bankruptcy is less than the estimated loss, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender must submit a revised estimated loss claim in order to obtain payment of the additional amount owed by the Agency to the lender.

(2) *Bankruptcy loss payments.* (i) The lender must request a bankruptcy loss payment of the guaranteed portion of the accrued interest and principal discharged by the court for all bankruptcies when all or a portion of the debt has been discharged. Unless a court approves a subsequent change to the bankruptcy plan that is adverse to the lender, only one bankruptcy loss payment is allowed during the bankruptcy. Once the court has discharged all or part of the guaranteed loan and any appeal period has run, the lender must submit the documentation necessary for the Agency to review and adjust the bankruptcy loss claim to reflect any actual discharge of principal and interest.

(ii) The lender must use Form RD 449–30 to request a bankruptcy loss payment and to revise any bankruptcy loss payments during the course of the bankruptcy. The lender must include with the bankruptcy loss claim documentation to support the claim, as well as any revisions to this claim.

(iii) Upon completion of a bankruptcy plan, restructure, or liquidation, the lender must either complete Form RD 1980–44 and forward it to the Agency or enter the data directly into LINC.

(iv) If an estimated loss claim is paid during a bankruptcy and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) *Interest rate losses as a result of bankruptcy reorganization.* (i) For guaranteed loans closed prior to August 2, 2016:

(A) Interest losses sustained during the period of the bankruptcy plan will be processed in accordance with paragraph (b)(1) of this section.

(B) Interest losses sustained after the bankruptcy plan is confirmed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction that extends beyond the period of the bankruptcy plan.

(C) If a bankruptcy loss claim is paid during the operation of the bankruptcy plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(ii) For guaranteed loans closed on or after August 2, 2016, the Agency will not compensate the lender for any difference in the interest rate specified in the Loan Note Guarantee and the rate of interest specified in the bankruptcy plan.

(4) *Final bankruptcy loss payments.* The Agency will process final bankruptcy loss payments when the loan is fully liquidated.

(5) *Application of loss claim payments.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a court attempts to direct the payments to be applied in a different manner, the lender must immediately notify the Agency in writing.

(6) *Protective advances.* If approved protective advances, as authorized by § 4287.156, were incurred in connection with the initiation of liquidation action and were required to provide repairs, insurance, etc., to protect the collateral as a result of delays in the case of failure of the borrower to maintain the security prior to the borrower having filed bankruptcy, the protective advances together with accrued interest, are payable under the guarantee in the final loss claim.

(c) *Expenses during bankruptcy proceedings.* (1) Under no circumstances will the guarantee cover liquidation expenses in excess of liquidation proceeds.

(2) Expenses, such as reasonable attorney/legal fees and the cost of appraisals incurred by the lender as a direct result of the borrower's bankruptcy filing, are considered liquidation expenses. Liquidation expenses must be reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency. Lender's in-house expenses, which are those expenses that would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee. Liquidation expenses must be deducted from collateral sale proceeds. The lender and Agency will share liquidation expenses equally. To accomplish this, the lender will deduct 50 percent of the liquidation expenses from the collateral sale proceeds.

(3) When a bankruptcy proceeding results in a liquidation of the borrower by a bankruptcy trustee, expenses will be handled as directed by the court, and the lender cannot claim liquidation expenses for the sale of the assets.

(4) If the property is abandoned by the bankruptcy trustee and any relief from the stay has been obtained, the lender will conduct the liquidation in accordance with § 4287.157.

(5) Proceeds received from the partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs associated with the partial sale, such as freight, labor, and sales commissions. Reasonable use of proceeds for this purpose must be documented with the final loss claim.

(6) Reasonable and customary liquidation expenses in bankruptcy may be deducted from liquidation proceeds of collateral.

[81 FR 36020, June 3, 2016, as amended at 81 FR 54477, Aug. 16, 2016]

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

The Loan Note Guarantee will terminate under any of the following conditions:

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.199 [Reserved]

§ 4287.200 OMB control number.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under OMB Control Number 0570–0069 for OMB approval.

Subpart D—Servicing Biorefinery, Renewable Chemical, and Biobased Manufacturing Assistance Guaranteed Loans

SOURCE: 80 FR 36447, June 24, 2015, unless otherwise noted.

§ 4287.301 Introduction.

(a) This subpart supplements 7 CFR part 4279, subpart C by providing additional requirements and instructions for servicing and liquidating all loans guaranteed under 7 CFR part 4279, subpart C.

(b) The Lender is responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan must continue to be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) All loan servicing actions under this subpart, except for those identified in § 4287.307(a) through (g), are subject to Agency concurrence. Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Whenever Agency approval is required, such servicing action must be for Good Cause.

(d) Copies of all forms, regulations, and Instructions referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program*. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the Agency.

§ 4287.302 Definitions.

The definitions and abbreviations contained in § 4279.202 of this chapter apply to this subpart.

§ 4287.303 Exception authority.

The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4287.304–4287.305 [Reserved]

§ 4287.306 Appeals.

Borrowers, Lenders, and Holders have appeal or review rights for Agency decisions made under this subpart. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The Borrower, Lender, and Holder can appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the Borrower, the Lender and Borrower must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the Lender may be appealed by the Lender only. An adverse decision that only impacts the Holder may be appealed by the Holder only. A decision by a Lender adverse to the interest of the Borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

§ 4287.307 Routine servicing.

The Lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonable Lender would perform in servicing its own portfolio of loans that are not guaranteed. The guarantee is unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, Negligent Loan Servicing or Grossly Negligent Loan Servicing as established in the Loan Note Guarantee, or failure to maintain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. The Lender may contract for services and may rely on certain written materials (including but not limited to certifications, evaluations, appraisals, financial statements and other reports) to be provided by the Borrower or other qualified third parties (including, among others, one or more independent engineers, appraisers, accountants, consultants or other experts) but is ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations. The Lender's Agreement is the contractual agreement between the Lender and the Agency that sets forth some of the Lender's loan servicing responsibilities. This responsibility includes but is not limited to periodic Borrower visits, the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, ensuring payment of taxes and insurance premiums, and maintaining liens on Collateral, and keeping an inventory accounting of all Collateral items and reconciling the inventory of all Collateral sold during loan servicing, including liquidation.

(a) *Periodic reports.* Each Lender must submit reports by the end of each Calendar Quarter, unless more frequent ones are needed as determined by the Agency to meet the financial interests of the United States, regarding the condition of its Agency guaranteed loan portfolio (including Borrower status and Loan Classification) and any Material Adverse Change in the general financial condition of the Borrower since the last report was submitted. The Lender must report the outstanding principal and Interest balance and the current Loan Classification on each guaranteed loan using either the USDA Lender Interactive Network Connection (LINC) system or Form RD 1980–41, ''Guaranteed Loan Status Report.''

(b) *Default reports.* Lenders must submit monthly Default reports, including Borrower payment history, for each loan in monetary Default using a form approved by the Agency.

(c) *Annual Renewal Fee.* The Lender must transmit the Annual Renewal Fee to the Agency in accordance with § 4279.231(b) of this chapter calculated based on the December 31 loan status report.

(d) *Agency and Lender conference.* At the Agency's request, the Lender must consult with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

(e) *Borrower Financial reports.* The Lender must obtain, analyze, and forward to the Agency the Borrower's and any guarantor's financial statements required by the Loan Agreement within 45 days of the end of each Calendar Quarter and audited financial statements within 180 days of the end of the Borrower's fiscal year. The Lender must analyze these financial statements and provide the Agency with a written summary of the Lender's analysis, ratio analysis, and conclusions, which, at a minimum, must include trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the Lender, any routine servicing actions performed, and other indications of the financial condition of the Borrower. Spreadsheets of the financial statements must also be included. Following the Agency's review of the Lender's financial analysis, the Agency will provide a written report of any concerns to the Lender. Any concerns based upon the Agency's review must be addressed by the Lender. If the Lender makes a reasonable attempt to obtain financial statements, but is unable to obtain the Borrower's cooperation, the failure to obtain financial

statements will not impair the validity of the Loan Note Guarantee.

(f) *Audits.* Any Public Body, nonprofit corporation or Indian Tribe that receives a guaranteed loan that meets the thresholds established by 2 CFR part 200, subpart F, must provide an audit for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a Public Body, nonprofit corporation, or Indian Tribe in accordance with this paragraph (f) will be considered adequate to meet the audit requirements of the Program for that year.

(g) *Protection of Agency interests.* If the Agency determines that the Lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the Lender must cooperate with the Agency to rectify the situation. In determining any loss, the Agency will assess against the Lender any cost to the Agency associated with such action.

(h) *Additional loans.* The Lender must notify the Agency in writing when the Lender makes any additional expenditures or new loans to the Borrower. The Lender may make additional expenditures or new loans to a Borrower with an outstanding loan guaranteed only with prior written Agency approval. The Agency will only approve additional expenditures or new loans where the expenditure or loan will not violate one or more of the loan covenants of the Borrower's Loan Agreement. Any additional expenditure or loan made by the Lender must be junior in priority to the BAP loan guaranteed under 7 CFR part 4279 except for Working Capital loans for which the Agency may consider a subordinate lien provided it is consistent with the conditional provisions specified in §4279.235(a) of this chapter and in §4287.323.

§§4287.308–4287.311 [Reserved]

§4287.312 Interest rate changes.

(a) *Reductions.* The Borrower, Lender, and Holder (if any) may collectively initiate a permanent or temporary reduction in the Interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Lender must obtain prior Agency concurrence and must provide a copy of the modification agreement to the Agency. If any of the guaranteed portion has been purchased by the Agency, the Agency (as a Holder) will affirm or reject Interest rate change proposals in writing.

(1) Fixed rates can be changed to variable rates to reduce the Borrower's Interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(2) The Interest rates, after adjustments, must comply with the requirements for Interest rates on new loans as established by §4279.233 of this chapter.

(3) The Lender is responsible for the legal documentation of Interest rate changes by an endorsement or any other legally effective amendment to the Promissory Note; however, no new Promissory Notes may be issued. The Lender must provide copies of all legal documents to the Agency.

(b) *Increases.* Increases in fixed Interest rates and increases in variable rate basis are not permitted (except the normal fluctuations in approved variable Interest rates), unless a temporary Interest rate reduction occurred. Any increase in rates must be for Good Cause.

§4287.313 Release of Collateral.

The Lender must inspect the Collateral as often as necessary to properly service the loan. The Agency must give prior written approval for the release of Collateral, except as specified in paragraph (a) of this section or where the release of Collateral is made of Collateral under the abundance of caution provision of the applicable security agreement, subject to the provisions of paragraph (c) of this section. Appraisals on the Collateral being released are required on all transactions exceeding $250,000 and will be at the expense of

the Borrower. The appraisal must meet the requirements of § 4279.244 of this chapter. The sale or release of Collateral must be based on an Arm's Length Transaction, unless otherwise approved by the Agency in writing.

(a) Within the parameters of paragraph (c) of this section, Lenders may, over the life of the guaranteed loan, release Collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement Collateral. Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and the proceeds used for the normal course of business operations, may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan has not been accelerated.

(b) If a release of Collateral does not meet the requirements of paragraph (a) of this section, the Lender must complete a written evaluation to justify the release and must obtain written Agency concurrence in advance of the release.

(c) The Lender must support all releases of Collateral with a value exceeding $250,000 with a current appraisal on the Collateral being released. The appraisal must meet the requirements of § 4279.244 of this chapter. The cost of this appraisal will not be paid for by the Agency. The Agency may, at its discretion, require an appraisal of the remaining Collateral in cases where it has been determined that the Agency may be adversely affected by the release of Collateral. The sale or release of the Collateral must be at Fair Market Value based on an Arm's Length Transaction, and there must be adequate consideration for the release of Collateral. Such consideration may include, but is not limited to:

(1) Application of the net proceeds from the sale of Collateral to the Borrower's debts in order of their lien priority in the sold Collateral;

(2) Use of the net proceeds from the sale of Collateral to purchase other Collateral of equal or greater value which the Lender will obtain as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of Collateral to the Borrower's business operation in such a manner that a significant improvement to the Borrower's debt service ability is clearly demonstrated. The Lender's written request must detail how the Borrower's debt service ability will be improved; and

(4) Assurance that the release of Collateral is essential for the success of the business, thereby furthering the goals of the Program. Such assurance must be supported by written documentation from the Lender acceptable to the Agency.

(d) Any release of Collateral must not adversely affect the Project's operation or financial condition.

§§ 4287.314–4287.322 [Reserved]

§ 4287.323 Subordination of lien position.

A Subordination of the Lender's lien position must be requested in writing by the Lender and concurred with in writing by the Agency in advance of the Subordination. The Lender's Subordination proposal must include a financial analysis of the servicing action and be fully supported by current financial statements of the Borrower and guarantors that are less than 90 days old.

(a) The Subordination of the Lender's lien position must enhance the Borrower's business and be in the best financial interest of the Agency.

(b) The lien to which the guaranteed loan is subordinated is for a fixed dollar limit and for a fixed term after which the guaranteed loan lien priority will be restored. Notwithstanding, a Subordination of lien position on inventory and accounts receivable may be made to a line of credit.

(c) Collateral must remain sufficient to provide for adequate Collateral coverage. The Agency may require a current independent appraisal in accordance with § 4279.244 of this chapter.

(d) Lien priorities must remain for the portion of the loan Collateral that was not subordinated.

(e) Subordination of the Lender's lien position must be for Good Cause.

§ 4287.324 Alterations of loan instruments.

The Lender must neither alter nor approve any alterations or modifications of any loan instrument without the prior written approval of the Agency.

§§ 4287.325–4287.333 [Reserved]

§ 4287.334 Transfer and Assumption.

The Lender may request a Transfer and Assumption of a guaranteed loan when the total indebtedness, or less than the total indebtedness, is assumed by another Borrower. If the assumption is for less than the total indebtedness of the guaranteed loan, the Transfer and Assumption must be an Arm's Length Transaction and the transfer must be of all loan Collateral. In the event of Default of the guaranteed loan, a Transfer and Assumption of the Borrower's operation and guaranteed loan can be accomplished before or after the loan goes into liquidation. However, if the Collateral has been purchased through foreclosure or the Borrower has conveyed title to the Lender, no Transfer and Assumption is permitted.

(a) *Documentation of request.* All Transfers and Assumptions cannot be conducted unless the Agency gives prior written approval. An individual credit report must be provided for transferee and its partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility and credit worthiness. The new Borrower must sign Form RD 4279–1.

(b) *Terms.* Loan terms may be changed for Transfer and Assumptions to eligible Borrowers continuing the Project for eligible purposes with the concurrence of the Agency, all Holders, and the transferor (including guarantors). If the transferor has been or will be released from liability, the transferor's concurrence is not required. Any new loan terms must be within the terms authorized by § 4279.234 of this chapter and must be for Good Cause.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence when the Transfer and Assumption is an Arm's Length Transaction and:

(1) The assumption is for the full amount of the loan and all of the loan Collateral is transferred to the transferee; or

(2) The assumption is for less than the full amount of the loan, all of the loan Collateral is transferred to the transferee, and the Lender demonstrates to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) *Proceeds.* The Lender must credit any proceeds received from the sale of Collateral before a Transfer and Assumption to the transferor's guaranteed loan debt in order of lien priority before the Transfer and Assumption are closed.

(e) *Additional loans.* Guaranteed loans to provide additional funds in connection with a Transfer and Assumption must be considered a new loan application, which requires submission of a complete Agency application in accordance with §§ 4279.260 and 4279.261 of this chapter.

(f) *Credit quality.* The Lender must make a complete credit analysis in accordance with § 4279.215 of this chapter.

(g) *Appraisals.* If the proposed Transfer and Assumption is for the full amount of the Agency guaranteed loan and all loan Collateral, the Agency will not require an appraisal. If the proposed Transfer and Assumption is for less than the full amount of the Agency guaranteed loan, the Agency will require an appraisal on all of the Collateral being transferred, and the amount of the assumption must not be less than this appraised value. The Lender is responsible for obtaining this appraisal, which must conform to the requirements of § 4279.244 of this chapter. The Agency will not pay the appraisal fee or any other costs associated with this transfer.

(h) *Documents.* Prior to Agency approval, the Lender must provide the Agency a written legal opinion that the transaction can be properly and legally transferred and assurance that the conveyance instruments will be appropriately filed, registered, and recorded.

(1) The Lender must not issue any new Promissory Notes. The assumption must be completed in accordance with applicable law and must contain the Agency case number of the transferor and transferee. The Lender will provide the Agency with a copy of the Transfer and Assumption agreement. The Lender must ensure that all Transfers and Assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, must be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) Upon execution of the Transfer and Assumption, the Lender must provide the Agency with a written legal opinion that the Transfer and Assumption is completed, valid, enforceable, and certification that the Transfer and Assumption is consistent with the conditions outlined in the Agency's conditions of approval for the transfer and complies with all Agency regulations.

(i) *Loss resulting from transfer.* (1) Any resulting loss must be processed in accordance with § 4287.358.

(2) If a Holder owns any of the guaranteed portion, such portion must be repurchased by the Lender or the Agency in accordance with § 4279.225 of this chapter.

(j) *Related party.* If the transferor and transferee are Affiliates or related parties, any Transfer and Assumption must be to an eligible Borrower to continue the Project for eligible purposes, must transfer all of the loan Collateral, and must be for the full amount of the guaranteed loan indebtedness.

(k) *Cash down payment.* The Lender may allow the transferee to make cash down payments directly to the transferor provided:

(1) The Transfer and Assumption is made for the total indebtedness to an eligible Borrower to continue the Project for eligible purposes;

(2) The Lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The Lender may require that an amount be retained for a defined period of time as a reserve against future Defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(3) The Lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness; and

(4) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(l) *Transfer/Annual Renewal Fees.* (1) The Agency will charge a nonrefundable transfer fee at the time of transfer, which may be passed on to the Borrower by the Lender. The transfer fee rate will be equal to the rate of the guarantee fee authorized in § 4279.231(a) of this chapter for the fiscal year in which the transfer occurs. The amount of the transfer fee is determined by multiplying the principal balance at the time of the transfer by the transfer fee rate by the percentage of guarantee on the original loan.

(2) The Lender must pay any Annual Renewal Fee in accordance with § 4279.231(b) of this chapter.

(m) *Change in control of Borrower.* Transfer and Assumption shall be deemed to occur in the event of a change in the control of the Borrower.

(n) *Personal and corporate guarantees.* Guarantees from owners are required in accordance with § 4279.245 of this chapter.

§ 4287.335 Substitution of Lender.

The Lender is prohibited from selling or transferring the entire loan without the prior written approval of the Agency. Because the Loan Note Guarantee is associated with a specific Promissory Note and cannot be transferred to a new Promissory Note, the Lender must transfer the original Promissory Note and loan security documents to

the new Lender, who must agree to its current loan terms, including the Interest rate, secondary market Holder (if any), Collateral, Loan Agreement terms, and guarantors. The new Lender must also obtain the original Loan Note Guarantee, original personal and corporate guarantee(s), and the loan payment history from the transferor Lender. If the new Lender wishes to modify the loan terms after acquisition, the new Lender must submit a request to the Agency.

(a) The Agency may approve the substitution of a new Lender if:

(1) The proposed substitute Lender:

(i) Is an eligible Lender in accordance with § 4279.208 of this chapter;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees to acquire title to the unguaranteed portion of the loan held by the original Lender and assumes all original loan requirements, including liabilities and servicing responsibilities; and

(2) The substitution of the Lender is requested in writing by the Borrower, the proposed substitute Lender, and the original Lender if still in existence.

(b) The Agency will not pay any loss or share in any costs (*e.g.*, appraisal fees and environmental assessments) with a new Lender unless a relationship is established through a substitution of Lender in accordance with paragraph (a) of this section. This includes situations where a Lender is acquired by another Lender and situations where the Lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another Lender.

(c) In cases when there is a substitution of Lender or when a Lender has been merged with or acquired by another Lender, the Agency and the new Lender must execute a new Lender's Agreement, unless a valid Lender's Agreement already exists with the new Lender.

§ 4287.336 Lender failure.

(a) The acquiring Lender must comply with 7 CFR parts 4279, subpart C and 4287, subpart D and must take such action that a reasonable Lender would take if it did not have a Loan Note Guarantee to protect the Lender and Agency's mutual interest. The Lender cannot arbitrarily change the Lender's Agreement and related documents on the guaranteed loan, and the Agency will make the successor to the failed institution aware of the statutory and regulatory requirements.

(b) In the event of a Default and the guaranteed loan is liquidated by the FDIC rather than being sold to another Lender, the Agency will pay losses and share in costs as if the FDIC were an approved new Lender.

§§ 4287.337–4287.344 [Reserved]

§ 4287.345 Default by Borrower.

The Lender's primary responsibilities in Default are to act reasonably and expeditiously, to work with the Borrower to bring the account current or cure the Default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in a manner that will minimize any potential loss. The Lender may initiate liquidation in accordance with § 4287.357.

(a) The Lender must notify the Agency in writing when a Borrower is more than 30 days past due on a payment and the Delinquency cannot be cured within 30 days or when a Borrower is otherwise in Default of covenants in the Loan Agreement by submitting Form RD 1980–44, ''Guaranteed Loan Borrower Default Status,'' or processing the Default Status report in LINC. The Lender must provide this notification to the Agency within 15 calendar days of when a Borrower is 30 days past due on a payment or is otherwise in Default of the Loan Agreement. The Lender must update the loan's status each month using either Form RD 1980–44 or the LINC Default Status report until such time as the loan is no longer in Default. If a monetary Default exceeds 60 days, the Lender must meet with the Agency and, if practical, the Borrower to discuss the situation.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the Lender are the paramount objective.

(1) Curative actions (subject to the rights of any Holder) include, but are not limited to:

(i) Deferment of principal or Interest payments;

(ii) An additional unguaranteed temporary loan by the Lender to bring the account current;

(iii) Reamortization of or rescheduling the payments on the loan (subject to the rights of any Holder) excluding capitalization of accrued Interest;

(iv) Transfer and Assumption of the loan in accordance with § 4287.334;

(v) Reorganization;

(vi) Liquidation; and

(vii) Changes in Interest rates with the Agency's, the Lender's, and Holder's approval. Any Interest rate changes must be adjusted proportionately between the guaranteed and unguaranteed portion of the loan.

(2) The term of any deferment, rescheduling, reamortization, or moratorium will be limited to the lesser of the remaining life of the Collateral or remaining limits as set forth in § 4279.234 of this chapter (excluding paragraph (d)). Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for success and the remaining life of the Collateral supports the action.

(3) In the event of a loss or a repurchase, the Lender cannot claim Default or penalty Interest, late payment fees, or Interest on Interest.

(c) Debt write-downs by the lender are prohibited when the Lender will continue with the Project loan, except as directed or ordered by a final court order.

(d) In the event of a loss, the guarantee will not cover Interest to the Lender accruing after the Interest Termination Date.

(e) For repurchases of guaranteed loans, refer to § 4279.225 of this chapter.

§§ 4287.346–4287.355 [Reserved]

§ 4287.356 Protective Advances.

Protective Advances are advances made by the Lender for the purpose of preserving and protecting the Collateral where the Borrower has failed to, will not, or cannot meet its obligations. Lenders must exercise sound judgment in determining that the Protective Advance preserves Collateral and recovery is actually enhanced by making the advance. Lenders cannot make Protective Advances in lieu of additional loans. A Protective Advance claim will be paid only at the time of the final payment as indicated in the Guaranteed Loan Report of Loss.

(a) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued Interest times the percentage of guarantee regardless of any Protective Advances made.

(b) In the event of a final loss, Protective Advances will accrue Interest at the Promissory Note rate and will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee. The guarantee will not cover Interest on the Protective Advance accruing after the Interest Termination Date.

(c) Protective Advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instruments. Agency written authorization is required when the cumulative total of Protective Advances exceeds $200,000 or 10 percent of the outstanding balance of principal, whichever is less.

§ 4287.357 Liquidation.

In the event of one or more incidents of Default or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender, with Agency consent, must provide for liquidation.

(a) *Decision to liquidate.* A decision to liquidate or proceed otherwise must be made when the Lender determines that the Default cannot be cured through actions such as those contained in § 4287.345, or it has been determined that it is in the best interest of the Agency and the Lender to liquidate. The decision to liquidate or proceed otherwise with the Borrower must be made as soon as possible when one or more of the following exist:

(1) A loan is 90 days behind on any scheduled payment and the Lender and the Borrower have not been able to cure the Delinquency through actions such as those contained in § 4287.345.

(2) It is determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The Borrower or Lender is uncooperative in resolving the problem or the Agency or Lender has reason to believe the Borrower is not acting in good faith, and immediate liquidation would minimize loss to the Agency.

(b) *Repurchase of loan.* When the decision to liquidate is made, if any portion of the loan has been sold or assigned under §4279.223 of this chapter and not already repurchased, provisions will be made for repurchase in accordance with §4279.225 of this chapter.

(c) *Lender's liquidation plan.* The Lender is responsible for initiating actions immediately and as necessary to ensure a prompt, orderly liquidation that will provide maximum recovery. Within 30 days after a decision to liquidate, the Lender must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include at least the following:

(1) Such proof as the Agency requires to establish the Lender's ownership of the guaranteed loan Promissory Note and related security instruments and a copy of the payment ledger, if available, that reflects the current loan balance, accrued Interest to date, and the method of computing the Interest;

(2) A full and complete list of all Collateral, including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action for acquiring and disposing of all Collateral and collecting from guarantors;

(4) Necessary steps for preservation of the Collateral;

(5) Copies of the Borrower's most recently available financial statements;

(6) Copies of each guarantor's most recently available financial statements;

(7) An itemized list of estimated Liquidation Expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the Agency on the progress of liquidation;

(9) Estimated Protective Advance amounts with justification;

(10) Proposed protective bid amounts on Collateral to be sold at auction and a breakdown to show how the amounts were determined. A protective bid may be made by the Lender, with prior Agency written approval, at a foreclosure sale to protect the Lender's and the Agency's interest. The protective bid will be based on the liquidation value and estimated net recovery considering prior liens and outstanding taxes, expenses of foreclosure, and estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, Interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens;

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(12) Legal opinions, if needed by the Lender's legal counsel; and

(13) An estimate of Fair Market Value and potential liquidation value of the Collateral. If the value of the Collateral is $250,000 or more, the Lender must obtain an independent appraisal report meeting the requirements of §4279.244 of this chapter on the Collateral securing the loan, which reflects the Fair Market Value and potential liquidation value. The liquidation appraisal must evaluate the impact on Market Value of any release of hazardous substances, petroleum products, or other environmental hazards. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the Lender. In order to ensure prompt action, the liquidation plan can be submitted with an estimate of Collateral value, and the liquidation plan may be approved by the Agency subject to the results of the final liquidation appraisal.

(d) *Approval of liquidation plan.* The Lender cannot implement its liquidation plan before obtaining written approval from the Agency. The Lender and Agency must attempt to resolve any Agency concerns.

(1) If the liquidation plan is approved by the Agency, the Lender must proceed expeditiously with liquidation and

must take all legal action necessary to liquidate the loan in accordance with the approved liquidation plan. The Lender must update or modify the liquidation plan when conditions warrant, including a change in value based on a liquidation appraisal.

(2) Should the Agency and the Lender not agree on the liquidation plan, negotiations will take place between the Agency and the Lender to resolve the disagreement. The Lender must take such actions that a reasonable Lender would take without a guarantee and keep the Agency informed in writing. When the liquidation plan is approved by the Agency, the Lender will proceed expeditiously with liquidation.

(e) *Acceleration.* The Lender will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other legal actions required. The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the Borrower. The Lender must obtain from the Agency concurrence prior to the acceleration of the loan if the sole basis for acceleration is a nonmonetary Default. In the case of monetary Default, prior approval by the Agency of the Lender's acceleration is not required, although Agency concurrence must still be given not later than at the time the liquidation plan is approved. The Lender will provide a copy of the acceleration notice or other acceleration document to the Agency.

(f) *Filing an estimated loss claim.* When the Lender owns any of the guaranteed portion of the loan, the Lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation is expected to exceed 90 days. When calculating the estimated loss payment, the value of the Collateral must be based on its estimated net liquidation value. For the purpose of reporting and loss claim computation, the guarantee will not cover Interest to the Lender accruing after the Interest Termination Date. The Agency will promptly process the loss claim in accordance with applicable Agency regulations as set forth in § 4287.358.

(g) *Accounting and reports.* The Lender must account for funds during the period of liquidation and must, in accordance with the Agency-approved liquidation plan, provide the Agency with reports on the progress of liquidation including disposition of Collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(h) *Transmitting payments and proceeds to the Agency.* When the Agency is the Holder of a portion of the guaranteed loan, the Lender must transmit to the Agency within 14 calendar days its Pro Rata share of any payments received from the Borrower, liquidation, or other proceeds using Form RD 1980–43, ''Lender's Guaranteed Loan Payment to Rural Development.''

(i) *Abandonment of collateral.* When the Lender adequately documents that the cost of liquidation would exceed the potential recovery value of certain Collateral and receives Agency concurrence, the Lender may abandon that Collateral. When the Lender makes a recommendation for abandonment of Collateral, it will be considered a servicing action under 7 CFR 1970.8(e), and will not require separate NEPA review.

(j) *Disposition of personal or corporate guarantees.* The Lender must take action to maximize recovery from all personal and corporate guarantees, including seeking Deficiency Judgments when there is a reasonable chance of future collection.

(k) *Compromise settlement.* Compromise settlements must be approved by the Lender and the Agency. Complete current financial information on all parties obligated for the loan must be provided. At a minimum, the compromise settlement must be equivalent to the value and timeliness of that which would be received from attempting to collect on the guarantee. The guarantor cannot be released from liability until the full amount of the compromise settlement has been received. In weighing whether the compromise settlement should be accepted, among other things, the Agency will weigh whether the compromise is more financially advantageous than collecting on the guarantee.

(l) *Litigation.* In all litigation proceedings involving the Borrower, the Lender is responsible for protecting the rights of the Lender with respect to the

loan and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the Lender is not adequately protecting the rights of the Lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the Lender, on behalf of the Lender, or the Agency with respect to the loan. If the Agency exercises this right, the Lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the Lender.

[80 FR 36447, June 24, 2015, as amended at 81 FR 11053, Mar. 2, 2016]

§4287.358 Determination of loss and payment.

Unless the Agency anticipates a Future Recovery, the Agency will make a final settlement with the Lender after the Collateral is liquidated and settlement and compromise of all parties has been completed. The Agency has the right to recover losses paid under the guarantee from any party that may be liable.

(a) *Report of loss form.* Form RD 449–30, ''Guaranteed Loan Report of Loss,'' will be used for reporting and calculating all estimated and final loss determinations.

(b) *Estimated loss.* In accordance with the requirements of §4287.357(f), the Lender must prepare an estimated loss claim and submit it to the Agency.

(1) Interest accrual eligible for payment under the guarantee on the Defaulted loan will be discontinued when the estimated loss is paid.

(2) A Protective Advance claim will be paid only at the time of the final payment as indicated in the Guaranteed Loan Report of Loss.

(3) The estimated loss payment is a payment to the Lender and is not to be applied as a payment on the loan for purposes of reducing the unpaid balance owed by the Borrower or for status reporting (semi-annual status/Default status reports).

(c) *Final loss.* Except for certain unsecured personal or corporate guarantees as provided for in this section, the Lender must prepare a final Guaranteed Loan Report of Loss and submit it to the Agency within 30 days after liquidation of all Collateral is completed. Interest will not be paid beyond the Interest Termination Date. Before approval by the Agency of any final loss report, the Lender must account for all funds during the period of liquidation, disposition of the Collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and Guaranteed Loan Report of Loss, the Agency may audit all applicable documentation to determine the final loss. The Lender must make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the Guaranteed Loan Report of Loss must support the amounts reported as losses on the Guaranteed Loan Report of Loss.

(1) The Lender must make a determination regarding the collectability of unsecured personal and corporate guarantees. If reasonably possible, the Lender must promptly collect or otherwise dispose of such guarantees in accordance with §4287.357(j) prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the Lender must file the Guaranteed Loan Report of Loss when all other Collateral has been liquidated. Unsecured personal or corporate guarantees outstanding at the time of the submission of the final loss claim will be treated as a Future Recovery with the net proceeds to be shared on a Pro Rata basis by the Lender and the Agency. The Agency may consider a compromise settlement of Federal Debt after it has processed a final Guaranteed Loan Report of Loss and issued a 60 day due process letter. Any funds collected on Federal Debt will not be shared with the Lender.

(2) The Lender must document that all of the Collateral has been accounted for and properly liquidated and liquidation proceeds have been accounted for and applied correctly to the loan.

(3) The Lender must provide receipts and a breakdown of any Protective Advance amount as to the payee, purpose

of the expenditure, date paid, and evidence that the amount expended was proper.

(4) The Lender must provide receipts and a breakdown of Liquidation Expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper. Liquidation Expenses are recoverable only from liquidation proceeds. The Agency may approve attorney/legal fees as Liquidation Expenses provided that the fees are reasonable, require the assistance of attorneys, and cover legal issues pertaining to the liquidation that could not be properly handled by the Lender and its employees.

(5) The Lender must support accrued Interest by documenting how the amount was accrued. If the Interest rate was a variable rate, the Lender must include documentation of changes in both the selected base rate and the loan rate.

(6) The Agency will pay loss payments within 60 days after it has reviewed the complete final loss report and accounting of the Collateral.

(7) If a Lender receives a final loss payment and the Agency determines there is Future Recovery, the Lender must submit to the Agency an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

(d) *Loss limit.* The amount payable by the Agency to the Lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Liquidation Expenses.* The Agency will deduct Liquidation Expenses from the liquidation proceeds of the Collateral. The Lender cannot claim any Liquidation Expenses in excess of liquidation proceeds. Any changes to the Liquidation Expenses that exceed 10 percent of the amount proposed in the liquidation plan must be approved by the Agency. Reasonable attorney/legal expenses will be shared by the Lender and Agency equally, including those instances where the Lender has incurred such expenses from a trustee conducting the liquidation of assets. The Lender cannot claim the guarantee fee or the Annual Renewal Fee as authorized Liquidation Expenses, and no In-House Expenses of the Lender will be allowed. In-House Expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(f) *Rent.* The Lender must apply any net rental or other income that it receives from the Collateral to the guaranteed loan debt.

(g) *Payment.* Once the Agency approves the Guaranteed Loan Report of Loss and supporting documents submitted by the Lender:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the Lender.

(2) If the loss is less than the estimated loss payment, the Lender must reimburse the Agency for the overpayment plus Interest at the Promissory Note rate from the date of payment.

§§ 4287.359–4287.368 [Reserved]

§ 4287.369 Future recovery.

Unless notified otherwise by the Agency, after the final loss claim has been paid, the Lender must use reasonable efforts to attempt collection from any party still liable for Future Recovery. Any net proceeds from Future Recovery must be split Pro Rata between the Lender and the Agency based on the original amount of the loan guarantee. Any collection of Federal Debt made by the Federal Government from any liable party to the guaranteed loan will not be split with the Lender.

§ 4287.370 Bankruptcy.

(a) *Lender's responsibilities.* It is the Lender's responsibility to protect the guaranteed loan and all of the Collateral securing it in bankruptcy and any related appellate proceedings. These responsibilities include, but are not limited to the following:

(1) Monitoring confirmed bankruptcy plans to determine Borrower compliance, and, if the Borrower fails to comply, pursue appropriate relief;

(2) Filing all the necessary papers and pleadings concerning the case, including where appropriate a proof of claim;

(3) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(4) Requesting modifications of any proposed bankruptcy plan whenever it appears that the Lender could obtain additional recoveries via plan modification;

(5) Keeping the Agency adequately and regularly informed in writing of all aspects of the proceedings;

(6) Submitting a Default status report within 15 days after the date when the Borrower Defaults and every 30 days thereafter until the Default is resolved or a final loss claim is paid by the Agency. The Default status report will be used to inform the Agency of the bankruptcy filing, the plan confirmation date, when the plan is complete, and when the Borrower is not in compliance with the plan; and

(7) With written Agency consent, the Lender and Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings.

(b) *Reports of loss during bankruptcy.* In bankruptcy proceedings, payment of loss claims will be made as provided in this section.

(1) *Estimated loss payments.* (i) If a Borrower has filed for bankruptcy and all or a portion of the debt has been discharged, the Lender must request an estimated loss payment of the guaranteed portion of the accrued Interest and principal discharged by the court. Only one estimated loss payment is allowed during the bankruptcy and any related appellate proceedings. All subsequent claims of the Lender during bankruptcy and any related appellate proceedings will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the bankruptcy plan. Once the bankruptcy plan has been completed, the Lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and Interest and to reimburse the Lender for any court-ordered Interest rate reduction under the terms of the bankruptcy plan.

(ii) The Lender must use the Guaranteed Loan Report of Loss to request an estimated loss payment and to revise any estimated loss payments during the course of the bankruptcy plan. The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim.

(iii) Upon completion of a bankruptcy plan, the Lender must:

(A) Complete a Form RD 1980–44 and forward this form to the Agency; and

(B) Provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained.

(*1*) If the actual loss sustained as a result of the bankruptcy is less than the estimated loss, the Lender must reimburse the Agency for the overpayment plus Interest at the Promissory Note rate from the date of payment of the estimated loss.

(*2*) If the actual loss is greater than the estimated loss payment, the Lender must submit a revised estimated loss claim in order to obtain payment of the additional amount owed by the Agency to the Lender.

(2) *Bankruptcy loss payments.* (i) The Lender must request a bankruptcy loss payment of the guaranteed portion of the accrued Interest and principal discharged by the court for all bankruptcies when all or a portion of the debt has been discharged. Unless a final court decree approves a subsequent change to the bankruptcy plan that is adverse to the Lender, only one bankruptcy loss payment is allowed during the bankruptcy. Once a final court decree has discharged all or part of the guaranteed loan and any appeal period has run, the Lender must submit the documentation necessary for the Agency to review and adjust the bankruptcy loss claim to reflect any actual discharge of principal and Interest.

(ii) The Lender must use the Guaranteed Loan Report of Loss to request a bankruptcy loss payment and to revise any bankruptcy loss payments during the course of the bankruptcy. The Lender must include with the bankruptcy loss claim documentation to support the claim, as well as any revisions to this claim.

(iii) Upon completion of a bankruptcy plan, restructuring, or liquidation, the Lender must either complete a Form RD 1980–44 and forward this

form to the Agency or enter the data directly into LINC.

(iv) If an estimated loss claim is paid during a bankruptcy and the Borrower repays in full the remaining balance without an additional loss sustained by the Lender, a final Guaranteed Loan Report of Loss is not necessary.

(3) *Interest rate losses as a result of bankruptcy reorganization.* Interest rate losses as a result of bankruptcy reorganization will be paid as follows:

(i) Interest losses sustained during the period of the bankruptcy plan will be processed in accordance with paragraph (b)(1) of this section;

(ii) Interest losses sustained after the bankruptcy plan is confirmed will be processed annually when the Lender sustains a loss as a result of a permanent Interest rate reduction that extends beyond the period of the bankruptcy plan; and

(iii) If a bankruptcy loss claim is paid during the operation of the bankruptcy plan and the Borrower repays in full the remaining balance without an additional loss sustained by the Lender, a final Guaranteed Loan Report of Loss is not necessary.

(4) *Final bankruptcy loss payments.* The Agency will process final bankruptcy loss payments when the loan is fully liquidated.

(5) *Application of loss claim payments.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a court attempts to direct the payments to be applied in a different manner, the Lender must immediately notify the Agency in writing.

(6) *Protective Advances.* If approved Protective Advances, as authorized by § 4287.356, were incurred in connection with the initiation of liquidation action and were required to provide repairs, insurance, etc., to protect the Collateral as result of delays in the case of failure of the Borrower to maintain the security prior to the Borrower having filed bankruptcy, the Protective Advances together with accrued Interest are payable under the guarantee in the final loss claim.

(c) *Expenses during bankruptcy proceedings.* (1) Under no circumstances will the guarantee cover Liquidation Expenses in excess of liquidation proceeds.

(2) Expenses, such as reasonable attorney/legal fees and the cost of appraisals incurred by the Lender as a direct result of the Borrower's bankruptcy filing, will be shared equally by the Lender and the Agency.

(3) Reasonable and customary Liquidation Expenses must be deducted from Collateral sale proceeds. Liquidation Expenses are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the Lender and the Agency. Lender's In-House Expenses, which are those expenses that would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.

(4) When a bankruptcy proceeding results in a liquidation of the Borrower by a bankruptcy trustee appointed under 11 U.S.C. 701, 702, 703 or 1104, expenses will be handled as directed by the court, and the Lender cannot claim Liquidation Expenses for the sale of the assets.

(5) If the property is abandoned by the bankruptcy trustee, the Lender will conduct the liquidation in accordance with § 4287.357.

(6) Proceeds received from partial sale of Collateral during bankruptcy may be used by the Lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim.

§§ 4287.371–4287.379 [Reserved]

§ 4287.380 Termination of guarantee.

The Loan Note Guarantee will terminate under any of the following conditions:

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the Lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the Lender owns the entire guaranteed interest

in the loan and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.381–4287.399 [Reserved]

§ 4287.400 OMB control number.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in the subsequent interim rule have been submitted to the Office of Management and Budget (OMB) under OMB Control Number 0570–0065 for approval. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

PART 4288—PAYMENT PROGRAMS

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

SOURCE: 76 FR 7926, Feb. 11, 2011, unless otherwise noted.

Subpart A—Repowering Assistance Payments to Eligible Biorefineries

§ 4288.1 Purpose and scope.

(a) *Purpose.* The purpose of this program is to provide financial incentives to biorefineries in existence on June 18, 2008, the date of the enactment of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110–246), to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

(b) *Scope.* The Agency may make payments under this program to any biorefinery that meets the requirements of the program up to the limits established for the program. Based on our research and survey of medium-sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biorefineries to apply.

(1) The Agency will determine the amount of payments to be made to a biorefinery taking into consideration the percentage reduction in fossil fuel

used by the biorefinery (including the quantity of fossil fuels a renewable biomass system is replacing), and the cost and cost-effectiveness of the renewable biomass system.

(2) The Agency will determine who receives payment under this program based on the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; the cost and cost-effectiveness of the renewable biomass system; and other scoring criteria identified in § 4288.21. The above criteria will be used to determine priority for awards of 50 percent of total eligible project costs, up to the maximum award applicable for the fiscal year.

§ 4288.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Agency. The USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Application period. The time period announced by the Agency during which the Agency will accept applications.

Base energy use. The amount of documented fossil fuel energy use over an extended operating period.

(1) The extended operating period must be at least 24 months of recorded usage, and requires metered utility records for electric energy, natural gas consumption, fuel oil, coal shipments and propane use, as applicable for providing heat or power for the operation of the biorefinery.

(2) Utility billing, oil and coal shipments must be actual bills, with meter readings, applicable rates and tariffs, costs and usage. Billing must be complete, without gaps and arranged in chronological order. Drop shipments of coal or oil can be substituted for metered readings, provided the biorefinery documents the usage and its relationship to providing heat or power to the biorefinery.

(3) A biorefinery in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

Biobased products. Products determined by the Secretary to be commercial or industrial products (other than food or feed) that are:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) Intermediate ingredients or feedstocks.

Biofuel. Fuel derived from renewable biomass.

Biorefinery. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products, and may produce electricity.

Eligible biorefinery. A biorefinery that has been in existence on or before June 18, 2008.

Energy Information Agency (EIA). The statistical agency of the Department of Energy and source of official energy statistics from the U.S. Government.

Feasibility study. An Agency-acceptable analysis of the economic, environmental, technical, financial, and management capabilities of a proposed project or business in terms of its expected success. A list of items that must be included in a feasibility study is presented in § 4288.20(c)(9) of this subpart.

Financial interest. Any ownership, creditor, or management interest in the biorefinery.

Fiscal year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Fossil fuel. Coal, oil, propane, and natural gas.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health; and

(ii) Would not otherwise be used for higher value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old growth maintenance, restoration, and management direction as per paragraphs (e)(2), (e)(3), and (e)(4), and large tree retention as per paragraph (f), of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants according to the most recent decennial Census of the United States, not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I), as well as any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (6)(i)(B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how

the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

[76 FR 7926, Feb. 11, 2011, as amended at 80 FR 9913, Feb. 24, 2015; 87 FR 38645, June 29, 2022]

§ 4288.3 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.4 Compliance with other laws and regulations.

Participating biorefineries must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, 7 CFR Part 1901, subpart E, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Applicants must submit and will be subject to preaward and post award compliance reviews with the terms and conditions set forth in Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement.''

§ 4288.5 Oversight, monitoring, and reporting requirements.

(a) *Verification.* The Agency reserves the right to verify all payment requests and subsequent payments made under this program, including field visits, as frequently as necessary to ensure the integrity of the program. Documentation provided will be used to verify, reconcile, and enforce the payment terms of Form RD 4288–5, ''Repowering Assistance Program—Agreement,'' along with any potential refunds that the recipient will be required to make should they fail to adequately document their request.

(b) *Records.* (1) For purposes of verifying the eligible project costs supporting payments under this subpart, each biorefinery must maintain in one place such books, documents, papers, receipts, payroll records and bills of sale adequate to identify the purposes for which, and the manner in which funds were expended for eligible project costs. The biorefinery must maintain copies of all documents submitted to the Agency in connection with payments made hereunder. These records must be available at all reasonable times for examination by the Agency and must be held and be available for Agency examination for a period of not less than 3 years from the final payment date.

(2) For the purpose of verifying compliance with the fossil fuel reduction and energy production requirements of this subpart, each biorefinery must make available and provide for the metering of all power and heat producing boilers, containment vessels, generators and any other equipment related to the production of heat or power required to displace fossil fuel loads with renewable biomass. These records must be held in one place and be available at all reasonable times for examination by the Agency. Such records include all books, papers, contracts, scale tickets, settlement sheets, invoices, and any other documents related to the program that are within the control of the biorefinery. These records must be held and made available for Agency examination for a period of not less than 3 years from the date the repowering project becomes operational.

(c) *Reporting.* Upon completion of the repowering project, the biorefinery must submit a report using Form RD 4288–6, ''Repowering Assistance Programs—Reporting Form,'' to the Agency annually for the first 3 years after

completion of the project. The reports are to be submitted as of October 1 of each year. The report must include the items specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Documentation regarding the usage and production of energy at the biorefinery during the previous year, including both the previous and current fossil fuel load and the renewable biomass energy production.

(i) Metered data documenting the production of heat, steam, gas and power must be obtained utilizing an Agency approved measurement device.

(ii) Metered data must be verifiable and subject to independent calibration testing.

(2) Current utility billing data, indentifying metered loads, from the base energy use period.

§ 4288.6 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this program may be obtained from the USDA Rural Development State Office, Renewable Energy Coordinator and the USDA Rural Development Web site at *http://www.rurdev.usda.gov/regs/*.

§ 4288.7 Exception authority.

The Administrator of the Agency (''Administrator'') may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4288.8–4288.9 [Reserved]

§ 4288.10 Applicant eligibility.

(a) *Eligible projects.* To be eligible for this program, the applicant must be an eligible biorefinery utilizing only renewable biomass for replacement fuel, and must meet the requirements specified in paragraphs (a)(1) through (a)(5) of this section.

(1) *Timely complete application submission.* To be eligible for this program, the applicant must submit a complete application within the application period. Projects will be selected based on ranking which is derived from the application of the selection criteria stated in § 4288.21.

(2) *Multiple biorefineries.* Corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

(3) *Cost-effectiveness.* The application must be awarded at least minimum points for cost-effectiveness under § 4288.21(b)(1).

(4) *Percentage of reduction of fossil fuel use.* The application must be awarded at least minimum points for percentage of reduction of fossil fuel use under § 4288.21(b)(2).

(5) *Full project financing.* The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project taking into account the amount of the payment request in the application.

(b) *Ineligible projects.* A project is not eligible under this subpart if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

§ 4288.11 Eligible project costs.

Eligible project costs will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees.

§ 4288.12 Ineligible project costs.

Any project costs incurred by the applicant prior to application for payment assistance under this program will be ineligible for payment assistance.

§ 4288.13 Payment information.

(a) *Maximum payment.* For purposes of this program, the maximum payment

an applicant may receive will be 50 percent of total eligible project costs up to the applicable fiscal year's maximum award as announced in an annual FEDERAL REGISTER notice. There is no minimum payment to an applicant.

(b) *Reimbursement payments.* The Agency shall only make payments based on the biorefinery's expenditures on eligible project costs. Payments shall be determined by multiplying the amount of eligible expenditures stated on the payment request by a percentage obtained by dividing the aggregate payment award by total eligible project costs.

(c) *Timing of payments.* The Applicant may request payments not more frequently than once a month by submitting an original, completed, validly signed Standard Form (SF) 271, ''Outlay Report and Request for Reimbursement for Construction Programs'' including the supporting documentation identified in § 4288.23, to reimburse the applicant for the Agency's pro rata share of funds expended on eligible project costs. The Agency shall make such payments until 90 percent of the total payment award has been expended. The final 10 percent of the payment award will be paid upon completion of the repowering project and satisfactory evidence has been received by the Agency demonstrating that the biorefinery is operating as described in the Agency approved application.

§§ 4288.14–4288.19 [Reserved]

§ 4288.20 Submittal of applications.

(a) *Address to make application.* Application must be submitted to USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

(b) *Content and form of submission.* Applicants must submit a signed original and one copy of an application containing the information specified in this section. The applicant must also furnish the Agency the required documentation identified in Form RD 4288–4, ''Repowering Assistance Program Application,'' to verify compliance with program provisions before acceptance into the program. Note that applicants are required to have a Unique Entity Identifier (UEI) (unless the applicant is an individual). Instructions for obtaining the UEI are available at *https://sam.gov/.* Applicants must submit to the Agency the documents specified in paragraphs (b)(1) through (6) of this section.

(1) *Form RD 4288–4.* Applicants must submit this form and all necessary attachments providing project information on the biorefinery; the facility at which the biorefinery operates, including location and products produced; and the types and quantities of renewable biomass feedstock being proposed to produce heat or power. This form requires the applicant to provide relevant data to allow for technical analysis of their existing facility to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. The applicant must also submit evidence that the biorefinery was in existence on or before June 18, 2008. The applicant is required to certify the information provided.

(2) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

(3) Form RD 400–1.

(4) Form RD 400–4.

(5) Environmental documentation in accordance with 7 CFR part 1970.

(6) Certifications. The applicant must furnish the Agency all required certifications before acceptance into the program, and furnish access to records required by the Agency to verify compliance with program provisions. The applicant must submit forms or other written documentation certifying to the following:

(i) AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions'' or other written documentation.

(ii) AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions'' or other written documentation.

(iii) SF–LLL, ''Disclosure of Lobbying Activities.''

(c) *Application package contents.* Applicants are required to provide relevant data to allow for technical analysis of their existing facilities to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicants in existence on or before June 18, 2008 with more than 24 months of actual operating data must provide data for the most recent 24-month period. Applicants in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All applicants must submit the information specified in paragraphs (c)(1) through (c)(9) of this section as part of their application package.

(1) *Contact data.* Contact information for the primary technical contact for the biorefinery.

(2) *Biorefinery data.* Basic information on facility operations over time (hours/day, days/year).

(3) *Electric use data.* Information on existing electric service to the facility, data on consumption, peak and average demand, and monthly/seasonal use patterns.

(4) *Fuel use data.* Information on natural gas and current fuel use for boilers and heaters, including fuel type, costs, and use patterns.

(5) *Thermal loads.* Information on existing thermal loads, including type (steam, hot water, direct heat), conditions (temperature, pressure) and use patterns.

(6) *Existing equipment.* Information on existing heating and cooling equipment, including type, capacities, efficiencies and emissions.

(7) *Site-specific data.* Information on other site-specific issues, such as expansion plans or neighborhood considerations that might impact the proposed new system design or operation; or environmental impacts.

(8) *Biofuel and biobased product production.* Information on biofuel and biobased product production, including quantity and units of production.

(9) *Feasibility study.* The applicant must submit a feasibility study by an independent qualified consultant, which has no financial interest in the biorefinery, and demonstrates that the renewable biomass system of the biorefinery is feasible, taking into account the economic, technical and environmental aspects of the system. The feasibility study must include the components specified in paragraphs (c)(9)(i) through (c)(9)(x) of this section.

(i) An executive summary, including resume of the consultant, and an introduction/project overview (brief general overview of project location, size, *etc.*).

(ii) An economic feasibility determination, including:

(A) Information regarding the project site;

(B) Information on the availability of trained or trainable labor; and

(C) Information on the availability of infrastructure and rail and road service to the site.

(iii) A technical feasibility determination, including a report that:

(A) Describes the repowering project, including:

(*1*) Information on heating and cooling equipment, including type, capacities, efficiencies and emissions;

(*2*) Anticipated impacts of the repowering project on the information requested above relating to electric use data, fuel use data, thermal loads and biofuel and biobased product production; and

(*3*) A project development schedule as more fully described in § 4288.21(b)(4)(iv);

(B) Is based upon verifiable data and contains sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of energy production that are projected in the statements. The report must provide the information in a format that is responsive to the scoring criteria specified in § 4288.21(b)(1) through (5) and applicants should identify in their report the information that corresponds to each of the scoring criteria; and

(C) Identifies and estimates project operation and development costs and specifies the level of accuracy of these estimates and the assumptions on which these estimates have been based.

(iv) A financial feasibility determination that discusses the following:

(A) Repowering project construction funding, including repayment terms and security arrangements. Attach any documents relating to the project financing;

(B) The reliability of the financial projections and assumptions on which the project is based including all sources of project capital, both private and public, such as Federal funds;

(C) Projected balance sheets and costs associated with project operations;

(D) Cash flow projections for 3 years;

(E) The adequacy of raw materials and supplies;

(F) A sensitivity analysis, including feedstock and energy costs, product/co-product prices;

(G) Risks related to the project; and

(H) The continuity, maintenance and availability of records.

(v) A management feasibility determination.

(vi) Recommendations for implementation.

(vii) The environmental concerns and issues of the system.

(viii) The availability of feedstock, including discussions of:

(A) Feedstock source management;

(B) Estimates of feedstock volumes and costs;

(C) Collection, pre-treatment, transportation, and storage; and

(D) Impacts on existing manufacturing plants or other facilities that use similar feedstock.

(ix) The feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock from those entities.

(x) If woody biomass from National forest system lands or public lands is proposed as the feedstock, documentation must be provided that it cannot be used as a higher value wood-based product.

[76 FR 7926, Feb. 11, 2011, as amended at 81 FR 11053, Mar. 2, 2016; 89 FR 34959, May 1, 2024]

§ 4288.21 Application review and scoring.

The Agency will evaluate projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project will be taken into consideration in the context of each project's ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

(a) *Review.* The Agency will evaluate each application and make a determination as to whether the applicant is eligible, whether the proposed project is eligible, and whether the proposed payment request complies with all applicable statutes and regulations. This evaluation will be conducted by experts in the Agency and other Federal agencies, including the U.S. Department of Energy based on the information provided by the applicant.

(b) *Scoring.* The Agency will score each application in order to prioritize each proposed project. The maximum number of points awardable to any applicant will be 100. The evaluation criteria that the Agency will use to score these projects are specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Cost-effectiveness.* Cost-effectiveness will be scored based on the anticipated simple payback period, or ''simple payback.'' Anticipated simple payback will be demonstrated by calculating documented base energy use costs for the 24-month period prior to submission of the application or at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

(i) The simple payback period is calculated as follows:

- Simple payback = C/S

Where:

C = eligible capital expenses of the repowering project

S = savings in annual operating costs.

Example: Eligible capital expenses of the repowering project, including handling equipment, biomass boiler, piping improvements and plant modifications, are equal to $5,300,500. The annual difference in fossil fuel cost versus the cost for renewable biomass is $990,500. Assume these costs and uses are based on a yearly operating cycle, which may include handling, storage and treatment

costs. In this example, C = $5,300,500; S = $990,500; simple payback = 5.35 years (C/S = simple payback).

(ii) A maximum of 20 points will be awarded as follows:

(A) If the anticipated simple payback is less than or equal to 4 years, award 20 points.

(B) If the anticipated simple payback is greater than 4 years but less than or equal to 6 years, award 10 points.

(C) If the anticipated simple payback will be greater than 6 years but less than or equal to 10 years, award 5 points.

(D) If the anticipated simple payback will be greater than 10 years, award 0 points.

(2) *Percentage of reduction of fossil fuel use.* The anticipated percent reduction in the use of fossil fuels will be measured using the same evidence provided by the applicant for measuring cost-effectiveness. However, this set of criteria will measure actual fossil fuel use for the 24-month period prior to submission of the application or for at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All fossil fuel use, for thermal loads as well as for electric use, will be evaluated by using information provided by the Energy Information Agency (EIA). The Agency will determine the percentage reduction of fossil fuel use based on and in cooperation with the applicant's submission of electric power provider contracts, power agreements, and utility billings in relation to available information from the EIA. A maximum of 35 points will be awarded as follows:

(i) Applicant demonstrates an anticipated annual reduction in fossil fuel use of 100 percent, award 35 points.

(ii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 80 percent but less than 100 percent, award 25 points.

(iii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 60 percent but less than 80 percent, award 15 points.

(iv) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 40 percent but less than 60 percent, award 5 points.

(v) Applicant demonstrates an anticipated annual reduction in fossil fuel use of less than 40 percent, award 0 points.

(vi) If any of the fossil fuel being replaced is natural gas, deduct 5 points.

(3) *Renewable biomass factors.* If an applicant demonstrates at the time of application that it has on site available access to renewable biomass or enforceable third party commitments to supply renewable biomass for the repowering project for at least 3 years, 5 points will be awarded. If an applicant cannot demonstrate this, no points will be awarded.

(4) *Technical review factors.* Technical reviews will be conducted by a team of experts, including rural energy coordinators and State engineers. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. Each section of the technical review will be scored within a range of possible points available within that section. A maximum of 25 points will be awarded as follows:

(i) *Qualifications of the applicant's project team.* The applicant must describe the qualifications of those individuals who will be essential to successful performance of the proposed project. This will include information regarding professional credentials, relevant experience, and education, and must be supported with documentation of service capabilities, professional credentials, licenses, certifications, and resumes, as applicable. Award 0–5 points.

(ii) *Agreements and permits.* The applicant must describe the agreements and permits necessary for project implementation. An Agency-acceptable schedule for securing the required documents and permits must be provided. Award 0–4 points.

(iii) *Design and engineering.* The applicant must describe the design, engineering, and testing needed for the proposed project. The Design and Engineering documents shall demonstrate that they meet the intended purpose, ensure public safety, and comply with

all applicable laws, regulations, agreements, permits, codes, and standards. Award 0–4 points.

(iv) *Project development schedule.* The applicant must provide a detailed plan for project development including a proposed schedule of activities, a description of each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. This description must address the applicant's project development cash flow requirements. Award 0–3 points.

(v) *Equipment procurement.* The applicant must describe the equipment needed, and the availability of the equipment needed, to complete installation and activation of the new system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule. Award 0–3 points.

(vi) *Equipment installation.* The applicant must provide a satisfactory description of the plan for site development and system installation that reflects the soundness of the project plan. Award 0–3 points.

(vii) *Operations and maintenance.* The applicant must describe the operations and maintenance requirements of the system necessary for the system to operate as designed and provide the savings and efficiencies as described. The description and requirements noted must be supportable by the technical review. Award 0–3 points.

(5) *Liquid transportation fuels.* If the biorefinery primarily produces liquid transportation fuels, award 10 points.

(6) *Rural area.* If the biorefinery is located in a Rural Area, award 5 points.

§ 4288.22 Ranking of applications.

All scored applications will be ranked by the Agency as soon after the application deadline as possible. The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for payments.

(a) *Selection of applications for payments.* Using the application scoring criteria point values specified in § 4288.21 of this subpart, the Agency will select applications for payments.

(b) *Availability of funds.* As applications are funded, if insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Agency must determine the project is feasible at the lower amount.

§ 4288.23 Notifications.

(a) *Successful applicants.* Successful applicants will receive an award letter notifying them of the award, including the terms and conditions, and Form RD 4288–5. Each funded project is unique, and, therefore, conditions of Form RD 4288–5 may vary among projects. Successful applicants must execute and return the Form RD 4288–5, accompanied by any additional items identified in the award letter.

(b) *Unsuccessful applicants.* Unsuccessful applicants will receive a letter notifying them of their application score and ranking and the score necessary to qualify for payments.

§ 4288.24 Program payment provisions.

The procedure the Agency will use to make payments to eligible biorefineries is specified in paragraphs (a) through (e) of this section.

(a) *Payment applications.* The Agency shall make payments based on the biorefinery's expenditures on eligible project costs. To request payments under this program during a fiscal year, an eligible biorefinery must:

(1) Submit an original, validly signed and completed SF 271 to the Agency not more frequently than once a month with the following supporting documentation:

(i) Evidence of expenditure of funds on eligible project costs which shall include paid third party invoices, receipts, bills of sale, and/or payroll records. Such records must be adequate to identify that funds to be reimbursed

were spent on eligible project costs; and

(ii) Evidence that construction of the repowering project is in compliance with the project development schedule.

(2) Certify that the request is accurate.

(3) Furnish the Agency such certifications as required in Form RD 4288–4, Part C, and access to records that verify compliance with program provisions.

(b) *Clarifying information.* After payment applications are submitted, eligible biorefineries may be required to submit additional supporting clarification if their original submittal is not sufficient to verify eligibility for payment.

(c) *Notification.* The Agency will notify the biorefinery, in writing, whenever the Agency determines that a payment request is ineligible and why the request was determined ineligible.

(d) *Refunds and interest payments.* An eligible biorefinery that has received a payment under this program may be required to refund such payment as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) An eligible biorefinery receiving payment under this program will become ineligible for payments if the Agency determines the biorefinery has:

(i) Made any material fraudulent representation;

(ii) Misrepresented any material fact affecting a program determination; or

(iii) Upon completion of the repowering project, failed to reduce its fossil fuel consumption, produce energy from renewal biomass or otherwise operate as described in its Agency approved application.

(2) All payments made to a biorefinery determined by the Agency to be ineligible must be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs, as determined appropriate under 31 CFR 901.9.

(3) When a refund is due, it must be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the biorefinery, and sharing information with the Department of Justice.

(4) Late payment interest will be assessed on each refund in accordance with provisions and rates as determined by the Agency.

(i) Interest charged by the Agency under this program will be at the rate established annually by the Secretary of the U.S. Treasury pursuant to 31 U.S.C. 3717. Interest will accrue from the date payments were received by the biorefinery to the date of repayment, and the rate will adjust in accordance with applicable regulations.

(ii) The Agency may waive the accrual of interest and/or damages if the Agency determines that the cause of the erroneous determination was not due to any fraudulent or negligent action of the biorefinery.

(5) A biorefinery or person receiving payment under this program will be liable for any refund or related charges associated with their project due under this program.

(e) *Remedies.* The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 4288.25 Succession and control of facilities and production.

Any party obtaining a biorefinery that is participating in this program must request permission to participate in this program as a successor. The Agency may grant such request if it is determined that, the party is eligible, and permitting such succession would serve the purposes of the program. If appropriate, the Agency will require the consent of the previous party to such succession. Also, the Agency may terminate payments and demand full refund of payments made if a party loses control of a biorefinery whose production of heat or power from renewable biomass is the basis of a program payment, or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 4288.26 Fiscal Year 2009 and Fiscal Year 2010 applications.

Any entity that submitted an application for payment to the Agency

under this program prior to March 14, 2011 will have their payments made and serviced in accordance with the provisions specified in this subpart.

§§ 4288.27–4288.100 [Reserved]

Subpart B—Advanced Biofuel Payment Program General Provisions

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 7967, Feb. 11, 2011, unless otherwise noted.

§ 4288.101 Purpose and scope.

(a) *Purpose*. The purpose of this subpart is to support and ensure an expanding production of advanced biofuels by providing payments to eligible advanced biofuel producers.

(b) *Scope*. This subpart sets forth, subject to the availability of funds as provided herein, or as may be limited by law, the terms and conditions an advanced biofuel producer must meet to obtain payments under this Program from the United States Department of Agriculture for eligible advanced biofuel production. Additional terms and conditions may be set forth in the Program contract and payment agreement prescribed by the Agency.

§ 4288.102 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Advanced biofuel. A fuel that is derived from renewable biomass, other than corn kernel starch, to include:

(1) Biofuel derived from cellulose, hemicellulose, or lignin;

(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(4) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;

(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; or

(7) Other fuel derived from cellulosic biomass.

Advanced biofuel producer. An individual, corporation, company, foundation, governmental entity, school or other educational facility, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces advanced biofuel. An entity that blends or otherwise combines advanced biofuels into a blended biofuel is not considered an advanced biofuel producer under this subpart. An entity that produces biofuel exclusively under a toll/bailment arrangement/third part production contract is not considered an advanced biofuel producer under this subpart.

Agency. The USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Alcohol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, rendered unfit for beverage use, produced at a biofuel facility and in a manner approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives for the production of alcohol for fuel; or

(2) As denatured alcohol used by blenders and refiners and rendered unfit for beverage use.

Alcohol producer. An advanced biofuel producer authorized by ATF to produce alcohol.

ATF. The Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

Bailment. The temporary placement of control over, or possession of property by an individual or entity, the bailor, into the hands of another, the bailee, for a designated purpose upon which the parties have agreed. For purposes of this Program any advanced biofuel produced by a toll producer of any form, or under any form of third-party production agreement, is regarded/considered as produced under bailment and is ineligible for payment; to either bailor or bailee.

Biodiesel. A mono alkyl ester, manufactured in the United States and its

territories, that meets the requirements of the appropriate ASTM International standard.

Biofuel. Fuel derived from renewable biomass.

Biorefinery. The term ''biorefinery'' means a facility (including equipment and processes) that—

(1) Converts renewable biomass or an intermediate ingredient or feedstock of renewable biomass into any 1 or more, or a combination, of—

(i) Biofuels;

(ii) Renewable chemicals; or

(iii) Biobased products; and

(2) May produce electricity.

Blender. A blender is a processor of fuels who combines two or more fuels, one of which must be an advanced biofuel, for distribution and sale. Producers who blend one or more of their own fuels are not blenders under this definition.

Certificate of analysis. A document approved by the Agency that certifies the quality and purity of the advanced biofuel being produced. The document must be from a qualified, independent third party.

Commodity. Renewable biomass, other than corn kernel starch, used primarily for the purposes of this Program, by advanced biofuel producers as feedstock from which to produce/derive advanced biofuel. Eligible renewable biomass is organized into the following commodity categories:

(1) Title I grains and oilseeds including: Wheat, corn, grain sorghum, barley, oats, and rice; sugars, and starches (other than corn kernel starch); Soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard, crambe, sesame, and peanuts; as identified under Title I, Public Law 115–334, and as determined by the Secretary;

(2) Other oilseeds and nuts including cottonseed, palm, camelina, coconut, and olive; and algae;

(3) A cellulosic commodity grown for energy purposes, such as, hybrid poplar and other energy trees, switch grass and other energy grasses; cellulose, hemicellulose, or lignin;

(4) Waste material, including crop residue/Stover, other vegetative waste material/orchard waste, animal waste/manure, food waste/food processing waste, and yard waste/biodegradable solid waste/organic matter;

(5) Fats, oils, and greases, derived from an agricultural product, including: Recycled fats, oils, and greases, such as used cooking oil and reclaimed-industrial grade-distillers' corn/sorghum oil; tallow, white grease, yellow grease, and other livestock renderings; and

(6) Any animal byproduct (in addition to oils, fats, and greases) that may be used to produce bioenergy, as determined by the Secretary.

Contract. Form RD 4288–2, ''Advanced Biofuel Payment Program Contract,'' signed by the eligible advanced biofuel producer and the Agency, that defines the terms and conditions for participating in and receiving payment under this Program.

Derived. A process that creates a physical, and/or chemical, and/or biological change in renewable biomass/feedstock.

Eligible advanced biofuel producer. A producer of advanced biofuels that meets all requirements of §4288.110 of this subpart.

Eligible renewable biomass. Renewable biomass, as defined in this section, excluding corn kernel starch. See also commodity.

Eligible renewable energy content. That portion of an advanced biofuel's energy content derived from eligible renewable biomass feedstock. The energy content from any portion of the biofuel, whether from, for example, blending with another fuel or a denaturant, that is derived from a non-eligible renewable biomass feedstock (e.g., corn kernel starch) is not eligible for payment under this Program.

Enrollment application. Form RD 4288–1, ''Advanced Biofuel Payment Program Annual Application,'' which is submitted by advanced biofuel producers for participation in this Program.

Ethanol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, and which has been rendered unfit for beverage use and produced at an advanced biofuel facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and energy refiners, which has been rendered unfit for beverage use.

Ethanol producer. An advanced biofuel producer authorized by ATF to produce ethanol.

Final Product. A product of a biorefinery that is ready for sale/distribution without further processing. For purposes of this Program, an advanced biofuel is a Final Product eligible for payment if it is ready for distribution and sale as a fuel.

Fiscal Year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Flared gas. The burning of unwanted gas through a pipe (also called a flare). Flaring is a means of disposal used when the operator cannot transport the gas to market or convert to electricity and cannot use the gas for any other purpose.

Incremental production. The quantity of eligible advanced biofuel produced at an advanced biofuel biorefinery in the fiscal year for which payment is sought that exceeds the quantity of advanced biofuel produced at the biorefinery over the prior fiscal year.

Large producer. (1) An advanced biofuel producer which in the prior fiscal year, produced more than:

(i) 150,000,000 gallons of liquid advanced biofuel per year; or

(ii) 15,900,000 Million British Thermal Units (MMBTU) of biogas and/or solid advanced biofuel per year.

(2) The amount of gallons and MMBTUs listed in paragraphs (1)(i) and (ii) of this definition include the advanced biofuel production at all facilities, in the United States, in which the producer and/or its parent company(ies) have a 50-percent or greater ownership.

Parent company. A company/corporation that has a controlling interest in another company/corporation, giving it control of its operations. The company is deemed a subsidiary of the parent company.

Payment application. Form RD 4288–3, ''Advanced Biofuel Payment Program—Payment Request,'' which is submitted by an eligible advance producer to the Agency in order to receive payment under this Program.

Quarter. The Federal fiscal time period for any fiscal year as follows:

(1) 1st Quarter: October 1 through December 31;

(2) 2nd Quarter: January 1 through March 31;

(3) 3rd Quarter: April 1 through June 30; and

(4) 4th Quarter: July 1 through September 30.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of paragraph (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Sale. A transaction between two or more parties, typically a buyer and a seller, in which goods or services are exchanged for money or other assets.

Sign-up period. The time period during which the Agency will accept enrollment applications.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Third party production. Third party production involves outsourcing production processes to a third-party company whereby the third-party company, hired to produce, is supplying the manufacturing process as well as sourcing the raw materials/commodity feedstock. The contract producer is responsible for manufacturing the product to specification and disposition/delivery requirements. For purposes of this Program, any advanced biofuel produced under a contractual third-party production agreement is ineligible for payment. A producer that is strictly a third-party contractor produces no eligible advanced biofuel.

Toll producer. See also bailment. Toll production/manufacturing is an arrangement, where a company with specialised equipment processes raw materials or unfinished goods for a different company. A toll producer of advanced biofuels produces advanced biofuels for another company. For purposes of this Program, any advanced biofuel produced by a toll producer of any form, or under any form of third-party production agreement, is regarded/considered as produced under bailment and is ineligible for payment.

USDA. The United States Department of Agriculture.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71301, Dec. 27, 2019]

§ 4288.103 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.104 Compliance with other laws and regulations.

(a) Advanced biofuel producers must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, The Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and 7 CFR part 1901, subpart E. This includes collection and maintenance of race, sex, and national origin data of the recipient's employee.

(b) Producers must comply with equal opportunity and nondiscriminatory requirements in accordance with 7 CFR 15d. Rural Development will not discriminate against an applicant on the bases of race, color, religion, national origin, sex, sexual orientation, marital status, familial status, disability, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

§ 4288.105 Oversight and monitoring.

(a) *Verification*. The Agency reserves the right to verify all payment applications and subsequent payments made under this subpart, as frequently as necessary, to ensure the integrity of the Program. The Agency will conduct site visits as necessary.

(1) *Production and feedstock verification*. The Agency will review producer records to verify the type and amount of biofuel produced and the type and amount of commodity/eligible renewable biomass used.

(2) *Blending verification*. The Agency will review the producer's certificates of analysis and feedstock records to verify the portion of the advanced biofuel eligible for payment.

(3) *Certificate of Analysis*. The Agency will review the producer records for quarterly payments to ensure that each Certificate of Analysis has been issued by an Agency-approved qualified entity, which may include the blender only if the blender is not associated with the biorefinery.

(b) *Records*. For the purpose of verifying compliance with the requirements of this subpart, each eligible advanced biofuel producer shall make available at one place at a reasonable time for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price

quotations, and other documents related to the Program that is within the control of such advanced biofuel producer for not less than 3 years from each Program payment date.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.106 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this Program may be obtained from the USDA Rural Development State Office, Rural Energy Coordinator and the USDA Rural Development website at *https://www.rd.usda.gov/*.

[84 FR 71302, Dec. 27, 2019]

§ 4288.107 Exception authority.

The Administrator of the Agency (''Administrator'') may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4288.108–4288.109 [Reserved]

ELIGIBILITY PROVISIONS

§ 4288.110 Applicant eligibility.

Sections 4288.110 through 4288.119 present the requirements associated with advanced biofuel producer eligibility, biofuel eligibility, eligibility notifications, and payment record requirements. To be eligible for this Program, the applicant must meet the requirements specified in paragraph (a) of this section and must provide additional information as may be requested by the Agency under paragraph (b) of this section. Public bodies and educational institutions are not eligible for this Program.

(a) *Eligible producer.* The applicant must be an advanced biofuel producer, as defined in this subpart.

(b) *Eligibility determination.* The Agency will determine an applicant's eligibility for participation in this Program. If an applicant's original submittal is not sufficient to verify an applicant's eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the applicant's eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the applicant's eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the Agency will not consider the applicant any further for participation in the upcoming fiscal year. Such applicants may elect to enroll during the next sign-up period.

(c) *Ineligibility determination.* An otherwise eligible producer will be determined to be ineligible if the producer:

(1) Refuses to allow the Agency to verify any information provided by the producer under this subpart, including information for determining applicant eligibility, advanced biofuel eligibility, and application payments;

(2) Fails to meet any of the conditions set out in this subpart, in the contract, or in other Program documents; or

(3) Fails to comply with all applicable Federal, State, or local laws.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.111 Biofuel eligibility.

To be eligible for this Program, a biofuel must meet the requirements specified in paragraph (a) of this section, and must not be listed in paragraph (b) of this section, and the biofuel's producer must provide additional information as may be requested by the Agency under paragraph (c) of this section.

(a) *Eligible advanced biofuel.* For an advanced biofuel to be eligible, each of the following conditions must be met, as applicable:

(1) The advanced biofuel must meet the definition of advanced biofuel and be produced in a State;

(2) The advanced biofuel must be a solid, liquid, or gaseous advanced biofuel;

(3) The advanced biofuel must be a Final Product; and

(4) The advanced biofuel must be sold as an advanced biofuel through an arm's length transaction to a third party.

(b) *Ineligible fuels.* Notwithstanding the provisions of paragraph (a) of this section, for the purposes of this Program, the following fuels, and as may be supplemented by the Agency through the publication of documents in the FEDERAL REGISTER, are not eligible for payment:

(1) Flared gases;

(2) Fuels derived from paper milling and other processes commonly ascribed to wood products manufacturing and generically referred to as ''liquor'' (*e.g.*, black liquor, red liquor, brown liquor, white liquor, green liquor, etc.), which typically are blended with diesel and burned as boiler fuel;

(3) Biofuels produced from solid eligible renewable biomass primarily by mechanical means, whether by hand or by machine, such as collecting, baling, bundling, chopping, screening, and chipping of the renewable biomass. Examples of ineligible biofuels that are not eligible advanced biofuels for the purposes of this subpart include, but are not limited to, baled energy grasses, chipped or chunked woody biomass, and chopped or split firewood; and

(4) Any advanced biofuel produced under bailment or third-party production contract and/or any variation thereof.

(c) *Eligibility determination.* The Agency will determine a biofuel's eligibility for payment under this Program. If an applicant's original submittal is not sufficient to verify a biofuel's eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the biofuel's eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the biofuel's eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the biofuel will not be eligible for payment under this Program in the upcoming fiscal year. Applicants may elect to include such biofuels in the application form submitted during the next sign-up period.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.112 Eligibility notifications.

(a) *Applicant eligibility.* If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application and will assign the applicant a contract number.

(b) *Ineligibility notifications.* If an applicant or a biofuel is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application, as to the reason(s) the applicant or biofuel was determined to be ineligible. Such applicant will have appeal rights as specified in this subpart.

(c) *Subsequent ineligibility determinations.* If at any time a producer or an advanced biofuel is determined to be ineligible, the Agency will notify the producer in writing of its determination.

§ 4288.113 Payment record requirements.

To be eligible for Program payments, an advanced biofuel producer must maintain records for all relevant fiscal years and fiscal year quarters for each advanced biofuel facility indicating:

(a) The type of eligible renewable biomass used in the production of advanced biofuel;

(b) The quantity of advanced biofuel produced from eligible renewable biomass at each advanced biofuel facility;

(c) The quantity of eligible renewable biomass used at each advanced biofuel facility to produce the advanced biofuel; and

(d) All other records required to establish Program eligibility and compliance.

§§ 4288.114–4288.119 [Reserved]

ENROLLMENT PROVISIONS

§ 4288.120 Enrollment.

In order to participate in the Program, a producer of advanced biofuels must be approved by the Agency and enter into a contract with the Agency. The process for enrolling in the Program is presented in this section. Advanced biofuel producers who expect to produce eligible advanced biofuels at any time during a fiscal year must enroll in the Program as described in this section.

(a) *Enrollment.* To enroll in the Program, an advanced biofuel producer must submit to the Agency a completed enrollment application during the applicable sign-up period, as specified in paragraph (b) of this section. Applicants must be registered in the System for Award Management (SAM) prior to submitting an application; which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *www.sam.gov/SAM*. Registration of a new entity in SAM requires an original, signed, and notarized letter stating that the applicant is the authorized Entity Administrator, before the registration will be activated.

(1) Eligible advanced biofuel producers must submit enrollment applications during each sign-up period in order to continue participating in this Program. If a participating producer fails to submit the enrollment application during a fiscal year's applicable sign-up period, the producer's contract will be terminated and the producer will be ineligible to receive payments for that fiscal year. Such a producer must reapply, and sign a new contract, to participate in the Program for future fiscal years.

(2) Eligible advanced biofuel producers may submit an enrollment application during a fiscal year's sign-up period even if the advanced biofuel facility is not currently producing, but is scheduled to start producing advanced biofuel in that fiscal year.

(3) The producer must furnish the Agency all required certifications before acceptance into the Program, and furnish access to the advanced biofuel producer's records required by the Agency to verify compliance with Program provisions. The required certifications depend on the type of biofuel produced. Certifications specified in paragraphs (a)(3)(i) through (a)(3)(iv) of this section are to be completed and provided by an accredited independent third party.

(i) *Alcohol.* For alcohol producers with authority from ATF to produce alcohol, copies of either

(A) The Alcohol Fuel Producers Permit (TTB F 5110.74) or

(B) The registration of Distilled Spirits Plant (TTB F 5110.41) and Operating Permit (TTB F 5110.25).

(ii) *Hydrous ethanol.* For hydrous ethanol that is upgraded by another distiller to anhydrous ethyl alcohol, the increased ethanol production is eligible for payment one time only. If the advanced biofuel producer entering into this agreement is:

(A) The hydrous ethanol producer, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the distiller stating that the:

(*1*) Applicable hydrous ethanol produced is distilled and denatured for fuel use according to ATF requirements, and

(*2*) Distiller will not include the applicable ethanol in any payment requests that the distiller may make under this Program.

(B) The distiller that upgrades hydrous ethanol to anhydrous ethyl alcohol, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the hydrous ethanol producer stating that the hydrous ethanol producer will not include the applicable ethanol in any payment requests that may be made under this Program.

(iii) *Biodiesel, biomass-based diesel, and liquid hydrocarbons derived from biomass.* For these fuels, the advanced biofuel producer shall certify that the producer, the advanced biofuel facility, and the biofuel meet the definitions of these terms as defined in § 4288.102, the applicable registration requirements under the Energy Independence and Security Act and the Clean Air Act and under the applicable regulations of the U.S. Environmental Protection Agency and Internal Revenue Service, and the

quality requirements per applicable ASTM International standards (e.g., ASTM D6751) and commercially acceptable quality standards of the local market. If a Renewable Identification Number has been established, the advanced biofuel producer shall also provide documentation of the most recent Renewable Identification Number for a typical gallon of each type of advanced biofuel produced.

(iv) *Gaseous advanced biofuel.* For gaseous advanced biofuel producers, certification that the biofuel meets commercially acceptable pipeline quality standards of the local market; that the flow meters used to determine the quantity of advanced biofuel produced are industry standard and properly calibrated by a third-party professional; and that the readings have been taken by a qualified individual.

(v) *Woody biomass feedstock.* If the feedstock is from National Forest system land or public lands, documentation must be provided that it cannot be used as a higher value wood-based product.

(4) Applicants must submit the forms specified in this paragraph (a)(4) with the enrollment application when applying for participation under this subpart and as needed when re-enrolling in the program.

(i) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

(ii) SF–LLL, ''Disclosure of Lobbying Activities.''

(iii) Form RD 400–4, ''Assurance Agreement.''

(b) *Sign-up period.* The sign-up period is October 1 to October 31 of the fiscal year for which payment is sought, unless otherwise announced by the Agency in a FEDERAL REGISTER notice.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.121 Contract.

Advanced biofuel producers determined to be eligible to receive payments must then enter into a contract with the Agency in order to participate in this Program.

(a) *Contract.* The Agency will forward the contract to the advanced biofuel producer. The advanced biofuel producer must agree to the terms and conditions of the contract, sign, date, and return it to the Agency within the time provided by the Agency.

(b) *Length of contract.* Once signed, a contract will remain in effect until terminated as specified in paragraph (d) of this section.

(c) *Contract review.* All contracts will be reviewed at least annually to ensure compliance with the contract and ensure the integrity of the program.

(d) *Contract termination.* Contracts under this Program will be terminated in writing by the Agency. Contracts may be terminated under any one of the following conditions:

(1) At the mutual agreement of the parties;

(2) In accordance with applicable Program notices and regulations;

(3) The advanced biofuel producer withdraws from the Program and so notifies the Agency, in writing;

(4) The advanced biofuel producer fails to submit the enrollment application during a sign-up period;

(5) The Program is discontinued or not funded;

(6) All of a participating advanced biofuel producer's advanced biofuel facilities no longer exist or no longer produce any eligible advanced biofuel; or

(7) The Agency determines that the advanced biofuel producer is ineligible for participation.

§§ 4288.122–4288.129 [Reserved]

PAYMENT PROVISIONS

§ 4288.130 Payment applications.

Sections 4288.130 through 4288.189 identify the process and procedures the Agency will use to make payments to eligible advanced biofuel producers. In order to receive payments under this Program, eligible advanced biofuel producers with valid contracts must submit a payment application, as required under paragraph (a) of this section. The Agency will review the payment application and, if necessary, may request additional information, as specified under paragraph (b) of this section.

(a) *Applying for payment.* To apply for payments under this subpart for a fiscal year, an eligible advanced biofuel producer must:

(1) After a quarter has been completed, submit a payment application covering the quarter;

(2) Certify that the request is accurate;

(3) Furnish the Agency such certification, and access to such records, as the Agency considers necessary to verify compliance with Program provisions; and

(4) Provide documentation as requested by the Agency of the net production of advanced biofuel at all advanced biofuel facilities during the relevant quarter.

(b) *Review of payment applications.* The Agency will review each payment application it receives to determine if it is eligible for payment.

(1) *Review factors.* Factors that the Agency will consider in reviewing payments applications include, but are not necessarily limited to:

(i) *Contract validity.* Whether the entity submitting the payment application has a valid contract with the Agency under this Program;

(ii) *Biofuel eligibility.* Whether the biofuel for which payment is sought is an eligible advanced biofuel; and

(iii) *Calculations.* Whether the calculations for determining the requested payment are complete and accurate.

(2) *Additional documentation.* If the Agency determines additional information is required for the Agency to complete its review of a payment application, eligible advanced biofuel producers shall submit such additional supporting documentation as requested by the Agency. If the producer does not provide the requested information within the required time period, the Agency will not make payment.

(c) *Payment application eligibility.* The Agency will notify the advanced biofuel producer, in writing, as soon as practicable after the payment application, whenever the Agency determines that a payment application, or any portion thereof, is ineligible for payment and the basis for the Agency's determination of ineligibility.

(d) *Submittal information.* Unless otherwise specified in a notice published in the FEDERAL REGISTER, eligible advanced biofuel producers must submit payment applications for this Program no later than 4:30 p.m. local time on the last day of the calendar month following the quarter for which payment is being requested. No payment applications received after the specified date and time will be considered, regardless of the postmark on the application.

(1) Any payment application form that is received by the Agency after October 31 of the calendar year for the preceding fiscal year is ineligible for payment.

(2) If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

[76 FR 7967, Feb. 11, 2011, as amended at 84 FR 71302, Dec. 27, 2019]

§ 4288.131 Payment provisions.

Payments to advanced biofuel producers for eligible advanced biofuel production will be determined in accordance with the provisions of this section.

(a) *Actual production.* Participating producers will be paid on a quarterly basis for the actual quantity of eligible advanced biofuel produced during the quarter. Payment for actual production will be determined according to paragraph (d) of this section.

(b) *Amount of payment funds available.* Based on the amount of funds made available to this Program each fiscal year, the Agency will allocate available program funds according to paragraphs (c), (d), and (e) of this section.

(c) *Quarterly allocations.* For each fiscal year, the Agency will allocate in each quarter one-fourth of the funds identified in paragraph (b) of this section allocated for the entire fiscal year.

(d) *Determination of payment rate.* Each quarter, the Agency will establish an actual production payment rate using the procedures specified in paragraphs (d)(1) through (4) of this section. This rate will be applied to the actual quantity of eligible advanced biofuel produced to determine payments to eligible advanced biofuel producers.

(1) Based on the information provided in each payment application, the Agency will determine the eligible advanced biofuel production. If the Agency determines that the amount of advanced

biofuel production reported in a payment application is not supported by the documentation submitted with the payment application, the Agency may revise the reported production to an amount that is commensurate with the submitted documentation.

(2) For each producer, the Agency will convert the production determined to be eligible under paragraph (c) of this section into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (EIA) (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another appropriate entity. If no such conversion factor exists, the Agency, in consultation with other Federal agencies, will establish and use a conversion formula as appropriate, until the Energy Information Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(3) For each quarter, the Agency will determine the actual production payment rate ($/BTU) based on paragraphs (b), (c), and (d) of this section. The rate will be calculated such that all quarterly funds for actual production will be distributed, subject to the payment provisions specified in paragraph (e) of this section.

(4) Using the actual production payment rate determined and the actual production for each type of advanced biofuel produced at a biorefinery, the Agency will calculate each quarter payment for each eligible advanced biofuel producer for that quarter.

(e) *Other payment provisions.* The following provisions apply:

(1) Notwithstanding any other provisions in this section, the Agency will provide payments to one or more eligible advanced biofuel producers from a single eligible Commodity, including intermediate ingredients of that single Commodity or use of that single Commodity and its intermediate ingredients in combination with another Commodity, of not more than one-third of available program funds in each quarter.

(i) Payments to producers for advanced biofuel derived from a commodity listed in Title I grains and oilseeds (as defined paragraph (1) of the defintion of commodity in §4288.102), are subject to the one-third limitation as tracked individually for each commodity. For example, with respect to the Title I grains and oilseeds commodity—grain sorghum, all payments for the quarter to producers of advanced biofuel derived from grain sorghum are tabulated and subject to the one-third payment limitation. This is similarly true for each commodity listed under Title I grains and oilseeds—barley, oats, rice, soybeans, etc.

(ii) Payments to producers for advanced biofuel derived from a commodity listed in paragraphs (2) through (6) of the defintion of commodity in §4288.102, inclusively, are subject to the one-third limitation as tracked cumulatively with each commodity group. For example, with respect to the commodity in paragraph (2) of the definition of commodity (other oilseeds and nuts including cottonseed, palm, camelina, coconut, and olive and algae), all payments for the quarter to producers of fuel derived from ''other oilseeds, nuts and algae'' are tabulated cumulatively (all are tracked as ''other oilseeds, nuts, and algae'' whether olive, or coconut, or camelina, etc.) and subject cumulatively to the one-third payment limitation. This is similarly true for the commodity in paragraphs (3) through (6) of the definition of commodity.

(2) Notwithstanding any other provision of this section, the Agency will provide payments to large producers of not more than five (5) percent of available program funds in any fiscal year. At any time during the year, if the limit on payments to large producers would be reached, the Agency will prorate payments to large producers based on the BTU content of their eligible advanced biofuel production so as not to exceed the limit.

(3) Notwithstanding any other provision of this section, the Agency will provide payments to any eligible advanced biofuel producer, that is not a large producer, of not more than eight

(8) percent of available funds in any fiscal year. At any time during the year, if the eight percent to the advanced biofuel producer would be reached, the Agency will pro-rate payments based on the BTU content of the eligible advanced biofuel production so as not to exceed the limit.

(4) Advanced biofuel producers will be paid based on the amount of eligible renewable energy content of the advanced biofuels only if the producer provides sufficient documentation, including a Certificate of Analysis, for the Agency to determine the eligible renewable energy content for which payment is being requested, and quantity produced through such documentation as, but not limited to, records of sale and calibrated flow meter records.

(5) Payment will be made to only one eligible advanced biofuel producer per biorefinery. If a producer owns more than one facility, the Agency's tracking system will add all actual BTUs and calculate one payment amount. For facilities owned by more than one producer, only one payment will be issued per facility.

(6) Subject to other provisions of this section, advanced biofuel producers shall be paid any sum due.

(7) A producer will be paid only for the advanced biofuels identified in the enrollment application submitted during the sign-up period and which are produced during the fiscal year. If the producer starts producing a new advanced biofuel or changes the type of advanced biofuel during the fiscal year, the producer will not receive any payments for those new advanced biofuels. However, during each sign-up period, a producer may identify new advanced biofuels and production levels compared to the previous year.

(8) When determining the quantity of eligible advanced biofuel, if an applicant is blending its advanced biofuel using ineligible feedstocks (*e.g.*, fossil gasoline or methanol, corn kernel starch), only the quantity of advanced biofuel being produced from Renewable Biomass, other than corn kernel starch, will be used in determining the payment rates and for which payments will be made.

[84 FR 71302, Dec. 27, 2019]

§ 4288.132 Payment adjustments.

The Agency will adjust the payments otherwise payable to the advanced biofuel producer if there is a difference between the amount actually produced and the amount determined by the Agency to be eligible for payment.

§ 4288.133 Payment liability.

Any payment, or portion thereof, made under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the advanced biofuel, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

§ 4288.134 Refunds and interest payments.

An eligible advanced biofuel producer who receives payments under this subpart may be required to refund such payments as specified in this section. If the Agency suspects fraudulent representation through its site visits and records inspections under § 4288.105(b), it will be referred to the Office of Inspector General for appropriate action.

(a) An eligible advanced biofuel producer receiving payments under this subpart shall become ineligible if the Agency determines the advanced biofuel producer has:

(1) Made any fraudulent representation; or

(2) Misrepresented any material fact affecting a Program determination.

(b) If an Agency determination that a producer is not eligible for participation under this subpart is appealed and overturned, the Agency will make appropriate and applicable payments to the producer from Program funds, to the extent such funds are available, that remain from the fiscal year in which the original adverse Agency decision was made.

(c) All payments made to an entity determined by the Agency to be ineligible shall be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs as determined appropriate under 31 CFR 901.9.

(d) When a refund is due, it shall be paid promptly. If a refund is not made

promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the producer, and referral to the Department of Justice.

(e) Late payment interest shall be assessed on each refund in accordance with the provisions and rates as established by the United States Treasury.

(1) Interest charged by the Agency under this subpart shall be established by the United States Treasury. Such interest shall accrue from the date such payments were made by the Agency to the date of repayment by the producer.

(2) The Agency may waive the accrual of interest or damages if the Agency determines that the cause of the erroneous payment was not due to any action of the advanced biofuel producer.

(f) Any advanced biofuel producer or person engaged in an act prohibited by this section and any advanced biofuel producer or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this subpart and for related charges.

§4288.135 Unauthorized payments and offsets.

When unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency reserves the right to collect from the recipient the sum that is determined to be unauthorized. If the recipient fails to pay the Agency the unauthorized assistance plus other sums due under this section, the Agency reserves the right to offset that amount against Program payments.

(a) *Unauthorized assistance.* The Agency will seek to collect from recipients all unauthorized assistance made under this Program using the procedures specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *Notification to the producer.* Upon determination that unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency will send a demand letter to the producer. Unless the Agency modifies the original demand, it will remain in full force and effect. The demand letter will:

(i) Specify the amount of unauthorized assistance, including any accrued interest to be repaid, and the standards for imposing accrued interest;

(ii) State the amount of penalties and administrative costs to be paid, the standards for imposing them and the date on which they will begin to accrue;

(iii) Provide detailed reason(s) why the assistance was determined to be unauthorized;

(iv) State the amount is immediately due and payable to the Agency;

(v) Describe the rights the producer has for seeking review or appeal of the Agency's determination pursuant to 7 CFR part 11;

(vi) Describe the Agency's available remedies regarding enforced collection, including referral of debt delinquent after due process for Federal salary, benefit and tax offset under the Department of Treasury Offset Program; and

(vii) Provide an opportunity for the producer to meet with the Agency and to provide to the Agency facts, figures, written records, or other information that might refute the Agency's determination.

(A) If the producer meets with the Agency, the producer will be given an opportunity to provide information to refute the Agency's findings.

(B) When requested by the producer, the Agency may grant additional time for the producer to assemble documentation. Such extension of time for payment will be valid only if the Agency documents the extension in writing and specifies the period in days during which period the payment obligation created by the demand letter (but not the ongoing accrual of interest) will be suspended. Interest and other charges will continue to accrue pursuant to the initial demand letter during any extension period unless the terms of the demand letter are modified in writing by the Agency.

(2) *Payment in full.* If the producer agrees with the Agency's determination or will pay the amount in question, the Agency may allow a reasonable period of time (usually not to exceed 90 days) for the producer to arrange for repayment. The amount due will be the unauthorized payments made plus interest accrued beginning on the date of the demand letter at the interest rate stipulated until the date paid unless otherwise agreed, in writing, by the Agency.

(3) *Promissory note.* If the producer agrees with the Agency's determination or is willing to pay the amount in question, but cannot repay the unauthorized assistance within a reasonable period of time, the Agency will convert the unauthorized assistance amount to a loan provided all of the conditions specified in paragraphs (a)(3)(i) through (a)(3)(iii) of this section are met. Loans established under this paragraph will be at the Treasury interest rate in effect on the date the financial assistance was provided and that is consistent with the term length of the promissory note. In all cases, the receivable will be amortized per a repayment schedule satisfactory to the Agency that has the producer pay the unauthorized assistance as quickly as possible, but in no event will the amortization period exceed fifteen (15) years. The producer will be required to execute a debt instrument to evidence this receivable, and the best security position practicable in a manner that will adequately protect the Agency's interest during the repayment period will be taken as security.

(i) The producer did not provide false information;

(ii) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(iii) Failure to collect the unauthorized assistance immediately will not adversely affect the Agency's interests.

(4) *Appeals.* Appeals resulting from the demand letter prescribed in paragraph (a)(1) of this section will be handled according to the provisions of § 4288.103. All appeal provisions will be concluded before proceeding with further actions.

(b) *Offsets.* Failure to make payment as determined under paragraph (a) of this section will be treated by the Agency as a debt that can be collected by an Administrative offset, unless written agreements to repay such debt as an alternative to administrative offset is agreed to between the Agency and the producer.

(1) Any debtor who wishes to reach a written agreement to repay the debt as an alternative to administrative offset must submit a written proposal for repayment of the debt, which must be received by the Agency within 20 calendar days of the date the notice was delivered to the debtor. In response, the Agency will notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the Agency will balance the Government's interest in collecting the debt against fairness to the debtor.

(2) When the Agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the initial agreement is acceptable. If a Government payment will be made before the end of the fiscal year and the review is not yet completed, payment will be deferred pending resolution of the review.

§ 4288.136 Remedies.

In addition to the steps available under the provisions of §§ 4288.134 and 4288.135, if the Agency has determined that a producer has misrepresented the information or defrauded the Government, the Agency will take one of the following steps in accordance with 2 CFR part 417:

(a) Suspend payments on the Contract until the violation has been reconciled;

(b) Terminate the Contract; or

(c) Debarment to participate in any Federal Government program.

[76 FR 7967, Feb. 11, 2011, as amended at 85 FR 31939, May 28, 2020]

§ 4288.137 Succession and loss of control of advanced biofuel facilities and production.

(a) *Contract succession.* An entity who becomes the eligible advanced biofuel producer for an advanced biofuel facility that is under contract under this subpart must request permission from the Agency to succeed to the Program

contract and the Agency may grant such request if it is determined that the entity is an eligible producer and permitting such succession would serve the purposes of the Program. If appropriate, the Agency may require the consent of the previous eligible advanced biofuel producer to such succession.

(b) *Loss of control.* Payments will be made only for eligible advanced biofuels produced at an advanced biofuel facility owned or controlled by an eligible advanced biofuel producer with a valid contract. If payments are made to an advanced biofuel producer for production at an advanced biofuel facility no longer owned or controlled by said producer or to an otherwise ineligible advanced biofuel producer, the Agency will demand full refund of all such payments.

§§ 4288.138–4288.200 [Reserved]

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (''RBIC'') PROGRAM

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AUTHORITY: 7 U.S.C. 1989 and 2009cc *et seq.*

SOURCE: 69 FR 32204, June 8, 2004, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 4290 appear at 85 FR 16522, Mar. 24, 2020.

Subpart A—Introduction to Part 4290

§ 4290.10 Description of the Rural Business Investment Company Program.

The Rural Business Investment Company (''RBIC'') Program is a Developmental Capital program for the purpose of promoting economic development and the creation of wealth and job opportunities in Rural Areas and among individuals living in such Areas. To this end, the Agency will select and license RBIC Applicants that will agree to address the unmet Equity Capital needs of Smaller Enterprises primarily located in Rural Areas.

§ 4290.15 Leveraged and Non-leveraged Rural Business Investment Companies.

The regulations in this part apply to rural business investment companies (RBICs) that seek leverage and to RBICs that do not seek leverage. The provisions of subparts A through N of this part apply to Leveraged RBICs and, except as indicated or as otherwise modified by subpart O of this part, to Non-leveraged RBICs. The provisions in subpart O of this part apply to Non-leveraged RBICs and, in addition, modify certain provisions in subparts A through N of this part as they apply to Non-leveraged RBICs.

[76 FR 80221, Dec. 23, 2011]

§ 4290.20 Legal basis and applicability of this part 4290.

The regulations in this part implement Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*) (''Act''). All RBICs must comply with all applicable regulations, accounting guidelines and valuation guidelines for RBICs.

§ 4290.30 Amendments to Act and regulations.

A RBIC is subject to all existing and future provisions of the Act and part 4290 of title 7 of the Code of Federal Regulations.

§ 4290.40 How to read this part 4290.

(a) *Center Headings.* Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms.* Terms defined in § 4290.50 have initial capitalization in this part 4290.

(c) ''*You.*'' The pronoun ''you'' as used in this part 4290 means a RBIC unless otherwise noted.

(d) *Forms.* All references in this part to forms, and instructions for their preparation, are to the current issue of such forms.

§ 4290.45 Responsibility for implementing this part 4290.

The Agency has delegated to the U.S. Small Business Administration (SBA), pursuant to an agreement under the Economy Act (31 U.S.C. 1535), the authority to implement the RBIC program, including implementing and enforcing the regulations in this part 4290. Therefore, unless specifically stated otherwise, SBA will exercise on behalf of the Agency all responsibilities and authorities assigned to the Agency in this part 4290.

Subpart B—Definition of Terms Used in Part 4290

§ 4290.50 Definition of terms.

Act means Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*).

Administrator means the Administrator of SBA.

Affiliate or *Affiliates* has the meaning set forth in title 13 CFR 121.103.

Agency means the Rural Business-Cooperative Service (RBS) an agency of the U.S. Department of Agriculture.

Applicant means any entity submitting an application to be licensed as a RBIC.

Articles mean articles of incorporation or charter and bylaws for a Corporate RBIC, the certificate and limited partnership agreement for a Partnership RBIC, and the operating agreement or other organizational documents for an LLC RBIC.

Assistance or *Assisted* means Financing of or management services rendered to a Portfolio Concern by or through a RBIC pursuant to the Act and this part.

Associate of a RBIC means any of the following:

(1)(i) An officer, director, employee or agent of a Corporate RBIC;

(ii) A Control Person, employee or agent of a Partnership RBIC;

(iii) A managing member of an LLC RBIC;

(iv) An Investment Adviser/Manager of any RBIC, including any Person who contracts with a Control Person of a RBIC to be the Investment Adviser/Manager of such RBIC; or

(v) Any Person regularly serving a RBIC on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate RBIC or 10 percent of the membership interests of an LLC RBIC, or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership RBIC. However, neither a limited partner in a Partnership RBIC nor a non-managing member in an LLC RBIC is considered an Associate if such Person is an Entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the RBIC and no more than five percent of such Person's net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a RBIC.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the RBIC).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), ''collectively'' means together with any Person(s) described in paragraphs (1) though (7) of this definition.

(10) For the purposes of this definition, any Associate relationship described in paragraphs (1) through (7) of this definition that exists at any time within six months before or after the date that a RBIC provides Financing, will be considered to exist on the date of the Financing.

Capital Impairment has the meaning set forth in § 4290.1830(b).

Central Registration Agent or *CRA* means one or more agents appointed for the purpose of issuing Trust Certificates (TCs) and performing the functions enumerated in § 4290.1620 and performing similar functions for Debentures funded outside the pooling process.

Close Relative of an individual means:

(1) A current or former spouse;

(2) A father, mother, guardian, brother, sister, son, daughter; or

(3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

Commitment means a written agreement between a RBIC and an Enterprise that obligates the RBIC to provide Financing (except a guarantee) to

that Enterprise in a fixed or determinable sum, by a fixed or determinable future date. In this context the term ''agreement'' means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the RBIC's obligation to fund the Commitment, but these conditions must be outside the RBIC's control.

Common Control means a condition such that two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more RBICs are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent Investment Advisor/Manager or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to the Agency.

Community Development Finance means debt securities or equity-type investments in Rural Areas.

Conflict of interest means a situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or a tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

Control means the possession, direct or indirect, of the power to direct or cause, or the power to stop or hinder (also referred to as ''negative Control''), the direction of the management and policies of a RBIC or other concern, whether through the ownership of voting securities, by contract, or otherwise.

Control Person means any Person that controls a RBIC, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership RBIC;

(2) Any Person serving as a general partner (in the case of a partnership), an officer or director (in the case of a corporation), or a manager (in the case of a limited liability company) of any entity that controls a RBIC, either directly or through an intervening entity;

(3) Any Person that—

(i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership RBIC, a LLC RBIC, or any entity described in paragraphs (1) or (2) of this definition; and

(ii) Participates in the investment decisions of a general partner of such Partnership RBIC or of a managing member of such LLC RBIC;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 50 percent of a RBIC or any entity described in paragraphs (1) or (2) of this definition.

Corporate RBIC has the meaning set forth in the definition of RBIC in this section.

Debenture means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Agency. A Debenture may be prepaid at any time without penalty.

Debt Securities means instruments evidencing a loan with an option or any other right to acquire Equity Securities in an Enterprise or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options acquired.

Developmental Capital means Equity Capital invested in Rural Business Concerns, with an objective of fostering economic development in Rural Areas.

Distribution means any transfer of cash or non-cash assets to the Agency,

the Agency's agent or Trustee, or to partners in a Partnership RBIC, or to shareholders in a Corporate RBIC, or to members in an LLC RBIC. Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the RBIC's partners, shareholders, or members.

Enterprise means a Person engaged in a business or commercial activity which charges for the goods and services it provides, whether such Person is operating for profit or is subject to any legal restrictions on the distribution of profits to its owners, members, or suppliers of its equity or quasi-equity capital. An Enterprise includes:

(1) A public, private, or cooperative for-profit or non-profit organization;

(2) A for-profit or nonprofit business controlled by an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group; or

(3) Any other Person.

Entity General Partner has the meaning set forth in § 4290.160.

Entity Managing Member has the meaning set forth in § 4290.160.

Equity Capital means Equity Securities or Subordinated Debt With Equity Features.

Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint interests.

Farm Credit System Institution means an institution defined in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)).

Financing or *Financed* means outstanding financial assistance provided to a Portfolio Concern by a RBIC, whether through:

(1) Loans, with or without a right to acquire Equity Securities;

(2) Debt Securities;

(3) Equity Securities;

(3) Subordinated Debt With Equity Features;

(4) Guarantees; or

(5) Purchases of securities of an Enterprise through or from an underwriter as permitted by § 4290.825.

Guaranty Agreement means the contract entered into by the Agency which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures and the Agency's rights in connection with such guarantee.

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468 or other USDA-approved form(s)) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Agency stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

Institutional Investor means Entity Institutional Investor or Individual Institutional Investor, each defined as follows:

(1) *Entity Institutional Investors.* Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least $1 million, or such higher amount as is specified in this paragraph (1). (*See also* § 4290.230(c)(4) for limitations on the amount of an Entity Institutional Investor's commitment that may be included in Private Capital.)

(i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association, including an investment pool created entirely by such bank or savings association, the deposits of which are insured under the Federal Deposit Insurance Act.

(ii) An insurance company.

(iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 *et seq.*).

(iv) A holding company of any entity described in paragraph (l)(i), (ii) or (iii) of this definition.

(v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a

State, or any agency or instrumentality of such government unit.

(vi) An employee benefit or pension plan (as defined in the Employee Retirement Income Security Act of 1974, as amended (Public Law 93–406, 88 Stat. 829), excluding plans established under § 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. 401(k)), as amended).

(vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, 26 U.S.C. 1, as amended.

(viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than $10 million.

(ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.

(x) An entity whose primary purpose is to manage and invest non-Federal funds on behalf of at least three Institutional Investors described in paragraphs (l)(i) through (ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.

(xi) Any other entity that the Agency determines to be an Institutional Investor.

(2) *Individual Institutional Investor.* (i) Any of the following individuals if he/she is also a permanent resident of the United States:

(A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended (15 U.S.C. 77a–77aa)) and whose commitment to the RBIC is backed by a letter of credit from a State or National bank acceptable to the Agency.

(B) An individual whose personal net worth is at least $2 million and at least ten times the amount of its commitment to the RBIC. The individual's personal net worth must not include the value of any equity in its most valuable residence.

(C) An individual whose personal net worth, not including the value of any equity in its most valuable residence, is at least $10 million.

(ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition provided such individual has irrevocably appointed an agent within the United States for the service of process.

Investment Adviser/Manager means any Person who furnishes advice or assistance with respect to operations of a RBIC under a written contract executed in accordance with the provisions of § 4290.510.

Lending Institution means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ) and which has assets in excess of $500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate's sales or business operations.

Leverage means financial assistance provided to a RBIC by the Agency either through the purchase or guaranty of a RBIC's Debentures and any other SBA financial assistance evidenced by a security of the RBIC.

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

Leveraged RBIC means a RBIC that received financial assistance under this part.

LLC RBIC has the meaning set forth in the definition of RBIC in this section.

Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

Loans and Investments means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468 or other USDA-approved form(s).

Management Expenses has the meaning set forth in § 4290.520.

NAICS Manual means the latest issue of the North American Industrial Classification System (NAICS) Manual, prepared by the Office of Management and Budget, and available from the

U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250–7954.

1940 Act Company means a RBIC which is registered under the Investment Company Act of 1940.

1980 Act Company means a RBIC which is registered under the Small Business Investment Incentive Act of 1980.

Non-leveraged RBIC means a RBIC that has not received financial assistance under this part.

Operational Assistance means management, marketing, and other technical assistance that assists a Smaller Enterprise with its business development.

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participation Agreement means an agreement between the Agency and an Applicant licensed as a RBIC pursuant to § 4290.390 of this part, that details the RBIC's operating plan and investment criteria and requires the RBIC to operate pursuant to the Act and this part.

Partnership RBIC has the meaning set forth in the definition of RBIC in this section.

Person means a natural person or legal entity.

Pool means an aggregation of guaranteed Debentures approved by the Agency.

Portfolio means the securities representing a RBIC's total outstanding Financings of Enterprises. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

Portfolio Concern means any Enterprise Assisted by a RBIC.

Private Capital has the meaning set forth in § 4290.230.

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 (17 CFR 230.144) of the Securities Act of 1933, as amended, by the holder thereof, and are of a class which is traded on a regulated stock exchange, or is listed in NASDAQ, or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended (15 U.S.C. 77b *et seq.*), and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

Qualified Non-private Funds means:

(1) Funds directly or indirectly invested in any RBIC or Applicant on or after May 13, 2002 by any Federal agency other than USDA under a provision of law explicitly mandating the inclusion of those funds in the definition of ''Private Capital;'' and

(2) The aggregate amount of funds invested in any Applicant or RBIC by one or more States, or any political subdivisions, agencies or instrumentalities thereof, including any guarantee extended by such entities.

Regulatory Capital means Private Capital, excluding non-cash assets contributed to a RBIC or an Applicant unless such assets have been converted to cash or have been approved by the Agency for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowings against such assets shall not constitute a conversion to cash.

Relevant Capital Finance means Equity Capital in Rural Business Concerns or benefiting Rural Areas.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468 or other USDA-approved form(s)), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

Rural area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants according to the most recent decennial Census of the United States (decennial Census), not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I), as well as any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with

more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the USDA shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is ''rural in character'' will be made by the Under Agency of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Agency of Rural Development for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Rural Business-Cooperative Service Administrator of USDA on behalf of the Under Agency. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Agency will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Agency will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Agency will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Agency will provide to the petitioner an opportunity to appeal a determination to the Under Agency, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Rural Business Concern means an Enterprise that primarily operates in a Rural Area.

Rural Business Concern Investment means a Financing in a Rural Business Concern at the time of the initial Financing or if the initial Financing is to facilitate a relocation from a Non-rural Area to a Rural Area after that initial Financing.

Rural Business Investment Company or *RBIC* means a corporation organized as required by § 4290.100 (Corporate RBIC), a limited partnership organized as required by §§ 4290.100 and 4290.160 (Partnership RBIC), or a limited liability company organized as required by §§ 4290.100 and 4290.160 (LLC RBIC), that

has been licensed as a RBIC pursuant to § 4290.390.

SBA means the U.S. Small Business Administration, an agency of the Federal Government headquartered at 409 Third Street, SW, Washington, DC 20416.

Secondary Relative of an individual means:

(1) A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;

(2) An uncle, aunt, nephew, niece, or first cousin; or

(3) A spouse of any person described in paragraph (1) or (2) of this definition.

Small Business Investment Company or *SBIC* means a Licensee, as that term is defined in 13 CFR 107.50.

Smaller Enterprise means any Rural Business Concern that, together with its Affiliates and by itself—

(1) Meets the size standard established by SBA in 13 CFR 121.201, corresponding to each type of economic activity or industry described in the NAICS Manual for the industry in which it is primarily engaged on the date on which the Financing is made (the term ''primarily engaged'' for purposes of this definition is defined in 13 CFR 121.107); or

(2) Has—

(i) A net financial worth of not more than $6,000,000 as of the date on which the Financing is made; and

(ii) An average net income for the two year period preceding the date on which the Financing is made of not more than $2,000,000, after Federal income taxes (excluding any carryover losses), except that, for purposes of this clause, if the Rural Business Concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the Rural Business Concern, its net income is determined by allowing a deduction in an amount equal to the total of—

(A) If it is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this paragraph (2)(ii)(A)) multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the Rural Business Concern were a corporation; and

(B) The net income (so determined) less any deduction for State (and local) income taxes calculated under paragraph (2)(ii)(A) of this definition multiplied by the marginal Federal income tax rate that would have applied if the Rural Business Concern were a corporation.

Smaller Enterprise Investment means a Financing in the form of Equity Capital in an Enterprise that qualified as a Smaller Enterprise at the time of the initial Financing.

State means each of the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

Subordinated Debt means a debt of a debtor, common to more than one creditor, that is the subject of an agreement between two groups of creditors (whose claims would otherwise be in parity) setting forth the circumstances under which the claims of one group (senior creditors) shall be satisfied out of the resources of the common debtor that would otherwise be available for the payment of the claims of the other group (junior creditors).

Subordinated Debt With Equity Features means a Subordinated Debt obligation that gives to the junior creditor such additional compensation as warrants, conversion rights, any other interest in the debtor's equity, profits, increased future revenue, or a royalty interest.

Trust means a legal entity created for the purpose of holding guaranteed Debentures and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined at the time Debentures are pooled.

Trust Certificates (TCs) means certificates issued by the Agency, the Agency's agent or Trustee and representing

ownership of all or a fractional part of a Trust or Pool of Debentures.

Trustee means the trustee or trustees of a Trust.

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468 or other USDA-approved form(s).

Unrealized Appreciation means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a RBIC's Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

Urban Area means an area containing a city (or its equivalent), or any equivalent geographic area determined by the Census Bureau and adopted by the Agency for purposes of this definition (about which the Agency will publish a document in the FEDERAL REGISTER from time to time), which had a population of over 150,000 in the most recent decennial Census and the urbanized areas containing or adjacent to that city, both as determined by the Bureau of the Census for the most recent decennial Census.

Urban Area Investment means a Financing in an Enterprise that primarily operates in an Urban Area at the time of the initial Financing.

USDA means the U.S. Department of Agriculture, a department of the Federal government headquartered at 1400 Independence Avenue, SW., Washington, DC 20250.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80221, Dec. 23, 2011; 79 FR 76018, Dec. 19, 2014; 80 FR 9914, Feb. 24, 2015; 85 FR 16522, Mar. 24, 2020; 87 FR 38645, June 29, 2022]

Subpart C—Qualifications for the RBIC Program

ORGANIZING A RBIC

§ 4290.100 Business form.

(a) *Newly-formed for-profit*. An Applicant for a RBIC license must be a newly formed for-profit entity or, subject to § 4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State. An Applicant may be organized as a corporation (''Corporate RBIC''), a limited partnership (''Partnership RBIC''), or a limited liability company (''LLC RBIC'').

(b) *Purpose*. An Applicant must be organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act: making Developmental Capital investments and providing Operational Assistance to eligible Smaller Enterprises.

(c) *Articles*. The RBIC's Articles—

(1) Must specify in general terms:

(i) The purposes for which the RBIC is formed;

(ii) The name of the RBIC;

(iii) The Rural Area or Areas in which it will operate;

(iv) The place where the RBIC's headquarters will be located; and

(v) The amount and classes of the RBIC's ownership interests.

(2) May contain any other provisions consistent with the Act that the RBIC may determine is appropriate to adopt to regulate its business and the conduct of its affairs.

(3) Are subject to the Agency's approval.

(d) *Duration*—(1) *Partnership RBICs*. If you are a Partnership RBIC:

(i) You must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Agency, its agent, or Trustee

have been paid, the Partnership RBIC may be terminated by a vote of your partners;

(ii) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of the Agency;

(iii) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner prior to the Agency's written approval of such transfer or succession; and

(iv) You must incorporate all the provisions in this paragraph (d) in your limited partnership agreement.

(2) *LLC RBICs.* If you are a LLC RBIC, you must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Agency, its agent, or Trustee have been paid, the LLC RBIC may be terminated by a vote of your members.

(3) *Corporate RBICs.* If you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders, except that the Corporate RBIC must not dissolve until at least two years following the maturity of your last-maturing Leverage security.

§ 4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Agency, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, the Agency will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation (and any other managerial aspect identified by the USDA in a FEDERAL REGISTER notice) of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Agency.

[76 FR 80222, Dec. 23, 2011]

§ 4290.120 Plan to invest in Rural Areas.

An Applicant must agree that if licensed as a RBIC, it will make Developmental Capital investments in Enterprises that will create wealth and job opportunities in Rural Areas and among individuals living in those areas.

§ 4290.130 Identified Rural Areas.

A RBIC must identify the specific Rural Area or Areas in which it intends to make Developmental Capital investments and provide Operational Assistance under the RBIC program. The scope of the identified areas must be consistent with Applicant's business plan, especially as the plan relates to the Applicant's ability to operate actively, soundly, and profitably in such areas.

§ 4290.140 Approval of initial Management Expenses.

A RBIC must have its Management Expenses approved by the Agency at the time it is licensed. (*See* § 4290.520 for the definition of Management Expenses.)

§ 4290.150 Management and ownership diversity requirement.

(a) *Diversity requirement.* You must have diversity between management and ownership in order to be licensed as a RBIC and to maintain your license. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section.

(b) *Percentage ownership requirement.* No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) *Non-affiliation requirement.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by the Agency. Such Persons must not be

your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single ''acceptable'' Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are ''acceptable'' for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by State, Federal or other governmental authorities satisfactory to the Agency;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to the Agency.

(d) *Voting requirement.* The investors relied upon to satisfy the diversity requirement may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior approval by the Agency.

(e) *Requirement to maintain diversity.* You must maintain management-ownership diversity while you are a RBIC. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify the Agency within 10 days; and

(2) Re-establish diversity within six months after loss of diversity.

§ 4290.160 Special rules for Partnership RBICs and LLC RBICs.

(a) *Entity General Partner or Entity Managing Member.* (1) A general partner of a Partnership RBIC which is a corporation, limited liability company or partnership (an ''Entity General Partner''), or a managing member of an LLC RBIC which is a corporation, limited liability company, or partnership (an ''Entity Managing Member'') shall be organized under State law solely for the purpose of serving as the general partner or managing member of one or more RBICs, and shall be organized for profit.

(2) The Agency must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner or Entity Managing Member and of an entity that Controls the Entity General Partner or Entity Managing Member. This provision must be stated in an Entity General Partner's or Entity Managing Member's articles of incorporation or charter and bylaws if a corporation, operating agreement if a limited liability company, or partnership agreement if a partnership.

(3) An Entity General Partner or Entity Managing Member is subject to the same examination and reporting requirements as a RBIC under sections 384K and 384L of the Act. The restrictions and obligations imposed upon a RBIC by §§ 4290.1810, 4290.30, 4290.410 through 4290.450, 4290.470, 4290.500, 4290.510, 4290.585, 4290.600, 4290.680, 4290.690 through 4290.692, and 4290.1910 apply also to an Entity General Partner or Entity Managing Member of a RBIC.

(4) The general partner(s) of your Entity General Partner(s) or Entity Managing Member(s) will be considered your general partner.

(5) If your Entity General Partner or Entity Managing Member is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in § 4290.50.

(b) *Liability of general partner of Partnership RBIC.* Subject to section 384O(b) of the Act, your general partner(s) is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to the Agency unless the Agency, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage. The conditions specified in § 4290.1810 and § 4290.1910 apply to all general partners.

(c) *Special Leverage requirement for Partnership RBICs and LLC RBICs.* Before your first issuance of Leverage, you must furnish the Agency with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service or by an opinion of counsel.

§ 4290.165 Obligations of Control Persons.

All Control Persons are bound by the provisions of sections 384O and 384P of the Act and by the conflict-of-interest rules under § 4290.730. The term RBIC, as used in §§ 4290.30, 4290.460, and 4290.680, includes all of the RBIC's Control Persons.

CAPITALIZING A RBIC

§ 4290.200 Adequate capital for RBICs.

You must meet the requirements of §§ 4290.210 through 4290.230 in order to qualify as a RBIC.

[76 FR 80222, Dec. 23, 2011]

§ 4290.210 Minimum capital requirements for RBICs.

(a) *General Rule.* Unless otherwise specified in a FEDERAL REGISTER notice, you must have Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) and Leverageable Capital of at least $500,000, to become a RBIC.

(b) *Exception.* (1) The Agency in its sole discretion and based on a showing of special circumstances and good cause may license an Applicant with Regulatory Capital of at least $2,500,000, but only if the Applicant:

(i) Has satisfied all eligibility criteria for licensing as a RBIC as described in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Agency;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least $10,000,000.

(2) A RBIC licensed under this exception is not eligible to receive Leverage until it has complied with paragraph (a) of this section.

(c) *Time frame.* Each RBIC shall have a period of 2 years to meet the capital requirements set forth in this section.

(d) *Closing.* Each RBIC may conduct more than one closing to raise the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (see § 4290.310(b)). One or more closings may take place subsequent to licensing as an RBIC to raise the difference between the required Regulatory Capital as provided under paragraphs (a) and (b) of this section and the specific amount of Regulatory Capital that the Applicant had projected to raise in its application.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011; 85 FR 16522, Mar. 24, 2020]

§ 4290.230 Private Capital for RBICs.

(a) *General.* Private Capital means the contributed capital of a RBIC, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a RBIC.

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate RBIC, the members' contributed capital of a LLC RBIC, or the partners' contributed capital of a Partnership RBIC, in each case subject to the limitations in paragraph (c) of this section.

(c) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by an Applicant or a RBIC from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from the Federal government or any State (including by a political subdivision, agency or instrumentality of the Federal government or a State), except that the following categories of such funds are not excluded from Private Capital—

(i) Funds obtained directly or indirectly from the business revenues (excluding any governmental appropriation) of any federally-chartered or government-sponsored enterprise established prior to May 13, 2002;

(ii) Funds invested by an employee welfare benefit plan or pension plan; and

(iii) Qualified Non-private Funds in an amount not to exceed 33 percent of the total Private Capital of any Applicant or RBIC, *provided*, *however*, that in no event may any investor or investors of Qualified Non-private Funds have the power to Control, directly or indirectly, the management, board of directors, general partners, or members of the RBIC.

(4) Any portion of an unfunded commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor's net worth.

(5) An unfunded commitment from an investor if the Agency determines that the collectability of the commitment is questionable.

(d) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in § 4290.240 of this part.

(e) *Contributions with borrowed funds.* You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) The Agency gives its prior written approval of the capital contribution.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

§ 4290.240 Limitations on non-cash capital contributions in Private Capital.

Non-cash capital contributions to a RBIC or Applicant are included in Private Capital only if they are approved by the Agency and they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States having a term of no more than one year.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Other non-cash assets approved by the Agency.

Subpart D—Application and Approval Process for RBIC Licensing

§ 4290.300 When and how to apply for a RBIC License.

(a) *Notice of Funds Availability (''NOFA'').* The Agency will publish a NOFA in the FEDERAL REGISTER advising potential applicants of the availability of funds for the RBIC program and inviting the submission of applications. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round. When submitting its application, an Applicant must comply with both this part 4290 and any requirements specified in the NOFA, including the opening and closing dates for submission of an application.

(b) *Application form.* An Applicant must apply for a RBIC license using an appropriate application packet provided by the Agency. Upon receipt of a completed application packet, the Agency may request clarifying or technical information on the materials submitted as part of the application.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011]

§ 4290.310 Contents of application.

Each Applicant must submit a complete application, including the following:

(a) *Management team experience.* The Applicant must provide information generally as to the background, capability, education, reputation and training of its management team, including general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant also must provide information specifically on these individuals' qualifications and reputation in the areas of Community Development Finance and/or Relevant Capital Finance, including the impact of these individuals' activities in these areas.

(b) *Amount of Regulatory Capital.* The Applicant must indicate the amount of Regulatory Capital it has raised or proposes to raise, which amount must satisfy the requirements of § 4290.210(a) of this part, unless the Applicant indicates that it has raised or proposes to

raise at least $2,500,000 and is applying for an exception pursuant to § 4290.210(b) of this part and includes in its application—

(1) A showing of special circumstances and good cause for the exception:

(2) Will satisfy all eligibility criteria for licensing as a RBIC as set forth in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Agency;

(3) Has a viable business plan reasonably projecting profitable operations; and

(4) Has a reasonable timetable for achieving Regulatory Capital in an amount that satisfies the requirements of § 4290.210(a) of this part.

(c) *Comprehensive business plan.* The Applicant must submit a comprehensive business plan covering at least a five-year period, addressing the specific items described in § 4290.320, and which demonstrates that the Applicant has the capacity to operate successfully as a RBIC.

§ 4290.320 Contents of comprehensive business plan.

(a) *Plan for Developmental Capital investing.* The Applicant must describe its plans and strategies for how it proposes to make successful Developmental Capital investments in identified Rural Areas.

(b) *Working with Rural Area community-based organizations.* The Applicant must describe how it intends to work with community-based organizations and local entities (including local economic development companies, local lenders, and local investors) in order to facilitate its Developmental Capital investments.

(c) *Market analysis.* The Applicant must provide an analysis of the Rural Areas in which it intends to focus its Developmental Capital investments and Operational Assistance to Smaller Enterprises, demonstrating that the Applicant understands the market and the unmet Equity Capital needs in such areas and how its activities will meet these unmet needs and will have a positive economic impact on those areas. The Applicant also must analyze the extent of the demand in such areas for Developmental Capital investments and any factors or trends that may affect the Applicant's ability to make effective Developmental Capital investments.

(d) *Operational capacity and investment strategies.* The Applicant must submit information concerning its policies and procedures for underwriting and approving its Developmental Capital investments, monitoring its portfolio, and maintaining internal controls and operations.

(e) *Plan to raise Regulatory Capital.* The Applicant must include a detailed description of how it plans to raise its Regulatory Capital if it has not yet done so at the time of application. The Applicant must discuss its potential sources of Regulatory Capital, the estimated timing for raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant.

(f) *Plan for providing Operational Assistance.* The Applicant must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it makes or expects to make Developmental Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(g) *Projected amount of investment in Rural Areas.* The Applicant must describe how it proposes to meet the requirements set forth in § 4290.700. An Applicant must project the amount of its total Regulatory Capital and Leverage that it proposes to invest in Smaller Enterprises and in Rural Business Concerns that are not Smaller Enterprises. The Applicant also must describe the amount of its total Regulatory Capital and Leverage that it proposes to invest in Urban Area Investments.

(h) *Projected impact.* The Applicant must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the RBIC program. It must include:

(1) A description of the extent to which it will concentrate its Developmental Capital investments and Operational Assistance activities in identified Rural Areas;

(2) An estimate of the economic development benefits to be created within identified Rural Areas over the next five years or more as a result of its activities;

(3) A description of the criteria to be used to measure the benefits created as a result of its activities;

(4) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the RBIC program.

(i) *Affiliates and business relationships.* The Applicant must submit information describing the management and financial strength of any parent or holding entity, affiliated firm or entity, or any other firm or entity essential to the success of the Applicant's business plan.

§ 4290.330 Guarantee fee.

In cases of Leveraged Applications, the Applicant must pay to the Agency an issuance fee for each grant or debenture guarantee. The Agency may charge such fees as the Agency considers appropriate, so long as those fees are proportionally equal for each rural business investment company, with respect to any guarantee or grant issued under this subchapter.

[85 FR 16523, Mar. 24, 2020]

Subpart E—Evaluation and Selection of RBICs

§ 4290.340 Evaluation and selection—general.

The Administrator of RBS and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant to participate in the RBIC program based on a review of the Applicant's application materials, interviews or site visits with the Applicant (if any), and background investigations conducted by the Agency and other Federal agencies. The Agency's evaluation and selection process is intended to—

(a) Ensure that Applicants are evaluated on a competitive basis and in a fair and consistent manner;

(b) Take into consideration the unique proposals presented by Applicants;

(c) Ensure that each Applicant licensed as a RBIC can fulfill successfully the goals of its comprehensive business plan; and

(d) Ensure that the Agency selects Applicants in such a way as to promote nationwide geographic distribution of Developmental Capital investments.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

§ 4290.350 Eligibility and completeness.

The Agency will not consider any application that is not complete or that is submitted by an Applicant that does not meet the eligibility criteria described in subpart C of this part. The Agency at its sole discretion, may request from an Applicant additional information concerning eligibility criteria or easily completed portions of the application in order to facilitate consideration of its application.

§ 4290.360 Initial review of Applicant's management team's qualifications.

The Agency will review the information submitted by the Applicant concerning the qualifications of the Applicant's management team to determine in its sole discretion whether the team meets the minimum requirements deemed by the Agency to be critical to successful capital investing. In making this determination, the Agency will consider, among other things, the general business reputation of the owners and managers of the Applicant. Only those Applicants considered to have a management team qualified for venture capital investing will be further considered for selection as a RBIC.

§ 4290.370 Evaluation criteria.

Of those Applicants whose management team is considered qualified for venture capital investing and who have submitted an eligible and complete application, the Administrator of RBS and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant for

participation in the RBIC program by considering the following criteria:

(a) Whether the Applicant's management team has the knowledge, experience, and capability necessary to manage a sound, economically viable RBIC and to comply with the Act;

(b) The quality of the Applicant's comprehensive business plan in terms of meeting the objectives of the RBIC program;

(c) The likelihood that the Applicant will achieve the goals described in its comprehensive business plan;

(d) The strength and likelihood for success of the Applicant's operations and investment strategies, including whether the Applicant has projected adequate profitability and financial soundness;

(e) Whether the Applicant will be able to operate soundly and profitably over the long term;

(f) Whether the Applicant will be able to operate actively in its identified Rural Areas in accordance with its business plan;

(g) The need for Developmental Capital investments in the Rural Areas in which the Applicant intends to invest;

(h) The extent to which the Applicant will concentrate its activities on serving Smaller Enterprises located in the Rural Area in which it intends to invest, including the ratio of resources that it proposes to invest in such Enterprises as compared to other Enterprises;

(i) The Applicant's demonstrated understanding of the markets in the Rural Areas in which it intends to focus its activities;

(j) The likelihood that and the time frame within which the Applicant will be able to raise the Regulatory Capital it proposes to raise for its investments;

(k) The strength of the Applicant's proposal to provide Operational Assistance to Smaller Enterprises in which it plans to invest;

(l) The extent to which the activities proposed by the Applicant will promote economic development and the creation of wealth and job opportunities in the Rural Areas in which it intends to invest and among individuals living in such Areas; and

(m) The strength of the Applicant's application compared to applications submitted by other Applicants intending to invest in the same or proximate Rural Areas.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

§ 4290.380 Selection.

From among the Applicants that have submitted eligible and complete applications, the Administrator of RBS and the Administrator on behalf of SBA, in their sole discretion, will select some, all, or none of such Applicants to participate in the RBIC program. Selection will entitle the Applicant to proceed with obtaining a license as a RBIC but only if the Applicant also meets the conditions set forth in § 4290.390.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

§ 4290.390 Licensing as a RBIC.

(a) *Eligibility criteria for licensing as a RBIC.* Each selected Applicant must meet the following conditions before it is eligible to be licensed as a RBIC:

(1) Raise the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (see § 4290.210 for additional information).

(2) Raise $500,000 in Leverageable Capital as required by § 4290.210;

(3) Complete and submit to the Agency all legal and other documentation concerning the RBIC, including but not limited to its Articles and updated financial information concerning the RBIC in order to qualify for a Leverage commitment; and

(4) Enter into a Participation Agreement with the Agency.

(b) *Licensing as a RBIC.* If the selected Applicant has satisfactorily met all the conditions specified in paragraph (a) of this section, as determined within the sole discretion of the Agency, then the Administrator of RBS and the Administrator on behalf of SBA will license the Applicant as a RBIC.

(c) *Failure to meet eligibility criteria for licensing.* Each selected Applicant that does not meet the eligibility criteria for licensing described in paragraph (a) of this section, within a time period specified by the Agency, will not be licensed as a RBIC. Failure to meet any

of those conditions, including but not limited to failure to raise the projected Regulatory Capital within the required time period, will cause the Applicant's selection to lapse. The Agency will not restore the selection of such an Applicant after the expiration of that time period. After the expiration of that time period, an Applicant that is not licensed as a RBIC must cease to represent itself as a participant or potential participant in the RBIC program.

(d) *Effect of a RBIC license.* The Participation Agreement executed by the Agency with each Applicant licensed as a RBIC will include the following:

(1) Approval to operate as a RBIC under the Act;

(2) A commitment of Leverage; and

(3) An Operational Assistance grant award.

[69 FR 32204, June 8, 2004, as amended at 77 FR 4885, Feb. 1, 2012; 85 FR 16523, Mar. 24, 2020]

Subpart F—Changes in Ownership, Structure, or Control

CHANGES IN CONTROL OR OWNERSHIP OF RBIC

§ 4290.400 Changes in ownership of 10 percent or more of RBIC but no change of Control.

You must obtain the Agency's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock, partnership capital or membership interests.

§ 4290.410 Changes in Control of RBIC (through change in ownership or otherwise).

You must obtain the Agency's prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by the Agency.

§ 4290.420 Prohibition on exercise of ownership or Control rights in RBIC before approval.

Without the Agency's prior written approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any meeting of shareholders, partners or members);

(c) Permit the proposed new owner(s) to participate in any manner in the conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, manager, employee or agent); or

(d) Allow ownership or Control to pass to another Person.

§ 4290.430 Notification of transactions that may change ownership or Control.

You must promptly notify the Agency as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your Regulatory Capital. If the effect of a particular transaction or event is unclear, you must report all pertinent facts to the Agency.

§ 4290.440 Standards governing prior approval for a proposed transfer of Control.

The Agency's approval of a proposed transfer of Control is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by the Agency. As a condition of approving a proposed transfer of control, the Agency may:

(a) Require an increase in your Regulatory Capital;

(b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by the Agency; or

(c) Require compliance with any other conditions set by the Agency, including compliance with the requirements for minimum capital and management-ownership diversity in effect at such time for new RBICs.

§ 4290.450 Notification of pledge of RBIC's shares.

(a) You must notify the Agency in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged constitute at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 4290.400 or § 4290.410, as appropriate.

RESTRICTIONS ON COMMON CONTROL OR OWNERSHIP OF TWO OR MORE RBICS

§ 4290.460 Restrictions on Common Control or ownership of two (or more) RBICs.

Without the Agency's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another RBIC; or

(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another RBIC.

CHANGE IN STRUCTURE OF RBIC

§ 4290.470 Prior approval of merger, consolidation, or reorganization of RBIC.

You may not merge, consolidate, change form of organization (corporation, limited liability company, or limited partnership) or reorganize without the Agency's prior written approval. Any such merger, consolidation, or change of form is subject to § 4290.440.

§ 4290.480 Prior approval of changes to RBIC's business plan.

Without the Agency's prior written approval, no change in your business plan, upon which you were selected and licensed as a RBIC, may take effect.

Subpart G—Managing the Operations of a RBIC

GENERAL REQUIREMENTS

§ 4290.500 Lawful operations under the Act.

You must engage only in the activities permitted by the Act and in no other activities.

§ 4290.502 Representations to the public.

You may not represent or imply to anyone that the Agency, the U.S. Government, or any of its agencies or officers has approved any ownership interests you have issued, obligations you have incurred, or Financings you have made. You must include a statement to this effect in any solicitation provided to investors. Example: You may not represent or imply that ''USDA stands behind the RBIC'' or that ''Your capital is safe because the Agency's experts review proposed investments to make sure they are safe for the RBIC.''

§ 4290.503 RBIC's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at *http://www.sba.gov/sites/default/files/files/inv_valuation.pdf.*

(b) *The Agency's approval of valuation policy.* You must have a written valuation policy approved by the Agency for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain the Agency's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors, managing member(s), or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to the Agency. If the Agency reasonably believes that your valuations, individually or in the aggregate, are materially misstated, it reserves the right to require you to engage, at your expense, an independent third party acceptable to the Agency to substantiate the valuations.

(d) *Frequency of valuations.* (1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and again at the end of your fiscal year.

(2) On a case-by-case basis, the Agency may require you to perform valuations more frequently.

(3) You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468 or other USDA-approved form(s)) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011]

§ 4290.504 Equipment of USDA or SBA officials.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports and transmit such reports to the Agency. In addition, you must have the capability to send and receive electronic mail.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011]

§ 4290.506 Safeguarding the RBIC's assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

§ 4290.507 Violations based on false filings and nonperformance of agreements with the Agency or SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Failure to perform any of the requirements of any Debenture or of any written agreement with the Agency or SBA.

(b) *False statement.* In any document submitted to the Agency or SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact.

(4) A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 4290.508 Compliance with non-discrimination laws and regulations applicable to federally-assisted programs.

In conducting your operations and providing Assistance to your Portfolio Concerns, you must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 *et seq.*), the Age Discrimination Act of 1975 (Pub. L. 94–135, Title III), and Title V of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the following regulations promulgated by USDA to implement and enforce such laws: 7 CFR part 15.

§ 4290.509 Employment of USDA or SBA officials.

(a) Without the Agency's prior written approval, for a period of two years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, whichever is later, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(1) Served as an officer, attorney, agent, or employee of SBA or USDA within one year before such date; and

(2) In that capacity, occupied a position or engaged in activities which, in SBA's or the Agency's determination, involved discretion with respect to the issuing of Leverage or the granting of such assistance.

(b) For purposes of this section, ''assistance'' means financial, contractual, grant, managerial, or other aid, including licensing, certifications, and other eligibility determinations made by USDA or SBA, and any express decision to compromise or defer possible litigation or other adverse action.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80222, Dec. 23, 2011]

MANAGEMENT AND COMPENSATION

§ 4290.510 Approval of RBIC's Investment Adviser/Manager.

(a) *General.* You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing member(s), or general partner(s). If you have Leverage or plan to seek Leverage, you must obtain the Agency's prior written approval of the management contract. Approval of an Investment Adviser/Manager for one RBIC does not indicate approval of that manager for any other RBIC.

(b) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to your Portfolio Concerns; and

(2) Indicate the basis for computing Management Expenses.

(c) *Material change to approved management contract.* Any proposed material change must be approved by both you and the Agency in advance. If you are uncertain whether the change is material, submit the proposed revision to the Agency.

§ 4290.520 Management Expenses of a RBIC.

The Agency must approve your initial Management Expenses and any increases in your Management Expenses.

(a) *Definition of Management Expenses.* Management Expenses include:

(1) Salaries;

(2) Office expenses;

(3) Travel;

(4) Business development, including finders' fees;

(5) Office and equipment rental;

(6) Bookkeeping; and

(7) Expenses related to developing, investigating and monitoring investments.

(b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a capital company.

CASH MANAGEMENT BY A RBIC

§ 4290.530 Restrictions on investments of idle funds by RBICs.

(a) *Permitted investments of idle funds.* Funds not invested in Portfolio Concerns must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount*—(1) *General rule.* You are permitted to deposit in a federally insured institution funds in excess of the institution's insured amount, but only if the institution is ''well capitalized'' in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation (12 CFR 325.103).

(2) *Exception.* You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 4290.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

SECURED BORROWING BY RBICS

§ 4290.550 Prior approval of secured third-party debt of RBICs.

(a) *Definition.* For the purposes of this section, ''secured third-party debt'' means any debt that is secured by any of your assets and not guaranteed by the Agency, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Agency's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468 or other USDA-approved form(s)) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this section, the Agency may impose such restrictions or limitations as it deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Agency will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless the Agency notifies you otherwise within 30 days after it receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1; and

(3) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80223, Dec. 23, 2011]

VOLUNTARY DECREASE IN REGULATORY CAPITAL

§ 4290.585 Voluntary decrease in RBIC's Regulatory Capital.

You must obtain the Agency's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 4290.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 384E(d) of the Act.

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

RECORDKEEPING REQUIREMENTS FOR RBICS

§ 4290.600 General requirement for RBIC to maintain and preserve records.

(a) Maintaining your accounting records. You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless the Agency approves otherwise. You may obtain this chart of accounts from SBA or at *http://www.sba.gov/sites/default/files/files/inv_charts_ of_accounts.pdf*.

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, members, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker's per-account insurance coverage.

(c) *Preservation of records.* You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c) and must remain readily accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership RBIC or LLC RBIC, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses;

(ii) Your Articles, bylaws, minute books, and RBIC application; and

(iii) All documents evidencing ownership of the RBIC including ownership ledgers and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(l) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments;

(ii) All loan, participation, and escrow agreements;

(iii) All certifications listed in § 4290.610 of this part;

(iv) Any capital stock certificates and warrants of the Portfolio Concern that you did not surrender or exercise; and

(v) All other documents and supporting material relating to the Portfolio Concern, including correspondence.

(4) You may substitute a microfilm or computer-scanned or generated copy for the original of any record covered by this paragraph (c).

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in 2 CFR part 200, as adopted by USDA in 2 CFR part 400.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80223, Dec. 23, 2011; 79 FR 76018, Dec. 19, 2014]

§ 4290.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to the Agency upon request.

(a) For each Financing made to a Rural Business Concern or Smaller Enterprise, a certification by the Portfolio Concern stating the basis for its qualification as a Rural Business Concern or Smaller Enterprise.

(b) A certification by the Portfolio Concern that it will not discriminate in violation of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title V of the Equal Credit Opportunity Act.

(c) A certification by the Portfolio Concern of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80223, Dec. 23, 2011; 85 FR 16523, Mar. 24, 2020]

§ 4290.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 4290.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the Enterprise to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses, projections, and such economic development information about the Enterprise, as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the Enterprise and the amount of the proposed Financing.

(b) *Updated financial and economic development information.* (1) The terms of each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial and economic development information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern;

(iii) Verify the use of Financing proceeds;

(iv) Evaluate the economic development impact of the Financing; and

(v) In the case of any Portfolio Concern that is not a Rural Business Concern, the number and percentage of its employees residing in Rural Areas.

(2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the Enterprise involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (*see* § 4290.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by the Agency's examiners for the purpose of verifying the certifications made by a Portfolio Concern under § 4290.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or the Agency's examiners access to its books and records for such purpose.

REPORTING REQUIREMENTS FOR RBICS

§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Agency.

(a) *Annual filing.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468 or other USDA-approved form(s). You must file SBA Form 468 (or other USDA-approved form(s)) on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of annual filing form.* An independent public accountant acceptable to the Agency must audit the annual form submitted under paragraph (a) of this section.

(2) *Insurance requirement for public accountant.* Unless the Agency approves otherwise, your independent public accountant must carry at least $1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least $1,000,000.

(b) *Interim filings.* When requested by the Agency, you must file interim reports on SBA Form 468 or other USDA-approved form(s). The Agency may require you to file the entire form or only certain statements and schedules. You must file such reports on or before

the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in § 4290.1220.

(c) *Standards for preparation.* You must prepare SBA Form 468 or other USDA-approved form(s) in accordance with SBA's Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at *http://www.sba.gov/content/accounting-standards-sbics.*

(d) *Where to file.* Unless otherwise identified in a notice published in the FEDERAL REGISTER, submit all filings of forms under this section to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing.* Your annual filing of SBA Form 468 or other USDA-approved form(s) must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your SBA Form 468 or other USDA-approved form(s) must include an assessment of each such Financing with respect to:

(1) The economic development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement; and

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the RBIC program.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80223, Dec. 23, 2011]

§ 4290.640 Requirement to file portfolio financing reports with the Agency.

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 or other USDA-approved form(s) within 30 days of the closing date.

[76 FR 80223, Dec. 23, 2011]

§ 4290.650 Requirement to report portfolio valuations to the Agency

You must determine the value of your Loans and Investments in accordance with § 4290.503. You must report such valuations to the Agency within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

§ 4290.660 Other items required to be filed by RBIC with the Agency.

(a) *Reports to owners.* You must give the Agency a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give the Agency a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give the Agency a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser/Manager or other Associate of yours for alleged breach of official duty.

(2) The Agency may require you to submit copies of the pleadings and other documents it may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise the Agency of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, general partner, or managing member of the RBIC, or any other person who was required by the Agency to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to the Agency within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in 2 CFR part 200, subpart D, as codified in 2 CFR 400.1 and any grant award document executed between you and the Agency.

(f) *Other reports.* You must file any other reports the Agency may require in writing.

[69 FR 32204, June 8, 2004, as amended at 79 FR 76019, Dec. 19, 2014]

§ 4290.680 Reporting changes in RBIC not subject to prior approval.

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require the Agency's prior approval. You must report such changes to the Agency within 30 days after the change, for post approval.

(b) *Approval by the Agency.* You may consider any change submitted under this § 4290.680 to be approved unless the Agency notifies you to the contrary within 90 days after receiving it. Approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions the Agency may prescribe.

EXAMINATIONS OF RBICS BY THE AGENCY FOR REGULATORY COMPLIANCE

§ 4290.690 Examinations.

All RBICs must submit to annual examinations by or at the direction of the Agency for the purpose of evaluating regulatory compliance.

§ 4290.691 Responsibilities of RBIC during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 4290.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to the examiners upon request.

§ 4290.692 Examination fees.

(a) *General.* The Agency will assess fees for examinations in accordance with this § 4290.692. Unless the Agency determines otherwise on a case by case basis, it will not assess fees for special examinations to obtain specific information.

(b) *Base fee.* A base fee of $9,200 + 0.015 percent of your assets will be assessed, subject to adjustment in accordance with paragraph (c) of this section.

(c) *Adjustments to base fee.* The base fee will be decreased based on the following criteria:

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination or the Agency did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee; and

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by the examiner for on-site review), you will receive a 10% discount on your base fee.

(d) *Examination delay fee.* If, in the sole discretion of the Agency, the time required to complete your examination

is delayed due to your lack of cooperation or the condition of your records, the Agency may assess an additional examination fee of up to $500 per day.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

Subpart I—Financing of Enterprises by RBICs

DETERMINING ELIGIBILITY OF AN ENTERPRISE FOR RBIC FINANCING

§ 4290.700 Requirements concerning types of enterprises to receive financing.

(a) *Financing requirements.* Beginning after the third fiscal year after the issuance of your RBIC license and at the close of each of your fiscal years thereafter, you must be in compliance with the Financing percentages specified in this paragraph (a).

(1) *Rural Business Concerns.* At least 75 percent of your Financings (in total dollars) to your Portfolio Concerns must have been to Rural Business Concerns.

(2) *Smaller Enterprises.* More than 50 percent of your Financings (in total dollars) to your Portfolio Concerns must have been to Smaller Enterprises that, at the time of the initial Financing to such Enterprise, meet either the net worth/net income test or the size standard set forth in the ''Smaller Enterprise'' definition in § 4290.50.

(3) *Urban Areas.* No more than 10 percent of your Financings (in total dollars) to your Portfolio Concerns must have been made to Portfolio Concerns located in an Urban Area.

(b) *Non-compliance.* If you are not in compliance with any of the Financing percentages specified in paragraph (a) of this section at the end of the third fiscal year after the issuance of your RBIC license or any fiscal year thereafter, you must come into compliance by the end of the following fiscal year. For as long as you remain out of compliance, you are not eligible for additional Leverage (see § 4290.1120).

[85 FR 16523, Mar. 24, 2020]

§ 4290.720 Enterprises that may be ineligible for Financing.

(a) *Re-lenders or re-investors.* You are not permitted to finance any Enterprise that is a re-lender or re-investor. The primary business activity of re-lenders or re-investors involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Passive Enterprises.* You are not permitted to finance a passive Enterprise.

(1) *Definition.* An Enterprise is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the Enterprise does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* With the prior written approval of the Agency, you may finance a passive Enterprise if it passes substantially all of the proceeds through to one or more subsidiary companies, each of which is an eligible Enterprise that is not passive. For the purpose of this paragraph (b)(2), ''subsidiary company'' means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive Enterprise.

(3) *Exception for certain Partnership RBICs or LLC RBICs.* With the prior written approval of the Agency, if you are a Partnership RBIC or LLC RBIC, you may form one or more wholly owned corporations in accordance with this paragraph (b)(3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Enterprise. You may form such corporation(s) only if a direct Financing to such Enterprise would cause any of your investors to

incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of § 4290.730(a).

(c) *Real Estate Enterprises.* (1) You are not permitted to finance:

(i) Any Enterprise classified under sector 233 (Building, Developing, and General Contracting) of the NAICS Manual, or

(ii) Any Enterprise listed under sector 531 (Real Estate) unless at least 80 percent of its revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance an Enterprise, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Enterprise:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business or commercial purpose; or

(ii) Is constructing or renovating a building and will use at least 67 percent of the usable square footage for an eligible business or commercial purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business or commercial purpose.

(d) *Project Financing.* You are not permitted to finance an Enterprise if:

(1) The assets of the Enterprise are to be reduced or consumed, generally without replacement, as the life of the Enterprise progresses, and the nature of the Enterprise requires that a stream of cash payments be made to the Enterprise's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

(2) The primary purpose of the Financing is to fund production of a single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Enterprise. Examples include motion pictures.

(e) *Farm land purchases.* You are not permitted to finance the acquisition of farmland. Farmland means land which is or is intended to be used for agricultural or forestry purposes such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) *Public interest.* You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to or activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) *Foreign investment*—(1) *General rule.* You are not permitted to finance an Enterprise if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 49 percent of the employees or tangible assets of the Enterprise are located outside the United States (unless you can show, to the Agency's satisfaction, that the Financing was used for a specific domestic purpose).

(2) *Exception.* This paragraph (g) does not prohibit either:

(i) A Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States; or

(ii) A Financing in a subsidiary based in the United States of foreign-owned entities with at least 51 percent U.S. ownership.

(h) *Financing RBICs, SBICs, or New Markets Capital Companies (NMVC Companies).* (1) You are not permitted to provide funds, directly or indirectly, that will be used:

(i) To purchase stock in or otherwise provide capital to a RBIC, SBIC or NMVC Company; or

(ii) To repay an indebtedness incurred for the purpose of investing in a RBIC, SBIC, or NMVC Company.

(2) ''NMVC Company'' is defined in 13 CFR 108.50.

(i) *Entities ineligible for Farm Credit System Assistance.* If one or more Farm Credit System Institutions or their Affiliates owns more than 50 percent of the ownership interests of a Rural Business Investment Company, either alone or in conjunction with other Farm Credit System Institutions (or affiliates), the Rural Business Investment Company may not provide Financing to any entity that is not otherwise eligible to receive Financing

from a Farm Credit System Institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*).

(j) *Gaming establishments.* You are not permitted to Finance an Enterprise that derives, or is expected to derive, more than one-third of its gross annual revenue from legal gaming activities.

(k) *Change in control of an Enterprise.* You are not permitted to Finance a change of more than 50 percent control of an Enterprise unless otherwise approved by the Agency.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011; 85 FR 16523, Mar. 24, 2020]

§4290.730 Financings which constitute conflicts of interest.

(a) *General rule.* You must not self-deal to the prejudice of an Enterprise, the RBIC, its shareholders, partners or, members, or the Agency. Unless you obtain a prior written exemption from the Agency for special instances in which a Financing may further the purposes of the Act despite presenting a conflict of interest, you must not directly or indirectly:

(1) Provide Financing to any of your Associates, except for an Enterprise that satisfies all of the following conditions:

(i) Your Associate relationship with the Enterprise is described by paragraph (8) or (9) of the definition of *Associate* in §4290.50,

(ii) No Person triggering the Associate relationship identified in paragraph (a)(1)(i) of the definition of Associate in §4290.50 is a Close Relative or Secondary Relative of any Person described in paragraphs (1), (2), (4), or (5) of the definition of *Associate* in §4290.50, and

(iii) No single Associate of yours has either a voting interest or an economic interest in the Enterprise exceeding 20 percent, and no two or more of your Associates have either a voting interest or an economic interest exceeding 33 percent. Economic interests shall be computed on a fully diluted basis, and both voting and economic interests shall exclude any interest owned through the RBIC.

(2) Provide Financing to an Associate of another RBIC if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that RBIC or any other RBIC (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) An Enterprise Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such Enterprise; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to an Enterprise to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(b) *Rules applicable to Associates.* Without the Agency's prior written approval, your Associates must not, directly or indirectly:

(1) Borrow money from any Person described in paragraph (a)(3) of this section.

(2) Receive from an Enterprise any compensation or anything of value in connection with Assistance you provide (except as permitted under §4290.825(c)), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) *Applicability of other laws.* You are also bound by Federal or State laws applicable to you that govern conflicts of interest and fiduciary obligations.

(d) *Financings with Associates*—(1) *Financings with Associates requiring prior approval.* Without the Agency's prior written approval, you may not Finance any Enterprise in which your Associate has either a voting equity interest or total equity interests (including potential interests) of at least five percent, or effective control, except as otherwise permitted under paragraph (a)(1) of this section.

(2) *Other Financings with Associates.* If you and an Associate provide Financing to the same Enterprise, either at the same time or at different times, you must be able to demonstrate to the Agency's satisfaction that the terms and conditions are (or were) fair and

equitable to you, taking into account any differences in the timing of each party's financing transactions.

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Enterprise and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Enterprise on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are RBICs.

(e) *Use of Associates to manage Portfolio Concerns.* To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Portfolio Concern. You must identify any such Associate in your records available for the Agency's review under § 4290.600. Without the Agency's prior written approval, such Associate must not:

(1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, the percentages of the Portfolio Concern's equity set forth in paragraph (a)(1) of this section.

(2) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this § 4290.730, you need not obtain the Agency's approval of the transaction. However, you must promptly notify the Agency of the transaction.

(g) *Restriction on options obtained by RBIC's management and employees.* Your employees, officers, directors, managing members or general partners, or the general partners or managing members of the Investment Adviser/Manager that is providing services to you or to your general partner or managing member, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Agency gives prior written approval; or

(3) The options received are compensation for service as a member of the board of directors of the Portfolio Concern, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

§ 4290.740 Portfolio diversification ("overline" limitation).

(a) Without the Agency's prior written approval, you may provide Financing or a Commitment to an Enterprise only if the resulting amount of your aggregate outstanding Financings and Commitments to that Enterprise and its Affiliates does not exceed 10 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital; plus

(3) The total amount of Leverage provided to the Rural Business Investment Company by the Agency since it was licensed under § 4290.390.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its original cost plus any amount of the Financing that was previously written off.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.760 How a change in size or activity of a Portfolio Concern affects the RBIC and the Portfolio Concern.

(a) *Effect on RBIC of a change in size of a Portfolio Concern.* If a Portfolio Concern was a Smaller Enterprise at the time of the initial Financing but

no longer qualifies as such under the size standard applicable to such entity, you may keep your investment in the Portfolio Concern and:

(1) Subject to the overline limitations of § 4290.740, you may provide additional Financing to the Portfolio Concern up to the time it makes a public offering of its securities.

(2) Even after the Portfolio Concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering, or fund Commitments you made before the public offering.

(b) *Effect of a change in business activity occurring within one year of RBIC's initial Financing*—(1) *Retention of Financing.* Unless you receive the Agency's written approval, you may not keep your Financing in a Portfolio Concern which becomes ineligible for financing by a RBIC by reason of a change in its business or commercial activity or for any other reason within one year of your initial Financing in the Portfolio Concern.

(2) *Request for approval to retain Financing.* If you request that the Agency approve the retention of your investment, your request must include sufficient evidence to demonstrate that the change in business or commercial activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing.* If the Agency approves your request to retain a Financing under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 4290.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment; and

(2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 4290.740.

[69 FR 32204, June 8, 2004, as amended at 85 FR 16523, Mar. 24, 2020]

STRUCTURING RBIC FINANCING OF ELIGIBLE ENTERPRISES—TYPES OF FINANCINGS

§ 4290.800 Financings in the form of Equity Securities.

You may purchase the Equity Securities of an Enterprise. You may not, inadvertently or otherwise:

(a) Become a general partner in any unincorporated business; or

(b) Become jointly or severally liable for any obligations of an unincorporated business.

§ 4290.810 Financings in the form of Loans.

You are permitted to make Loans to an Enterprise only if:

(a) The maturity or term of the Loan is five years or less; and

(b) You determine that making the Loan is necessary to preserve an existing Financing (other than a Loan) in that same Enterprise.

§ 4290.815 Financings in the form of Debt Securities.

(a) *General rule.* You may purchase Debt Securities from an Enterprise.

(b) *Restriction of options obtained by RBIC's management and employees.* Your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Agency gives its prior written approval; or

(3) The options received are compensation for services as a member of the board of directors of the Enterprise, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar Enterprises.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.820 Financings in the form of guarantees.

(a) *General rule.* At the request of an Enterprise or where necessary to protect your existing Financing in a Portfolio Concern, you may guarantee the monetary obligation of an Enterprise to any non-Associate creditor.

(b) *Exception.* You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business; or

(2) The amount of the guaranty plus any direct Financings to the Enterprise exceed the overline limitations of § 4290.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) *Pledge of RBIC's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§ 4290.825 Purchasing securities from an underwriter or other third party.

(a) *Securities purchased through or from an underwriter.* You may purchase the securities of an Enterprise through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the issuer, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* You must keep records available for the Agency's inspection which show the relevant details of the transaction, including but not limited to, date, price, commissions, and the underwriter's certifications required under paragraphs (a)(3) and (c) of this section.

(c) *Underwriter's requirements.* The underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase.

(d) *Securities purchased from another RBIC.* You may purchase from, or exchange with, another RBIC, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio securities (or any interest therein) on a recourse basis, you must include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of an Enterprise from a non-issuer not previously described in this § 4290.825 if such acquisition is a reasonably necessary part of the overall sound Financing of the Enterprise.

§ 4290.830 Minimum term of Financing.

(a) *General rule.* The minimum term of each of your Financings is one year.

(b) *Restrictions on mandatory redemption of Equity Securities.* If you have acquired Equity Securities, options, or warrants on terms that include redemption by the Portfolio Concern, you must not require redemption by the Portfolio Concern within the first year of your acquisition except as permitted in § 4290.850.

(c) *Special rules for Loans and Debt Securities*—(1) *Term.* The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) *Prepayment.* You must permit voluntary prepayment of Loans and Debt Securities by the Portfolio Concern. You must obtain the Agency's prior written approval of any restrictions on the ability of the Portfolio Concern to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If the Agency determines that a prepayment is unreasonable, you must refund the entire

penalty to the Portfolio Concern. A prepayment penalty equal to five percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered the maximum reasonable amount.

§ 4290.835 Exceptions to minimum term of Financing.

You may make a Financing with a term of less than one year but only if such Financing is in contemplation of another Financing, with a term of one year or more, to the same Enterprise.

§ 4290.840 Maximum term of Financing.

The maximum term of any Debt Security must be no longer than 20 years.

§ 4290.845 Maximum rate of amortization on Loans and Debt Securities.

The principal of any Loan, or the loan portion of any Debt Security, with a term of one year or less, cannot be amortized faster than straight line. If the term is greater than one year, the principal cannot be amortized faster than straight line for the first year.

§ 4290.850 Restrictions on redemption of Equity Securities.

(a) *Restriction on redemption.* A Portfolio Concern cannot be required to redeem Equity Securities earlier than one year from the date of the first closing unless:

(1) The Portfolio Concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

(2) You make a follow-on Financing, in which case the new securities may be redeemed in less than one year, but no earlier than the redemption date associated with your earliest Financing of the Portfolio Concern.

(b) *Redemption price.* The redemption price must be either:

(1) A fixed amount that is no higher than the price you paid for the securities; or

(2) An amount that cannot be fixed or determined before the time of the redemption. In this case, the redemption price must be based on:

(i) A reasonable formula that reflects the performance of the Portfolio Concern (such as one based on earnings or book value); or

(ii) The fair market value of the Portfolio Concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

(c) *Method.* Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.

§ 4290.860 Financing fees and expense reimbursements a RBIC may receive from an Enterprise.

(a) *General rule.* You may collect Financing fees and receive expense reimbursements from an Enterprise only as permitted under this § 4290.860.

(b) *Application fee.* You may collect a nonrefundable application fee from an Enterprise to review its Financing application. The application fee may be collected at the same time as the closing fee under paragraph (d) or (e) of this section, or earlier. The fee must be:

(1) No more than one percent of the amount of Financing requested (or, if two or more RBICs participate in the Financing, their combined application fees are no more than one percent of the total Financing requested); and

(2) Agreed to in writing by the Financing applicant.

(c) *The Agency's review of application fees.* For any fiscal year, if the number of application fees you collect is more than twice the number of Financings closed, the Agency in its sole discretion may determine that you are engaged in activities not contemplated by the Act, in violation of § 4290.500.

(d) *Closing fee—Loans.* You may charge a closing fee on a Loan if:

(1) The fee is no more than two percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than two percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(e) *Closing fee—Debt or Equity Financings.* You may charge a Closing

Fee on a Debt Security or Equity Security Financing if:

(1) The fee is no more than four percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than four percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(f) *Limitation on dual fees.* If another RBIC or an Associate of yours collects a transaction fee under § 4290.900(e) in connection with your Financing of an Enterprise, the sum of the transaction fee and your application and closing fees cannot exceed the maximum application and closing fees permitted under this § 4290.860.

(g) *Expense reimbursements.* You may charge an Enterprise for the reasonable out-of-pocket expenses, other than Management Expenses, that you incur to process its Financing application. If the Agency determines that any of your reimbursed expenses are unreasonable or are Management Expenses, the Agency will require you to refund them to the Enterprise.

(h) *Breakup fee.* If an Enterprise accepts your Commitment and then fails to close the Financing because it has accepted funds from another source, you may charge a ''breakup fee'' equal to the closing fee that you would have been permitted to charge under paragraph (d) or (e) of this section.

§ 4290.880 Assets acquired in liquidation of Portfolio securities.

(a) *General rule.* You may acquire assets in full or partial liquidation of a Portfolio Concern's obligation to you under the conditions permitted by this § 4290.880. The assets may be acquired from the Portfolio Concern, a guarantor of its obligation, or another party.

(b) *Timely disposition of assets.* You must dispose of assets acquired in liquidation of a Portfolio security within a reasonable period of time.

(c) *Permitted expenditures to preserve assets.* (1) You may incur reasonably necessary expenditures to maintain and preserve assets acquired.

(2) You may incur reasonably necessary expenditures for improvements to render such assets saleable.

(3) You may make payments of mortgage principal and interest (including amounts in arrears when you acquired the asset), pay taxes when due, and pay for necessary insurance coverage.

(d) *The Agency approval of expenditures.* This paragraph (d) applies if you have outstanding Leverage or are applying for Leverage. Any application for the Agency's approval under this paragraph must specify all expenses estimated to be necessary pending disposal of the assets. Without the Agency's prior written approval:

(1) Your total expenditures under paragraphs (c)(1) and (c)(2) of this section plus your total Financing(s) to the Portfolio Concern must not exceed your overline limit under § 4290.740; and

(2) Your total expenditures under paragraph (b) of this section plus your total Financing(s) to the Portfolio Concern must not exceed 35 percent of your Regulatory Capital.

Limitations on Disposition of Assets

§ 4290.885 Disposition of assets to RBIC's Associates or to competitors of Portfolio Concerns.

Except with the Agency's prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate or to competitors of Portfolio Concerns if you have outstanding Leverage. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

§ 4290.900 Management fees for services provided to an Enterprise by RBIC or its Associate.

(a) *General.* This § 4290.900 applies to management services that you or your Associate provide to a Portfolio Concern during the term of a Financing or prior to Financing. It does not apply to management services that you or your Associate provide to an Enterprise that you do not finance.

(b) *The Agency's approval.* You must obtain the Agency's prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management fees.* You or your Associate may provide management services to a Portfolio Concern financed by you if:

(1) You or your Associate have entered into a written contract with the Portfolio Concern;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to the Agency, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Portfolio Concern; and

(5) All of the management services fees paid to your Associate by a Portfolio Concern for management services provided by the Associate are allocated back to you for your benefit.

(d) *Fees for service as a board member.* You or your Associate may receive fees in the form of cash, warrants, or other payments, for services provided as members of the board of directors of a Portfolio Concern Financed by you. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. At least 50 percent of any board member services fees paid to your Associate by a Portfolio Concern for board member services provided by the Associate must be allocated back to you for your benefit.

(e) *Approval required.* You must obtain the Agency's prior written approval of any management contract that does not satisfy paragraphs (c) or (d) of this section.

(f) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed preparing an Enterprise for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes, stock, and/or options. All of the transaction services fees paid to your Associate by a Portfolio Concern for transaction services provided by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Portfolio Concern on that portion of a Financing that you do not provide.

(g) *Recordkeeping Requirements.* You must keep a record of hours spent and amounts charged to the Portfolio Concern, including expenses charged.

Subpart J—Financial Assistance for RBICs (Leverage)

GENERAL INFORMATION ABOUT OBTAINING LEVERAGE

§ 4290.1100 Type of Leverage and application procedures.

(a) *Type of Leverage available.* You may apply for Leverage from the Agency in the form of a guarantee of your Debentures.

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for the Agency's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. *See* §§ 4290.1200 through 4290.1240.

(c) *Where to send your application.* Send all Leverage draw-down applications to Funding Control Officer, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Suite 6300, Mail Code 7050, Washington, DC 20416.

§ 4290.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

§ 4290.1130 Leverage fees payable by RBIC.

(a) *Leverage fee.* You must pay the Agency a non-refundable leverage fee for each issuance of a Debenture. The fee is 3 percent of the face amount of the Debenture issued, and will be deducted from the proceeds remitted to you.

(b) *Additional charge.* You must pay the Agency an additional annual charge of 1 percent of the outstanding amount of your Debenture.

(c) *Other Leverage fees.* The Agency may establish a fee structure for services performed by the Central Registration Agent (CRA). The Agency will not collect any fee for its guarantee of TCs.

§ 4290.1140 RBIC's acceptance of remedies under § 4290.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 4290.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

MAXIMUM AMOUNT OF LEVERAGE FOR WHICH A RBIC IS ELIGIBLE

§ 4290.1150 Maximum amount of Leverage for a RBIC.

The face amount of a RBIC's outstanding Debentures may not exceed the lesser of 200 percent of its Leverageable Capital or $105,000,000.

CONDITIONAL COMMITMENTS TO RESERVE LEVERAGE FOR A RBIC

§ 4290.1200 Leverage commitment to a RBIC—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 4290.1200 through 4290.1240, you may apply for the Agency's conditional commitment to reserve a specific amount of Leverage and type of Debenture (standard or discounted) for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* The Agency will notify you when requests for Leverage commitments are being accepted, and upon receipt of your request, will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000. The Agency in its discretion may determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(d) *Term of Leverage commitment.* Your Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by the Agency. The Agency's Leverage commitment will be included in the Participation Agreement at the time of your licensing as a RBIC, under § 4290.390.

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form) or other USDA-approved form(s), you must:

(1) Give the Agency a financial statement on Form 468 (Short Form) or other USDA-approved form(s), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s).

(b) You will not be eligible for a draw if you are not in compliance with this § 4290.1220.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

(a) *RBIC's authorization of the Agency to guarantee securities.* By submitting a request for a draw against the Leverage commitment, you authorize the Agency, or the Agency's designated agent or trustee, to guarantee your Debenture and to sell it with the Agency's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. The Agency, in its discretion, may determine a minimum dollar amount for draws against Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on RBIC's eligibility for draws*—(1) *General rule.* You are eligible to make a draw against your Leverage commitment only if you are in compliance with all applicable provisions of the Act and this part (*i.e.*, no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) The Agency determines that your outstanding violations are of non-substantive provisions of the Act or this part or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with the Agency in writing on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s) (see also § 4290.1220 for filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 or other USDA-approved form(s) in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form) or other USDA-approved form(s).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and this part (*i.e.,* no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the RBIC;

(ii) An officer of a corporate general partner or managing member of the RBIC;

(iii) An individual who is authorized to act as or for a general partner of the RBIC; or

(iv) An individual who is authorized to act as or for a managing member of the RBIC.

(4) A statement that the proceeds are needed to fund one or more particular Enterprises or to provide liquidity for your operations. If required by the Agency, the statement must include the name and address of each Enterprise, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 or other USDA-approved form(s) confirming the closing of the transaction.

(2) If the Agency required you to provide information concerning a specific planned Financing under paragraph (d)(4) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must provide a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. The Agency may also determine that you are not in compliance with the terms of your Leverage under § 4290.1810.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.1240 Funding of RBIC's draw request through sale to third-party.

(a) *RBIC's authorization of the Agency to arrange sale of Debentures to third-party.* By submitting a request for a draw of Debenture Leverage, you authorize the Agency, or any agent or trustee the Agency designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture to a third-party at a price approved by the Agency; and

(2) The purchase of your Debenture from the third-party and the pooling of your Debenture with other Debentures with the same maturity date.

(b) *Sale of Debentures to a third-party.* If the Agency arranges for the sale of your Debenture to a third-party, the sale price may be an amount discounted from the face amount of the Debenture.

DISTRIBUTIONS BY RBICS WITH OUTSTANDING LEVERAGE

§ 4290.1500 Restrictions on distributions to RBIC investors while RBIC has outstanding Leverage.

(a) *Restriction on distribution.* If you have outstanding Leverage, whenever you make a distribution to your investors you must make, at the same time, a prepayment to or for the benefit of the third-party holder of the Debenture sold pursuant to § 4290.1240 of this part, accrued unpaid interest and the principal, in whole or in part, of one or more of your Debentures outstanding as of the date of the distribution (subject to the terms of such Debentures).

(b) *Amount of prepayment.* You must calculate the amount due the third-party holder by multiplying the total amount you intend to distribute by a fraction whose numerator is the outstanding principal of your Debenture(s) immediately preceding your distribution, and whose denominator is the sum of your Leverageable Capital as of that time plus the outstanding principal amount of your Debentures. For purposes of the preceding sentence ''principal'' means both the net proceeds and interest accrued to date of a discounted Debenture. The amount of any payment received under this section will be credited first against unpaid interest accrued to the date of distribution and then to the principal in whole or in part of the first Debenture you select to prepay and then to the interest and principal in whole or in part of such other Debenture(s) as you select to prepay. You may elect to prepay in whole any discounted Debenture under this section only within five years of its maturity date. Payments under this section must be made on the next occurring March 1 or September 1.

(c) *Effect of prepayment.* Subject to the terms of the Debenture(s), you may voluntarily prepay additional principal, but neither mandatory nor voluntary prepayment will increase your future Leverage eligibility.

FUNDING LEVERAGE BY USE OF GUARANTEED TRUST CERTIFICATES (''TCS'')

§ 4290.1600 Agency's authority to issue and guarantee Trust Certificates.

(a) *Authorization.* Section 384F of the Act authorizes the Agency to issue TCs and to guarantee the timely payment of the principal and interest thereon. Any such guarantee of such TC is limited to the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(b) *Authority to arrange public or private fundings of Leverage.* The Agency in its discretion may arrange for public or private financing under its guarantee authority. Such financing may be accomplished by the sale of individual Debentures, aggregations of Debentures, or Pools or Trusts of Debentures.

(c) *Pass-through provisions.* TCs shall provide for a pass-through to their holders of all amounts of principal and interest paid on the Debentures in the Pool or Trust against which they are issued.

(d) *Formation of a Pool or Trust holding Leverage Securities.* The Agency shall approve the formation of each Pool or Trust. The Agency may, in its discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust it deems appropriate. Notwithstanding § 4290.1130(c), any agent of the Agency may collect a fee for the functions described in 7 U.S.C. 2009cc–5(e)(2) that does not exceed $500.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.1610 Effect of prepayment or early redemption of Leverage on a Trust Certificate.

(a) The rights, if any, of a RBIC to prepay any Debenture is established by the terms of such security, and no such right is created or denied by the regulations in this part.

(b) The Agency's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture.

(c) Any prepayment of a Debenture pursuant to the terms of the Guaranty Agreement relating to such security shall reduce the Agency's guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal that such prepaid Debenture represents in the Trust or Pool backing such TC.

(d) The Agency shall be discharged from its guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(e) Interest on prepaid Debentures shall accrue only through the date of prepayment.

(f) In the event that all Debentures constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; provided, however, that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the Central Registration Agent (CRA) shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor RBIC pursuant to the terms of the Debenture.

§ 4290.1620 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.

(a) *Agents.* The Agency may appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture, the Agency may cause each RBIC to appoint a Selling Agent to perform functions that include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (''Poolers'').

(ii) Receiving guaranteed Debentures as well as negotiating the terms and conditions of sales or periodic offerings of Debentures and/or TCs on behalf of RBICs.

(iii) Directing and coordinating periodic sales of Debentures and/or TCs.

(iv) Arranging for the production of Offering Circulars, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* The Agency shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as the Agency, from time to time, may prescribe.

(3) *Central Registration Agent.* Pursuant to a contract entered into with the Agency, the CRA, as the Agency's agent, will do the following with respect to the Pools or Trust Certificates for the Debentures:

(i) Form an approved Pool or Trust;

(ii) Issue the TCs in the prescribed form;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from RBICs;

(v) Make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures;

(vi) Hold, safeguard, and release all Debentures constituting Trusts or Pools upon instructions from the Agency;

(vii) Remain custodian of such other documentation as the Agency shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures, all Pools and Trusts, and all TCs; and

(ix) Perform such other functions as the Agency may deem necessary to implement the provisions of this section.

(b) *Functions.* Either the Agency or an agent appointed by the Agency may perform the function of locating purchasers, and negotiating and closing

the sale of Debentures and TCs. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as the Agency's agent for this purpose.

§ 4290.1630 Regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.

(a) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by the Agency pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. It also shall be in good standing with the Agency as determined by the SBA official with delegated authority to made this determination (*see* paragraph (c) of this section) and shall provide a fidelity bond or insurance in such amount as the Agency may require.

(b) *Suspension and/or termination of Broker or Dealer.* The Agency shall exclude from the sale and all other dealings in Debentures or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, the Agency will suspend such broker or dealer for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) If such broker or dealer has suffered an adverse final civil judgment holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.

(c) *Termination/suspension proceedings.* A broker's or dealer's participation in the market for Debentures or TCs will be conducted in accordance with 7 CFR part 11. The Agency may, for any of the reasons stated in paragraphs (b)(1) through (3) of this section, suspend the privilege of any broker or dealer to participate in this market. The Agency shall give written notice at least ten business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to 7 CFR part 11.

§ 4290.1640 Agency's access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures and TCs available to the Agency for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

MISCELLANEOUS

§ 4290.1700 Agency's transfer of interest in a RBIC's Leverage security.

Upon such conditions and for such consideration as it deems reasonable, the Agency may sell, assign, transfer, or otherwise dispose of any Debenture held by or on behalf of the Agency. Upon notice by the Agency, a RBIC will make all payments of principal and interest as shall be directed by the Agency. A RBIC will be liable for all damage or loss which the Agency may sustain by reason of the RBIC's failure to follow such payment instructions, up to the amount of the RBIC's liability under such security, plus court costs and reasonable attorney's fees incurred by the Agency.

§ 4290.1710 Agency's authority to collect or compromise claims.

The Agency may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to obligations it holds or has guaranteed, and all legal or equitable rights accruing to it.

§ 4290.1720 Characteristics of Agency's guarantee.

If the Agency agrees to guarantee a RBIC's Debentures, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or any other circumstances that might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, the Agency will make timely payments of principal and interest on the Debentures.

Subpart K—RBIC's Noncompliance With Terms of Leverage

§ 4290.1810 Events of default and the Agency's remedies for RBIC's noncompliance with terms of Debentures.

(a) *Applicability of this section.* Upon acceptance of a license to operate as an RBIC, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance of the license and as fully set forth in all documents relating to the license, including, without limitation, the Participation Agreement and Debentures.

(b) *Automatic events of default.* The occurrence of one or more of the events in this paragraph (b) causes the remedies in paragraph (c) of this section to take effect immediately.

(1) *Insolvency.* You become equitably or legally insolvent.

(2) *Voluntary assignment.* You make a voluntary assignment for the benefit of creditors without the Agency's prior written approval.

(3) *Bankruptcy.* You file a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against you and is not dismissed within 60 days.

(c) *Remedies for automatic events of default.* Upon the occurrence of one or more of the events in paragraph (b) of this section:

(1) Without notice, presentation or demand, the entire indebtedness evidenced by your Debentures, including accrued interest, and any other amounts owed with respect to your Debentures, is immediately due and payable; and

(2) You automatically consent to the appointment of the Agency or its designee, as your receiver under section 384M of the Act.

(d) *Events of default with notice.* For any occurrence (as determined by the Agency) of one or more of the events in this paragraph (d), the Agency may avail itself of one or more of the remedies in paragraph (e) of this section.

(1) *Fraud.* You commit a fraudulent act that causes detriment to the Agency's position as a creditor or guarantor.

(2) *Fraudulent transfers.* You make any transfer or incur any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(3) *Willful conflicts of interest.* You willfully violate § 4290.730.

(4) *Willful non-compliance.* You willfully violate one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act or any substantive provision of your Participation Agreement.

(5) *Repeated Events of Default.* At any time after being notified of the occurrence of an event of default under paragraph (f) of this section, you engage in similar behavior that results in another occurrence of the same event of default.

(6) *Transfer of Control.* You willfully violate § 4290.410, and as a result of such violation you undergo a transfer of Control.

(7) *Non-cooperation under § 4290.1810(h).* You fail to take appropriate steps, satisfactory to the Agency, to accomplish any action the Agency may have required under paragraph (h) of this section.

(8) *Non-notification of Events of Default.* You fail to notify the Agency as soon as you know or reasonably should have known that any event of default exists under this section.

(9) *Non-notification of defaults to others.* You fail to notify the Agency in writing within ten days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness of yours, issued to or held by anyone other than the Agency.

(e) *Remedies for events of default with notice.* Upon written notice to you of the occurrence (as determined by the Agency) of one or more of the events in paragraph (d) of this section:

(1) The Agency may declare the entire indebtedness evidenced by your Debentures, including accrued interest and/or any other amounts owed the Agency with respect to your Debentures, immediately due and payable: and

(2) The Agency may avail itself of any remedy available under the Act, specifically including institution of proceedings for its, or its designee's appointment as your receiver under section 384M(c) of the Act.

(f) *Events of default with opportunity to cure.* For any occurrence (as determined by the Agency) of one or more of the events in this paragraph (f), the Agency may avail itself of one or more of the remedies in paragraph (g) of this section.

(1) *Excessive Management Expenses.* Without the Agency's prior written consent, you incur Management Expenses in excess of those permitted under §§ 4290.510 and 4290.520.

(2) *Improper Distributions.* You make any Distribution to your shareholders or partners, except with the Agency's prior written consent, other than:

(i) Distributions permitted under § 4290.585; and

(ii) Payments from Retained Earnings Available for Distribution based on either the shareholders' or members' pro-rata interests or the provisions for profit distributions in your partnership agreement, as appropriate.

(3) *Failure to make payment.* Unless otherwise approved by the Agency, you fail to make timely payment of any amount due under any security or obligation of yours that is issued to, held or guaranteed by the Agency.

(4) *Failure to maintain Regulatory Capital.* You fail to maintain the minimum Regulatory Capital required under these regulations or, without the Agency's prior written consent, you reduce your Regulatory Capital except as permitted by § 4290.585.

(5) *Capital Impairment.* You have a condition of Capital Impairment as determined under § 4290.1830.

(6) *Cross-default.* An obligation of yours that is greater than $100,000 becomes due or payable (with or without notice) before its stated maturity date, for any reason including your failure to pay any amount when due. This provision does not apply if you pay the amount due within any applicable grace period or contest the payment of the obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* You violate or fail to perform one or more of the terms and conditions of any security or obligation of yours that is issued to, held or guaranteed by the Agency, or of any agreement (including your Participation Agreement) with or conditions imposed by the Agency in the administration of the Act and the regulations promulgated under the Act.

(8) *Noncompliance.* Except as otherwise provided in paragraph (d)(5) of this section, the Agency determines that you have violated one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act.

(9) *Failure to maintain diversity.* You fail to maintain diversity between management and ownership as required by § 4290.150.

(g) *Remedies for events of default with opportunity to cure.* (1) Upon written notice to you of the occurrence (as determined by the Agency) of one or more of the events of default in paragraph (f) of this section, and subject to the conditions in paragraph (g)(2) of this section:

(i) The Agency may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed the Agency with respect to your Debentures, immediately due and payable; and

(ii) The Agency may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of the Agency or a designee as your receiver under § 348M of the Act.

(2) The Agency may invoke the remedies in paragraph (g)(1) of this section only if:

(i) You have been given at least 15 days to cure the default(s); and

(ii) You fail to cure the default(s) to the Agency's satisfaction within the allotted time.

(h) *Repeated non-substantive violations.* If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated under the Act, the Agency, after written notification to you and until you cure such condition to the Agency's satisfaction, may deny you additional Leverage and/or require you to take such actions as the Agency may determine to be appropriate under the circumstances.

(i) *Consent to removal of officers, directors, or general partners and/or appointment of receiver.* The Articles of each RBIC must include the following provisions as a condition to the purchase or guarantee of Leverage. Upon the occurrence of any of the events specified in paragraphs (d)(1) through (d)(6) or (f)(l) through (f)(3) of this section as determined by the Agency, the Agency shall have the right, and you consent to the Agency's exercise of such right:

(1) With respect to a Corporate RBIC, upon written notice, to require you to replace, with individuals approved by the Agency, one or more of your officers and/or such number of directors of your board of directors as is sufficient to constitute a majority of such board; or

(2) With respect to a Partnership RBIC or an LLC RBIC, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove the general partner or manager of the RBIC, which general partner or manager shall then be replaced in accordance with the RBIC's Articles by a new general partner or manager approved by the Agency; and/or

(3) With respect to a Corporate RBIC, Partnership RBIC, or LLC RBIC, to obtain the appointment of the Agency or its designee as your receiver under section 384M of the Act for the purpose of continuing your operations. The appointment of a receiver to liquidate an RBIC is not within such consent, but is governed instead by the relevant provisions of the Act.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

COMPUTATION OF RBIC'S CAPITAL IMPAIRMENT

§ 4290.1830 RBIC's Capital Impairment definition and general requirements.

(a) *Significance of Capital Impairment condition.* If you have a condition of Capital Impairment, you are not in compliance with the terms of your Leverage. As a result, the Agency has the right to impose the applicable remedies for noncompliance in § 4290.1810(g).

(b) *Definition of Capital Impairment condition.* You have a condition of Capital Impairment if your Capital Impairment Percentage, as computed pursuant to the procedures set forth in § 4290.1840, exceeds 70 percent.

(c) *Quarterly computation requirement and procedure.* You must determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. You must notify the Agency promptly if you are Capitally Impaired.

(d) *The Agency's right to determine RBIC's Capital Impairment condition.* The Agency may make its own determination of your Capital Impairment condition at any time.

§ 4290.1840 Computation of RBIC's Capital Impairment Percentage.

(a) *General.* This section contains the procedures you must use to determine your Capital Impairment Percentage. You must compare your Capital Impairment Percentage to the maximum permitted under § 4290.1830(b) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and you do not have to perform any more procedures in this § 4290.1840. Otherwise, you must continue with paragraph (c) of this section. You satisfy the test if each of the following amounts is zero or greater:

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468 or other USDA-approved form(s) and Includible Non-Cash Gains.

(2) Unrealized Gain (Loss) on Securities Held.

(c) *How to compute your Capital Impairment Percentage.* (1) If you have an

Unrealized Gain on Securities Held, compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, continue with paragraph (c)(2) of this section.

(2) Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.

(3) If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.

(4) If the sum in paragraph (c)(2) of this section is less than zero, drop the negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) *How to compute your Adjusted Unrealized Gain.* (1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your ''Net Appreciation''.

(2) Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your ''Class I Appreciation''.

(3) Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and meet the following criteria, which must be substantiated to the Agency's satisfaction (this is your ''Class 2 Appreciation''):

(i) The Portfolio Concern that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;

(ii) Such financing represents a substantial investment in the form of an arm's-length transaction by a sophisticated new investor in the issuer's securities; and

(iii) Such financing occurred within 24 months of the date of the Capital Impairment computation, or the Portfolio Concern's pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of its average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the table in 13 CFR 107.1840(d)(4).

(5) Reduce the gain computed in paragraph (d)(4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

[69 FR 32204, June 8, 2004, as amended at 76 FR 80225, Dec. 23, 2011]

Subpart L—Ending Operations as a RBIC

§ 4290.1900 Termination of participation as a RBIC.

You may not terminate your participation as a RBIC without the Agency's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to the Agency for the orderly liquidation of the RBIC.

Subpart M—Miscellaneous

§ 4290.1910 Non-waiver of rights or terms of Leverage security.

The Agency's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. The Agency's failure to require you to perform any term or provision of your Leverage does not affect the Agency's right to enforce such term or provision. Similarly, the Agency's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in § 4290.1810 does not constitute a waiver of any succeeding

breach of such term or provision or condition.

§ 4290.1920 RBIC's application for exemption from a regulation in this part 4290.

(a) *General.* You may file an application in writing with the Agency to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. The Agency may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act.

(b) *Contents of application.* Your application must be accompanied by supporting evidence that demonstrates to the Agency's satisfaction that:

(1) The proposed action is fair and equitable; and

(2) The exemption requested is reasonably calculated to advance the best interests of the RBIC program in a manner consistent with the policy objectives of the Act and the regulations in this part.

§ 4290.1930 Effect of changes in this part 4290 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

§ 4290.1940 Integration of this part with other regulations applicable to USDA's programs.

(a) *Intergovernmental review.* To the extent applicable to this part, the Agency will comply with 2 CFR part 415, subpart C, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' The Agency has not delegated this responsibility to SBA pursuant to § 4290.45.

(b) *National flood insurance.* To the extent applicable to this part, the Agency will comply with subpart B of 7 CFR part 1806. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(c) *Clean Air Act and Water Pollution Control Act requirements.* To the extent applicable to this part, the Agency will comply with the requirements of the Clean Air Act, section 306; the Clean Water Act, section 508; Executive Order 11738; and 40 CFR part 32. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(d) *Historic preservation requirements.* To the extent applicable to this part, the Agency will comply with subpart F of 7 CFR part 1901. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(e) *Lead-based paint requirements.* To the extent applicable to this part, the Agency will comply with subpart A of 7 CFR part 1924. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(f) *Conflict of interest.* To the extent applicable to this part, the Agency will comply with 2 CFR 400.2, subpart D of 7 CFR part 1900, and RD Instruction 2045–BB. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45.

(g) *Civil rights impact analysis.* To the extent applicable to this part, the Agency will comply with RD Instruction 2006–P, ''Civil Rights Impact Analysis.'' The Agency has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(h) *Environmental requirements.* To the extent applicable to this part, the Agency will comply with 7 CFR part 1970. The Agency has not delegated this responsibility to SBA pursuant to § 4290.45.

(i) *Appeals to the National Appeals Division for review of adverse decisions.* Applicants and RBICs have the right to request review by the National Appeals Division within the USDA of adverse decisions, as defined in 7 CFR 11.1, pursuant to 7 CFR part 11.

[69 FR 32204, June 8, 2004, as amended at 79 FR 76019, Dec. 19, 2014; 81 FR 11053, Mar. 2, 2016]

Subpart N—Requirements for Operational Assistance Grants to RBICs

§ 4290.2000 Operational Assistance Grants to RBICs.

(a) *Regulations governing.* Regulations governing Operational Assistance grants to RBICs may be found in subparts D and E of this part 4290 and in this § 4290.2000.

(b) *Restrictions on use.* A RBIC must use Operational Assistance grant funds only to provide Operational Assistance to Smaller Enterprises to which it either has made, or expects to make, a Financing.

(c) *Amount of grant.* Each RBIC will receive an Operational Assistance grant award equal to the lesser of 10 percent of the Regulatory Capital raised by the RBIC at the time of licensing or $1,000,000.

(d) *Term.* Operational Assistance grants made under this part will be made for a multiyear period (not to exceed 10 years) under such terms as the Agency may require.

(e) *Reporting and recordkeeping requirements.* Policies governing reporting, record retention, and recordkeeping requirements applicable to RBICs may be found in subpart H of this part 4290.

Subpart O—Additional Requirements for Non-Leveraged Licensees and Exceptions to Regulations

SOURCE: 76 FR 80225, Dec. 23, 2011, unless otherwise noted.

§ 4290.3000 Non-leveraged RBICs—General.

This subpart identifies provisions specific to RBICs seeking a non-leveraged license, including exceptions and additions to provisions associated with subparts A through N of this part.

§§ 4290.3001–4290.3002 [Reserved]

§ 4290.3003 Responsibilities for implementing Non-leveraged RBICs.

Section 4290.45 does not apply to Non-leveraged RBICs. Instead, for the purposes of this part as it applies to Non-leveraged RBICs, all authorities and responsibilities assigned to the Agency under this part shall be carried out by the Agency. Thus, when applying subparts A through N of this part to Non-leveraged RBICs, all references to the Small Business Administration (SBA) or Administrator on behalf of USDA shall be read as the Agency. All forms shall be submitted to USDA or its designee.

[77 FR 4885, Feb. 1, 2012]

§ 4290.3004 [Reserved]

§ 4290.3005 Qualifications for the Non-leveraged RBIC Program.

(a) *Business form.* In addition to complying with the applicable provisions of § 4290.100 not otherwise modified by this section, paragraphs (a)(1) through (a)(4) of this section apply.

(1) For RBICs applying for non-leveraged status, the types of investors eligible to invest in a RBIC must have been approved by the Agency. Investors seeking approval must submit a request to the Agency with sufficient documentation to support their request. The USDA will announce such approved categories and types of investors in a public notice published in the FEDERAL REGISTER from time to time. Subsequent notices that modify the types of investors eligible to invest in a RBIC will not be applied retroactively.

(2) In lieu of complying with § 4290.100(d)(1)(i), you must have a minimum duration of 10 years. After 10 years, the Partnership RBIC may be terminated by a vote of your partners.

(3) In lieu of complying with § 4290.100(d)(2), if you are a LLC RBIC, you must have a minimum duration of 10 years. After 10 years, the LLC RBIC may be terminated by a vote of your members.

(4) In lieu of complying with § 4290.100(d)(3), if you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders.

(b) *Approval of initial Management Expenses.* Section 4290.140 does not apply to Non-leveraged RBICs. However, the

Agency will provide a cap on these expenses in each FEDERAL REGISTER notice soliciting applications for Non-leveraged RBICs.

(c) *Management and ownership diversity requirements.* A Non-leveraged RBIC is subject to the provisions of § 4290.150 unless it is exempted from these provisions by the Agency. Exemptions will only be granted when the applicant establishes, to the satisfaction of the Agency, that granting the exemption will not unduly impair the integrity and soundness of the Non-leveraged RBIC.

(d) *Special rules for Partnership RBICs and LLC RBICs.* Paragraph (c) of § 4290.160 does not apply to Non-leveraged RBICs.

§§ 4290.3006–4290.3009 [Reserved]

§ 4290.3010 Application and Approval Process for RBIC licensing without Leverage.

(a) The provisions of § 4290.300 notwithstanding, the Agency will accept, at any time, applications for consideration as a Non-leveraged RBIC. The number of applications that the Agency will receive each year, and any fees and conditions, will be announced annually in a FEDERAL REGISTER notice.

(b) The provision for evaluating applicants on a competitive basis, as specified in § 4290.340(a), does not apply to this subpart.

(c) The provisions specified in § 4290.370(m) do not apply to this subpart.

[76 FR 80225, Dec. 23, 2011, as amended at 77 FR 4885, Feb. 1, 2012]

§§ 4290.3011–4290.3014 [Reserved]

§ 4290.3015 Evaluation and selection of Non-leveraged RBICs.

(a) *General.* Notwithstanding any other provision in this part, when selecting applications for non-leveraged status, the Agency may select one or more applications, or none, for further consideration based on the evaluation criteria of this part.

(b) *Eligibility and completeness.* In addition to the requirements specified in § 4290.350, an Applicant under this subpart must complete a written application that includes information not otherwise exempted by the Agency, in its sole discretion. The Agency may, on its own initiative, exempt material from a Non-leveraged RBIC application where the Agency determines it impedes an expedited process without a commensurate benefit to the program. To the extent that the Agency's exemption applies to the entire program, an announcement of the exemption will be published in the FEDERAL REGISTER. The Agency shall make a decision as to licensing an Applicant after the receipt of a complete application and will enter into a Participation Agreement with the RBIC if approved.

(c) *Effect of a RBIC license.* Paragraphs (d)(2) and (d)(3) of § 4290.390 do not apply to Non-leveraged RBICs.

§§ 4290.3016–4290.3019 [Reserved]

§ 4290.3020 Changes in Ownership, Structure, or Control.

Paragraph (b) in § 4290.440 does not apply to Non-leveraged RBICs.

§§ 4290.3021–4290.3024 [Reserved]

§ 4290.3025 Managing the Operations of a RBIC.

(a) *Nonperformance.* In addition to the provisions specified in § 4290.507, failure of an approved Non-leveraged RBIC to maintain sound investment practice, as determined by the Agency, may result in loss of approval for participating in this program.

(b) *Employment of USDA or SBA officials.* Paragraph (a)(2) of § 4290.509 does not apply to Non-leveraged RBICs.

(c) *Approval of RBIC's Investment Adviser/Manager.* In addition to complying with § 4290.510, a Non-leveraged RBIC must notify the Agency of the Management Expenses to be incurred under such contract, or of any subsequent material changes in such Management Expenses, within 30 days of execution.

(d) *Management Expenses of a RBIC.* When complying with § 4290.520, Non-leveraged RBICs do not need prior approval of initial Management Expenses and any increases in those expenses.

(e) *Restrictions on investments of idle funds by RBICs.* The provisions of § 4290.530 apply to Non-leveraged RBICs only when the Non-leveraged RBIC engages in activities not contemplated by the Act.

(f) *Prior approval of secured third-party debt of RBICs.* The provisions of §4290.550 do not apply to Non-leveraged RBICs.

(g) *Voluntary decrease in Regulatory Capital.* When complying with §4290.585, Non-leveraged RBICs do not need to obtain prior approval for decreases in Regulatory Capital of more than 2 percent (but not below the minimum required under this Act or these regulations). However, Non-leveraged RBICs must report the reduction to the Agency within 30 days.

§§ 4290.3026–4290.3029 [Reserved]

§ 4290.3030 Financing of Enterprises by RBICs.

(a) *Non-compliance with this section.* The last sentence of §4290.700(e) does not apply to Non-leveraged RBICs.

(b) *Enterprises that may be ineligible for Financing.* The provisions associated with real estate enterprises found in §4290.720(c) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Agency in accordance with §4290.1920.

(c) *Farmland purchases.* The provisions associated with farmland purchases found in §4290.720(e) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Agency in accordance with §4290.1920.

(d) *Purchasing securities from an underwriter or other third party.* Non-leveraged RBICs are exempt from the recordkeeping requirements and fee limitations in §4290.825(b) and (c), respectively, for securities purchased through or from an underwriter.

(e) *Assets acquired in liquidation of Portfolio securities.* The provisions of §4290.880 do not apply to Non-leveraged RBICs.

§§ 4290.3031–4290.3034 [Reserved]

§ 4290.3035 Recordkeeping, Reporting, and Examination Requirements for RBICs.

Except for §4290.600(d), Subpart H, Recordkeeping, Reporting, and Examination Requirements for RBICs, of this part applies to Non-leveraged RBICs.

§§ 4290.3036–4290.3039 [Reserved]

§ 4290.3040 Financial Assistance for RBICs.

Subpart J, Financial Assistance for RBICs (Leveraged), of this part does not apply to Non-leveraged RBICs.

§ 4290.3041 Events of default and the Agency's remedies for RBIC's noncompliance with terms of licensure.

In addition to complying with the provisions of §4290.1810, a RBIC's failure to comply with the terms of this part may result in the Agency revoking the Non-leveraged RBIC's license issued under this part.

[76 FR 80225, Dec. 23, 2011, as amended at 77 FR 4885, Feb. 1, 2012]

§§ 4290.3042–4290.3044 [Reserved]

§ 4290.3045 Computation of RBIC's Capital Impairment.

The provisions specified in §§4290.1830 and 4290.1840 do not apply to Non-leveraged RBICs.

§§ 4290.3046–4290.3049 [Reserved]

§ 4290.3050 Operational Assistance Grants for RBICs.

Subpart N, Requirements for Operational Assistance Grant to RBICs, of this part does not apply to Non-leveraged RBICs. All other references to Operational Assistance in this part do not apply to Non-leveraged RBICs.

§§ 4290.3051–4290.3099 [Reserved]

PARTS 4291–4299 [RESERVED]

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1926(a); 7 U.S.C. 1932(a); and 7 U.S.C. 8107.

SOURCE: 85 FR 42518, July 14, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 5001.1 General.

(a) This part contains the regulations for Community Facilities, Water and Waste Disposal, Business and Industry, and Rural Energy for America Program loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, and liquidating such loans. The loan guarantee programs covered by this regulation are more fully described as:

(1) Community Programs Guaranteed Loans (5 U.S.C. 301 and 7 U.S.C. 1989) as authorized by Section 306(a)(1) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1926(a)(1), as administered by the Rural Housing Service (RHS), herein after referred to as CF.

(2) Water and Waste Disposal Program Guaranteed Loans (5 U.S.C. 301, 7 U.S.C. 1989, and 16 U.S.C. 1005) as authorized by Section 306(a)(1) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1926(a)(1), as administered by the Rural Utilities Service (RUS), herein after referred to as WWD.

(3) Business and Industry Guaranteed Loans (7 U.S.C. 1932) as authorized by Section 310B, Business and Industry Direct and Guaranteed Loans, of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1932, as administered by the Rural Business-Cooperative Service (RBCS), herein after referred to as B&I.

(4) Rural Energy for America Program Guaranteed Loans (5 U.S.C. 301, and 7 U.S.C. 8107) as authorized by Section 9007, Title IX of the Food, Conservation, and Energy Act of 2008, as administered by the Rural Business-Cooperative Service (RBCS), herein after referred to as REAP.

(b) The applicability of the provision of this part for processing and approving applications and for servicing guaranteed loans depend on when a complete application is received. The Agency will process and approve applications, and service guaranteed loans according to the provisions of this part for all complete guaranteed loan applications that it receives on or after October 1, 2020, including guaranteed loan applications submitted under any of the programs whose authorization is identified in this section. All complete applications received before October 1, 2020, will be processed, and awarded and guaranteed loans serviced in accordance with the existing regulations in effect at the complete application date for the program under which the application was submitted.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79704, Sept. 30, 2024]

§ 5001.2 Structure.

This part is divided into six subparts as described in paragraphs (a) through (f) of this section. The provisions are applicable to each guaranteed loan made under this part, except as may be otherwise indicated. This part also contains several appendices as identified in paragraph (g) of this section.

(a) *Subpart A.* Subpart A contains provisions that are applicable to each guaranteed loan made under this part, except as may be otherwise indicated. Topics covered include definitions; exception authority; appeal and review rights; general lender responsibilities; special initiatives; approvals, regulations, and forms; and standards for financial information.

(b) *Subpart B.* This subpart contains provisions for determining project, borrower, and lender eligibility that are applicable to each guaranteed loan made under this part. It also contains a list of eligible and ineligible uses of loan funds, ineligible projects and conditions that would make an otherwise eligible borrower ineligible. The lender's agreement is addressed as well as maintenance of approved lender status.

(c) *Subpart C.* This subpart contains provisions for general origination requirements, credit evaluation, appraisals, various types of guarantees, monitoring requirements, compliance with other laws, environmental responsibilities, and conflicts of interest that are applicable to each guaranteed loan made under this part.

(d) *Subpart D.* This subpart contains provisions relating to applications for a loan guarantee under this part, including preliminary eligibility reviews, the application process, application evaluation, and the application award processes that are applicable to each guaranteed loan made under this part.

(e) *Subpart E.* This subpart contains loan and guarantee provisions that are applicable to each guaranteed loan made under this part. Loan provisions cover interest rates, term length, loan schedule, repayment, lender fees, loan amounts, percentage of guarantee, and assignment of a guaranteed loan. Guarantee provisions cover the conditional commitment, conditions precedent to issuing the loan note guarantee, the issuance of the loan note guarantee, guarantee and other fees, replacement of documents, borrower reorganizations, and other legal requirements.

(f) *Subpart F.* This subpart applies to provisions for servicing the loans guaranteed under this part, including oversight, monitoring and reporting requirements and project completion requirements that are applicable to each guaranteed loan made under this part, except as may be otherwise indicated. Servicing topics covered include audits and financial reports; collateral; loan transfers and assumptions; lender transfers; mergers; servicing fees; subordinations of lien position; repurchases; additional expenditures and loans; interest rate changes; lender failures; borrower defaults; protective advances; liquidation; bankruptcy; litigation; loss calculations and payments; future recovery; property acquired by the lender; and termination of the loan note guarantee.

(g) *Appendices.* These appendices provide specific information on various reports associated with applying for a loan guarantee under this part.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62196, Oct. 2, 2020; 89 FR 79704, Sept. 30, 2024]

§ 5001.3 Definitions.

The following definitions are applicable to the capitalized terms used in this part.

Administrator means the Administrator of the Rural Housing Service, the Rural Utilities Service, or the Rural Business-Cooperative Service (or the applicable Service's successor), as applicable, within the Rural Development mission area of the U.S. Department of Agriculture (USDA).

Affiliate means a person or entity that is closely attached or connected to another person or entity. For the purposes of program eligibility, the principles outlined in 13 CFR 121.301(f), and any successor regulation, are used to establish affiliation.

Agency means USDA Rural Development, which includes the Rural Housing Service; the Rural Utilities Service; and the Rural Business-Cooperative Service or their successors.

Agricultural producer means a person, including non-profits, directly engaged

in the production of agricultural products through labor management and operations, including the cultivating, growing, and harvesting plants and crops (including farming); breeding, raising, feeding, or housing of livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations. All gross income of the applicant entity is included for agricultural producer eligibility. The percentage is calculated as the average of gross agricultural operations income of the concern divided by the gross nonfarm income of the concern for the five most recent years. If the concern has been in operation for less than 60 months but for at least 12 months, average gross agricultural operations income, and gross non-farm income for as long as the concern has been in operation will be used. Agricultural operations income may include such items as production contracts, crop insurance, commodity payments, etc. Total income may include W–2 wages, schedule C income, and other income not related to the agricultural operation. Calculations will be using the applicant's five most recent tax years. Each year's gross agricultural operations income will be divided by the applicant's gross total income, then the five years will be averaged to determine eligibility. An agricultural producer could be located in either a rural or a nonrural area.

Agricultural production means the cultivation, growing, or harvesting of plants and crops (including farming) breeding, raising, feeding, or housing of livestock (including ranching); forestry products, hydroponics, or nursery stock; or aquaculture.

Anaerobic digester means a renewable energy system that uses animal waste or other renewable biomass and may include other organic substrates to produce biogas that is sold in a gaseous or compressed liquid state or used to produce thermal or electrical energy.

Applicant lender debt means an existing debt owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Appraisal surplus means the excess between the market value of an asset and its cost or depreciated book value when the market value is higher.

Architectural report means a report, prepared by a professional, licensed architect, or other qualified party that describes the existing situation, analyzes alternatives and proposes a specific course of action from an architectural perspective.

Arm's length transaction means a transaction in which the buyer and seller act independently and have no relationship to each other. The concept of an arm's length transaction allows the market to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

Assignment guarantee agreement means a signed, Agency-approved agreement between the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan.

Biofuel means a fuel derived from renewable biomass.

Biogas means a gaseous fuel (including landfill and sewage waste treatment gas) derived from the degradation and decomposition of renewable biomass.

Bond means a form of debt security in which the authorized issuer (borrower) owes the bond holder (lender) a debt and is obligated to repay the principal and interest (coupon) at a later date(s) (maturity). An explanation of the type of bond and other bond stipulations must be attached to the bond issuance.

Borrower means the person that borrows, or seeks to borrow, money from the lender (including any party or parties liable for the guaranteed loan except guarantors) through a loan guaranteed under this part.

Business plan means a comprehensive document that clearly describes the borrower's ownership structure and management experience including, if applicable, discussion of a parent company, any subsidiaries and affiliates of the borrower and discussion of how the borrower will operate the proposed project. If a business or industry is in decline or financial distress, the business plan must describe in detail how

the project differs from the current industry trends or improves the borrower's financial position.

Byproduct means an incidental or secondary product, regardless of whether it has a readily identifiable commercial use or value, generated under normal operations of the proposed Project that can be reasonably measured and monitored.

Certificate of incumbency means an Agency-approved form used to validate authenticity of Agency representatives' signature and title.

Collateral means the asset(s), including assignments of relevant agreements, pledged by the borrower to the lender as security for the guaranteed loan.

Commercially available means a system that meets the requirements of either paragraph (1) or (2) of this definition.

(1) A domestic or foreign system that:

(i) Has both a proven and reliable operating history and proven performance data for at least one year specific to the use and operation to the proposed application;

(ii) Is based on established design and installation procedures and practices and is replicable;

(iii) Has professional service providers, trades, large construction equipment providers, and labor who are familiar with installation procedures and practices;

(iv) Has proprietary and balance of system equipment and spare parts that are readily available;

(v) Has service that is readily available to properly maintain and operate the system; and

(vi) Has an existing established warranty that is valid in the United States for major parts and labor; or

(2) A domestic or foreign system that has been certified by a recognized industry organization whose certification standards are acceptable to the Agency.

Complete application means an application that contains all parts necessary for the Agency to determine borrower and project eligibility, the financial feasibility and technical merit of the project, and contains sufficient information to determine a priority score for the application, if applicable.

Conditional commitment means an Agency-approved form in which the Agency agrees that, in accordance with applicable provisions of the program regulations contained in this part and related forms, it will execute the loan note guarantee, subject to the conditions and requirements specified in applicable provisions of the program regulations contained in this part and in the conditional commitment itself.

Conflict of interest means a situation in which a person has personal, professional, or financial interests that prevent, or appears to prevent the person from acting impartially. For purposes of this part, conflict of interest also includes, but is not limited to:

(1) A person acting as a compensated agent of the borrower and the lender on the same guaranteed loan,

(2) Distribution or payment of guaranteed loan funds to an individual owner, partner, stockholder, or member of the borrower, or to a beneficiary or immediate family member of the borrower;

(3) Refinancing debt that is owned by a loan packager, broker, or referral agent or its affiliates.

Cooperative means an entity that is legally chartered by the State in which it operates as a cooperatively-operated business, or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Credit evaluation means the analysis and evaluation by the lender of the credit factors associated with each application to ensure loan repayment through the use of credit documentation procedures and an underwriting process that is consistent with industry standards and the lender's written policy and procedures.

Debt Collection Improvement Act (DCIA) means the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, which requires that any nontax monies that are payable or may become payable from the United States under contracts and other written agreements to any person not an agency or subdivision of a state or local

government may be subject to certain collection options, such as administrative offset, for a delinquent debt the person owes to the United States implemented under 7 CFR part 3.

Debt service coverage ratio means the ratio obtained when taking earnings before interest, taxes, depreciation, and amortization less reasonably expected replacement capital expenditures divided by the annual debt service (principal and interest payments) of the borrower.

Default means the condition that exists when a borrower is in non-compliance under the terms of any of the promissory notes, the loan agreements, security documents, program regulations, or other documents evidencing or collateralizing the loan. Default can be a monetary or non-monetary default.

Deficiency judgment means a monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Delinquency means a situation that exists when a scheduled loan payment on a guaranteed loan made under this part is more than 30 calendar days past due and cannot be cured within the next 30 calendar days. For purposes of this part, delinquency provides guidance for completing borrower status reports and is not used to define monetary or non-monetary default or undertaking-related servicing actions.

Departmental regulations means the regulations of the Agency's Office of Chief Financial Officer (or successor office) as codified in 2 CFR chapter IV.

Eligible project costs means those expenses approved by the Agency for the project as eligible uses of funds.

Energy assessment means an Agency-approved report assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy assessment.

Energy assessor means a qualified consultant who has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects and who adheres to generally recognized engineering principles and practices.

Energy audit means a comprehensive report that meets an Agency-approved standard prepared by an energy auditor or an individual supervised by an energy auditor that documents current energy usage; recommended potential improvements (typically called energy conservation measures) and their costs; energy savings from these improvements; dollars saved per year; and simple payback. The methodology of the energy audit must meet professional and industry standards. The final energy audit must be validated and signed off by the energy auditor who conducted the audit or by the supervising energy auditor of the individual who conducted the audit, as applicable.

Energy auditor means a qualified consultant that meets one of the following criteria:

(1) A certified energy auditor certified by the Association of Energy Engineers;

(2) A certified energy manager certified by the Association of Energy Engineers;

(3) A licensed professional engineer in the State in which the audit is conducted with at least 1 year of experience and who has completed at least two similar type energy audits; or

(4) An individual with a 4-year engineering or architectural degree with at least three years of experience and who has completed at least five similar type energy audits.

Energy efficiency improvement (EEI) means improvements to or replacement of an existing building or systems, or equipment owned by the borrower, that reduces measurable energy consumption on an annual basis.

Energy efficient equipment and systems (EEE) means equipment or systems for agricultural production or processing that exceed any of the following standards. Applications for energy efficient equipment and systems must clearly demonstrate energy efficiency.

Engineering documentation means a document, normally prepared by the borrower's consulting engineer or other qualified party, that describes the existing system, analyzes alternatives, and proposes a specific course of action from an engineering perspective.

Essential community facility means a public improvement, operated on a

non-profit basis, needed for the orderly development of a rural community where the rural community is a city or town, or its equivalent county or multi-county area. The term ''facility'' refers to both the physical structure financed, and the resulting service provided to rural residents or rural businesses. Facilities may include, but are not be limited to, courthouses, community centers, libraries, firehouses, health care, education, transportation, and industrial parks. An industrial park consists of land and the necessary access ways and utilities to the site, but not improvements erected on such site.

Existing business means a business that has been in operation for at least one full year and has achieved full operational capacity or stable operations as determined by the Administrator. The following will be treated as existing businesses provided there is not a significant change in operations of the existing business: Mergers by an existing business with a new or existing businesses, a change in the business name, or a new business and an existing business applying as co-borrowers,

Farmer or rancher cooperative means an entity that is owned and controlled by agricultural producers and that is incorporated, or otherwise recognized by the State in which it operates as a cooperatively-operated business or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Feasibility study means a report including an opinion or finding conducted by an independent qualified consultant(s) evaluating the economic, market, technical, financial, and management feasibility of the proposed project or operation in terms of its expectation for success as outlined in appendix A to subpart D of this part.

Federal debt means debt owed to the Federal Government that is subject to collection under the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701, *et seq*.

Federal fiscal year means the 12-month period beginning October 1 of each year and ends on September 30 of the following year; it is designated by the calendar year in which it ends.

Final loss claim means the Agency's payment of a final settlement amount with the lender after the collateral is liquidated or after settlement and compromise actions have been completed and as further set forth in § 5001.521(e).

Financial feasibility means the ability of a project to achieve sufficient income, credit, and cash flow to financially sustain the project over the long term and meet all debt obligations.

Future recovery means funds to be collected by the lender after a final loss claim is processed as set forth in § 5001.522.

Geothermal direct generation means a system that uses thermal energy directly from a geothermal source.

Geothermal electric generation means a system that uses thermal energy from a geothermal source to produce electricity.

Guaranteed loan means a loan made and serviced by a lender for which the Agency and lender have entered into a lender's agreement and for which the Agency has issued a loan note guarantee. Unless otherwise specified, guaranteed loan refers to a loan that the Agency has guaranteed under this Part.

Guarantor means a person giving assurance to the Agency under an Agency-approved written agreement that the borrower's obligations will be fulfilled and promising *its undertaking of responsibility for* repayment of a guaranteed loan if the borrower should default.

Holder means a person, other than the lender, who owns all or part of the guaranteed portion of the guaranteed loan with no servicing responsibilities.

Hospital (1) For the purpose of refinancing rural hospital debt in accordance with § 5001.102(d)(5), hospital means the following types of facilities defined in the Social Security Act, Section 1861 (42 U.S.C. 1395x):

(i) Hospital (section 1861(e)).

(ii) Psychiatric hospital (section 1861(f)).

(iii) Long-term care hospital (section 1861(ccc)); and shall also include the following other provider types defined in the Social Security Act, Section 1861 (42 U.S.C. 1395X):

(A) Critical access hospital (section 1861(mm)(1)).

(B) Religious nonmedical health care institution (section 1861(ss)(1)).

(2) The Agency will use the applicant provider's Centers for Medicare and Medicaid Services (CMS) Certification Number (CCN) to verify the applicant provider is listed as a ''Hospital'' for the ''Provider or Supplier Type'' category on the CMS Quality Certification and Oversight Reports (QCOR) website *qcor.cms.gov/index__new.jsp*.

Hybrid means a combination of two or more renewable energy technologies that are incorporated into a unified system to support a single project. Projects which propose two or more different renewable energy technologies that are not incorporated into a unified system and projects which propose different renewable energy technologies at two or more locations (a different technology at each site) are not eligible. For example, installing wind technologies at one location and solar technologies at another location is not considered hybrid but installing wind and solar technologies that are incorporated into a unified system to support a single project at both locations is considered hybrid.

Hydroelectric source means a renewable energy system producing electricity using various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

Hydrogen project means a system that produces hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal, or hydroelectric sources; or that uses hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric sources as an energy transport medium in the production of mechanical or electric power or thermal energy.

Immediate family(ies) means 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.

Indian tribe means the term as defined in 25 U.S.C. 5304(e).

In-house expenses means expenses associated with activities that are routinely the responsibility of a lender's internal staff, including in-house lawyers, or its agents and that are normally incurred for administration of the loan. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Inspector means a qualified consultant who has at least 3 years of experience and has completed at least five inspections on similar type projects.

Insurance means a means of protection from financial loss by which a company provides a guarantee of compensation for a specified loss, damage, illness, or death in return for payment of a premium.

Intangible assets means an asset that lacks physical substance. This includes, but is not limited to, copyrights, patents, capitalized franchise fees, goodwill, customer lists, software, organizational expenses, loan closing expenses, social media assets, and bond fees.

Interconnection agreement means a contract containing the terms and conditions governing the interconnection and parallel operation of the borrower's electric generation equipment and the utility's electric power system or a borrower's biogas production system and a gas pipeline.

Interest means an amount paid by a borrower to a lender as a form of compensation for the use of money. When money is borrowed, interest is typically paid over a certain period of time (typically months or years) to the lender as percentage of the principal amount owed. The term interest does not include default charges, penalty interest, or late payment fees.

Interest termination date means the date on which no further interest will be payable by the Agency under the loan note guarantee.

Interim financing means a temporary or short-term loan made with the clear intent when the loan is made that it will be repaid through another loan that provides permanent financing. Interim financing is frequently used to

pay construction and other costs associated with the proposed project, with permanent financing to be obtained after project completion.

Lender means a lending entity that the Agency has approved to originate, service, and collect payments on loans guaranteed under this part.

Lender's agreement means the Agency-approved form of contract between the Agency and the lender setting forth the lender's guaranteed loan responsibilities.

Liquidation expenses means costs directly associated with the liquidation of collateral, including, without limitation, costs associated with preparing collateral for sale (*e.g.*, repairs and transport), the sale (*e.g.*, advertising, public notices, auctioneer expenses, and foreclosure fees), and conducting appraisals. Legal fees are considered liquidation expenses provided that the fees are reasonable as determined by the Agency and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house legal staff. Liquidation expenses do not include in-house expenses.

Loan agreement means the agreement between the borrower and lender containing the specified terms and conditions of the guaranteed loan and the responsibilities of the borrower and lender.

Loan classification means the process by which loans are examined and categorized by the probability of default and degree of potential loss in the event of default.

Loan documents mean the loan agreement, promissory note, mortgage/deed of trust, and other security documents entered into by the borrower and the lender in connection with the guaranteed loan.

Loan note guarantee means the Agency-approved form containing the terms and conditions of the guarantee of an identified guaranteed loan.

Loan packager means a person, including a loan referral agent, broker, or an agent other than the borrower or lender that prepares a guaranteed loan application on behalf of the borrower or lender.

Local government means a county, municipality, town, township, village, or other unit of general government below the State level. The term also includes Tribal governments when tribal lands are within the service area.

Local owner means an individual who owns any portion of an entity that is the eligible borrower and whose primary residence is located within the normal commuting area, typically 100 miles or less, of the guaranteed loan project.

Locally or regionally produced agricultural food product means any agricultural food product that is raised, produced, and distributed in the locality or region in which the final product is marketed, so that the distance the product is transported is less than 400 miles from the origin of the product, or within the State in which the product is produced. Food products could be raw, cooked, or a processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

Market value means the most probable price that an asset should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby—

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Matching funds means the 25 percent of total eligible project costs required by 7 U.S.C. 8107 (REAP) to be eligible to receive a guaranteed loan. Funds provided by the borrower in excess of

matching funds are not matching funds.

Material adverse change means any change in circumstances associated with a guaranteed loan, including, without limitation, any change in the purpose of the loan, the borrower's financial condition or collateral that, individually or in the aggregate, have jeopardized, or could be reasonably expected to jeopardize, the borrower's repayment of the guaranteed loan.

Monetary default means a failure to make a scheduled or required payment on a guaranteed loan.

Multi-note system means an option for the lender to provide one promissory note for the unguaranteed portion and a separate promissory note(s) for the guaranteed portion of the loan. All promissory notes must reflect the same payment terms.

National Appeals Division (NAD) means the division of the United States Department of Agriculture pursuant to 7 CFR part 11.

Natural resource value-added product means a product derived from any naturally occurring resource, including agricultural resources, that is further processed to add value or used to generate energy or renewable energy. For example, wind or the sun being used for energy generation, grapes that are processed into wine or jam, or straw that is processed into particle board. Feeding grain to livestock is not considered as part of this definition.

Negligent loan origination means the failure of a lender to perform those services or actions that a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, and acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing means the failure of a lender to perform those services that a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, and acting in a manner contrary to the manner in which a reasonably prudent lender would act.

New business means a business that has been in operation for less than one full year and a business that has been in operation for at least one full year and has not achieved full operational capacity or stable operations as determined by the Administrator, including a new enterprise or new affiliate of an existing business moving or expanding into a new location involving new market or labor areas.

Non-monetary default means a situation where a borrower is not in compliance with the covenants or requirements of the loan documents, program requirements or loan.

Non-regulated lending entity means a lending entity that is not subject to supervision and examination by an agency of the United States or a State.

Ocean energy means energy created by use of various types of moving water in the ocean and other large bodies of water (*e.g.*, Great Lakes) including, but not limited to, tidal, wave, current, and thermal changes.

Off-take agreement means the terms and conditions governing the sale and transportation of products produced by the borrower and sold to another party.

Otherwise improve means, but is not limited to, the following:

(1) The purchase of necessary equipment that will itself provide an essential service to the rural community, such as vehicles, emergency and medical equipment, telecommunication equipment, computers, water meters and pumps;

(2) The purchase of equipment necessary to maintain, protect, operate, or use the eligible facility or service;

(3) The purchase of existing eligible facilities, when necessary, to either improve or prevent a loss of service provided the price paid for the facility is fair and reasonable and not directly related to the dollar amount of any debt to be retired by the seller; and

(4) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

Parity means a lien position whereby two or more separate lending entities or separate loans share a security interest of equal priority in collateral.

Participation means the sale of an interest in a loan by the lead lender to one or more participating lenders wherein the lead lender retains the note, collateral securing the note, and all responsibility for managing and servicing the loan. Participants have credit risk and are dependent upon the lead lender for protection of their interests in the loan. The relationship is typically formalized by a participation agreement between the lenders. The participant lender(s) and the borrower have no rights or obligations to one another.

Passive investor means an equity investor who does not actively participate in management and operation decisions of the borrower or any affiliate of the borrower as evidenced by a contractual agreement.

Person means an individual or entity organized under the laws of a State or a Tribe.

Power purchase agreement means the terms and conditions governing the sale and transportation of power produced by the borrower to another party.

Professional service means services used by the borrower for planning and developing a project, including, but not limited to, appraisals, architectural services, surveys, environmental impact analyses, implementing mitigation measures, and establishing or acquiring property rights. Such services are generally rendered by persons licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by loan packagers, but not including loan finders. A loan finder fee is not considered a professional service.

Project means the activity identified by a lender in its application for a loan guarantee for which the guaranteed loan funds will be used.

Promissory note means the legal instrument evidencing debt executed by the borrower to a lender with stipulated repayment terms. The term promissory note includes bonds and other related debt instruments issued by the lender to a borrower.

Protective advance means an advance made by the lender for the purpose of preserving and protecting the collateral where the borrower has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances for property taxes, rent, hazard and flood insurance premiums, emergency repairs and annual assessments that protect the collateral. Legal and accounting fees are not a protective advance.

Public body means a state, county, city, township, incorporated town or village, borough, authority, district, or other political subdivision of a State, or Indian tribe.

Qualified consultant(s) means an independent third-party person possessing the knowledge, expertise, and experience to perform the specific task required.

Rated power means the maximum amount of energy that can be created at any given time.

Refurbished means a piece of equipment or renewable energy system that has been brought into a commercial facility, thoroughly inspected, and worn parts replaced and has a warranty that is approved by the Agency or its designee An example of refurbished equipment is a diesel engine that has been rebuilt to factory specifications. The purchase of used equipment which has not been refurbished is not eligible.

Regulated lending entity means a lending entity that is subject to supervision and examination by an agency of the United States or a State; or a lending entity created specifically by State statute and operating under the direct supervision of a State government authority.

Renewable biomass means—

(1) Materials, pre-commercial thinning, or invasive species from National Forest System land or public lands (as defined in Section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that—

(i) Are by-products of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-

growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) of section 102; or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including the following items:

(i) Renewable plant material (including feed grains, other agricultural commodities, other plants and trees, and algae); and

(ii) Waste material (including crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts (including fats, oils, greases, and manure), and food and yard waste).

Renewable energy means energy derived from—

(1) A wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric source; or

(2) Hydrogen derived from renewable biomass or water using an energy source described in paragraph (1) of this definition.

Renewable energy site assessment means a report providing information regarding and recommendations for the use of commercially available renewable energy technologies in the borrower's operation. The report must be prepared by a qualified consultant for the specific energy system and project proposed.

Renewable energy system (RES) means a system that produces usable energy from a renewable energy source. Co-firing with fossil fuels, natural gas or petroleum-based products or materials such as coal and other fuels, oils, chemicals, tires, or plastic are not eligible; and may include:

(1) Distribution components necessary to move energy produced by such system to the initial point of sale; and

(2) Other components and ancillary infrastructure of such system, such as a storage system; however, such system may not include a mechanism for dispensing energy at retail *e.g.*, a flexible fuel pump.

Report of loss means an Agency-approved form used by lenders when reporting a financial loss under a guaranteed loan.

Retrofitting means a modification to an existing building or installed equipment that incorporates a function or feature(s) not included in the original design when built or for the replacement of existing components with components that improve the original design and does not affect original warranty if the warranty is still in existence. Examples of retrofitting include:

(1) Installing newly designed blades to an existing wind turbine to enhance energy production.

(2) Adding equipment or processes to or altering or enhancing an existing RES to improve production, efficiency, or financial viability, such as a feedstock retreater on an existing biodiesel production plant;

(3) Adding a battery system to an existing RES;

(4) Installing a steam turbine at an ethanol plant, or;

(5) Installing a combined heat and power system for a pellet production facility.

Rural and *rural area* means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, 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. Applications cannot be approved subject to meeting rural area requirements. Locations that are contiguous and adjacent to an urbanized area will be delineated as a non-eligible area in the Rural Development Property Eligibility Map found at: *https://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do*. This map is maintained independently by another government agency and is oriented through census tract data. The following exclusions apply:

(1) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that has been determined to be ''rural in character'' as follows:

(i) The determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development. *Rural in character requests and determinations are project specific; e.g., if approved, the determination does not apply to any future request made within the same area.* The process to request a determination under this provision is outlined in paragraph (1)(ii) of this definition. The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within ¼ mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's website at *rd.usda.gov/onerdguarantee*, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

(iii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is ''rural in character.'' A written recommendation must document how the area meets the statutory requirements of paragraph (1)(i)(B) of this definition and discusses why the State Director believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the ''rural in character'' provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in accordance with paragraph (1)(ii) of this definition. There is no appeal process for requests made on the initiative of the State Director.

(2) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision. This applies to areas that would not be considered a rural area because they are attached to the urbanized area

of a city or town of greater than 50,000 inhabitants by a ''string'' area that is two census blocks wide or less (which are typically interstates or major highways). As long as the ''string'' area is two census blocks wide or less, the area outside of the urbanized area, beginning with the ''string'' area, may be considered rural. Once an area is approved as a string exception, any project within that area is eligible.

(3) For the Commonwealth of Puerto Rico, the island is considered Rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be Rural if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be rural if they are ''not urban in character.''

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural Area based on available population data.

Rural small business means a small business that is located in a rural area or that can demonstrate the proposed project for which assistance is being applied for under this part is located in a rural area.

Service area means the area identified to be served.

Significant ties means, as determined by the agency, a facility under private control will carry out a public purpose and continue to primarily serve rural areas for CF projects (not applicable to public bodies and Federally Recognized Tribes) as evidenced by the following: Association with or control by a public body or bodies; or Broadly based membership and controlled primarily by members residing in the project service area. Membership must be open without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, or marital or familial status.

Simple payback means the estimated simple payback of a project funded under this part as calculated using paragraph (1), (2), or (3) of this definition, as applicable.

(1) Energy efficiency improvement projects simple payback = (Total Project Costs) ÷ (Dollar value of energy saved).

(i) Energy saved will be determined by subtracting the projected energy (determined by the method in paragraph (1)(i)(B) of this definition) to be consumed from the historical energy consumed (determined by the method in paragraph (1)(i)(A) of this definition), and converting the result to a monetary value using a constant value or price of energy (determined by the method in paragraph (1)(i)(C) of this definition).

(A) Actual energy used in the original building and/or equipment, as applicable, prior to the EEI project, must be based on the actual average annual total energy used in British thermal units (BTU) over the most recent 12, 24, 36, 48, or 60 consecutive months of operation.

(B) Projected energy use if the proposed EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that actual energy use under paragraph (1)(i)(A) of this definition.

(C) Value or price of energy must be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (1)(i)(A) of this definition.

(ii) Energy efficiency improvement projects simple payback does not allow EEI to monetize benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.

(iii) Proposed additional energy consumption by a business which would result in greater savings if implemented is not considered in the payback calculation.

(2) Renewable energy systems projects simple payback = (total project costs) ÷ (dollar value of energy

units replaced, credited, sold, or used and fair market value of byproducts as applicable in a typical year).

(i) Value of energy replaced will be calculated based on the borrower entity's historical energy consumption with actual average price paid for the energy replaced, following the methodology outlined in paragraph (1)(i) of this definition RES replacement projects which generate more energy than the applicant's historical records document, may add to the replacement value, the value obtained by taking the excess energy generated times a documented market price in order to derive at total dollar value of energy units replaced, credited, sold, or used.

(ii) Value of energy credited or sold will be calculated based on the amount of energy units to be sold at the proposed rate per unit, as documented in utility net metering or crediting policies and/or a purchase agreement.

(iii) If proposed energy will be used in a new facility (includes any direct-use project), value of energy used will be calculated based on the amount of energy units to be used at the documented price per unit of conventional fuel alternative.

(iv) Value of byproducts produced by and used in the project or related enterprises should be documented at the fair market value to be received for the byproducts in a typical year.

(v) Renewable energy systems projects simple payback does not include any one-time benefits such as but not limited to construction and investment-related benefits, nor credits which do not provide annual income to the project, such as tax credits. These benefits may be considered when appropriate for calculating repayment ability of guaranteed loans.

(vi) For RES projects that involve a shared meter with a residence where the cost of the system has been prorated, only the eligible prorated amount of energy attributed to the rural business or agricultural producer will be used in the payback calculation. For projects that involve in-eligible expenses other than residential, the full amount of energy production will be used in the payback calculation.

(3) Energy efficiency equipment and systems projects simple payback = (total project costs) ÷ (dollar value of efficiency savings). Efficiency savings will be determined by subtracting the annual value of energy to be consumed by the proposed energy efficient equipment from the annual value of energy that a conventional equipment alternative would have consumed. Adequate documentation must be provided for all consumption estimates and values utilized in the calculation.

Small business means an entity that meets the requirements of paragraphs (1) and (2) of this definition:

(1) An entity or utility, as applicable, as further defined in paragraphs (1)(i) through (iv) of this definition and meeting the requirements in paragraph (2) of this definition. With the exception of the entities identified in this paragraph, all other non-profit entities are not small businesses for the purposes of REAP program eligibility:

(i) A private for-profit entity, including a sole proprietorship, partnership, or corporation. The application must sufficiently describe the operations of the applicant's business entity;

(ii) A cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code);

(iii) An electric utility (including a Tribal or governmental electric utility) that provides service to rural consumers and operates independent of direct government control; or

(iv) A Tribal corporation or other Tribal business entities that are chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 5124) or have similar structures and relationships with their Tribal governments and are acceptable to the Agency. The Agency will determine the small business status of such Tribal entity without regard to the resources of the Tribal government. This means that only the applicant entity must meet the definition of a small business; and

(2) An entity that meets the requirements of (i) or (ii) below:

(i) The Small Business Administration size standards in accordance with 13 CFR 121.301(a), and any successor regulation. The size of the applicant alone (without affiliates) must not exceed the size standard designated for the industry in which the applicant is

primarily engaged. Also, the size of the applicant combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher. Size standards to be utilized are found in 13 CFR 121.201, and any successor regulation. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for an entity and its affiliates and are calculated using the following criteria:

(A) The number of employees is calculated using the guidance found in 13 CFR 121.106, and any successor regulation. The average number of employees is used based upon number of employees for each of the pay periods for the preceding 24 months. Part-time and temporary employees are counted as full-time employees. If the entity has not been in business for 24 months, the average number of employees is used for each of the pay periods during which it has been in business; or

(B) Annual receipts are calculated using the guidance found in 13 CFR 121.104, and any successor regulation. Federal income tax returns and any amendments filed with the IRS on or before the date of application must be used. If an entity has not filed a Federal income tax return, the Agency will calculate the entities annual receipts using any other available information such as regular books of account, or audited financial statements; or

(ii) The size standard outlined in 13 CFR 121.301(b)(2), and any successor regulation. Including its affiliates, the entity must not have a tangible net worth in excess of $20 million, and average net income after Federal income taxes (excluding carry over losses) for the preceding two completed fiscal year not in excess of $6.5 million.

State means 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.

State bond banks and *State bond pools* mean an entity authorized by the State to issue State debt instruments and use the funds received to finance eligible projects under this part.

Steady state operating level means that there is an adequate and consistent supply of the applicable renewable energy resource(s) for the project, both on a short-term (current) and long-term basis, and the renewable energy system and process(es) are operating at projected capacity, consistently yielding an adequate quantity and quality of renewable energy.

Subordination means the reduction of the lender's lien priority on certain assets pledged by the borrower to secure payment of the guaranteed loan to a position junior to, or on parity with, the lien position of another loan.

Total eligible project costs means the sum of all eligible project costs.

Total project costs means the sum of all costs associated with a completed project. All costs associated with a completed project, including ineligible project costs, must be included. Total project costs for retrofitting an existing RES includes the costs associated with the modifications or replacement of the existing components.

Transfer and assumption means the Agency-approved conveyance by a borrower to an assuming borrower of the assets, collateral, and liabilities of the borrower in return for the assuming borrower's binding promise to pay the outstanding debt.

Underserved communities mean communities (including urban or rural communities and Indian tribal communities) that have limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets and that have either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency-approved census. For purposes of awarding priority points, when applicable, this definition shall also include unserved or underserved populations, including minorities or protected groups, persistent poverty areas, or areas where Rural Development

projects have not been awarded in the past five years. High poverty rate is based on current census data and is not the same as persistent poverty which uses data for the last 30 years.

Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Used equipment means any equipment that has been used and is provided in an ''as is'' condition.

Useful life means estimated durations of utility placed on a variety of assets, including buildings, machinery, equipment, vehicles, electronics, and furniture. Useful life estimations terminate at the point when assets are expected to become obsolete, require major repairs, or cease to deliver economical results.

Veteran means a person who served in the active military, naval, or air service and was discharged or released therefrom under conditions other than dishonorable as defined in 38 U.S.C. 101(2).

Waste disposal means sanitary sewer (treatment and collection), solid waste, or storm drainage facilities.

Working Capital means current assets available to support a business' operations and growth. Working capital is calculated as current assets less current liabilities.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62196, Oct. 2, 2020; 86 FR 70354, Dec. 10, 2021; 87 FR 38645, June 29, 2022; 89 FR 79704, Sept. 30, 2024; 89 FR 97477, Dec. 9, 2024; 90 FR 57351, Dec. 11, 2025]

§ 5001.4 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable law.

§ 5001.5 Appeal and review rights.

Borrowers, lenders, and holders may have appeal or review rights for Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

(a) The borrower, lender, and holder can appeal any Agency decision that directly and adversely affects them.

(1) For an adverse decision that affects the borrower, the lender and borrower must jointly execute a written request for appeal of an adverse decision made by the Agency.

(2) An adverse decision that affects only the lender can be appealed by the lender only.

(3) An adverse decision that affects only the holder can be appealed by the holder only.

(b) In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision can be appealed only by the lender.

(c) A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, even if it was concurred in by the Agency, and therefore cannot be reviewed for appealability or appealed to NAD.

§ 5001.6 General lender responsibilities.

(a) Lenders are responsible for originating and servicing loans guaranteed by the Agency under this part in accordance with the provisions of this part and, for those guaranteed loans issued under one of the guaranteed loan programs identified in § 5001.1(a)(1) through (4), with the provisions of the applicable guaranteed loan program. Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities.

(b) Lenders can contract for services, but such contracting does not relieve a lender from its responsibilities as identified in this part or, where applicable, in the applicable guaranteed loan program identified in § 5001.1.

(c) If a lender fails to comply with the requirements of this part, the Agency may reduce any loss payment in accordance with the lender's agreement and loan note guarantee.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79708, Sept. 30, 2024]

§ 5001.7 Agency's special initiatives.

Applicants submitting applications that support the implementation of strategic or special initiatives are encouraged to review the Agency's annual notice to determine if their projects are eligible for receiving priority for projects. These projects may also support the implementation of strategic economic development and community development plans on a multi-jurisdictional and multi-sectoral basis in accordance with section 6401 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334).

[89 FR 79708, Sept. 30, 2024]

§ 5001.8 Approvals, regulations, and forms.

(a) When Agency approval or concurrence is required, it must be in writing and must be obtained prior to any action taken for which approval or concurrence is required. Written communication from an authorized Agency official, including any written communication approving, concurring, or otherwise communicating an Agency decision on a matter when such decision is required, may be transmitted via an electronic Agency system in accordance with Electronic Signatures in Global and National Commerce Act (ESIGN) of 2000 (114 Stat. 464) (E-Sign Act).

(b) All references to statutes and regulations include any and all successor statutes and regulations.

(c) All references to forms include any and all predecessor and successor forms as specified by the Agency.

(d) Copies of all regulations and forms referenced in this part can be obtained through the Agency and from the Agency's website at *https://www.rd.usda.gov/onerdguaranteed*.

(e) 7 CFR part 5001 does not prohibit or consent to electronic signatures. Rural Development will accept electronic signatures from lenders for origination, loan closing, and servicing documents in accordance with the E-Sign Act unless otherwise prohibited by law or program. Lenders may use electronic signatures for electronic promissory notes (eNotes), deeds of trust and other documents relevant to the loan transaction, providing that the lender perfects and maintains a first lien position, an enforceable promissory note, and meets all other agency requirements including the following:

(1) Lenders may submit forms to Rural Development electronically using USDA's Service Center Agencies Online Services website. Registration is limited to individuals and each individual authorized by the lender must register and upon registration may electronically sign and submit certain forms on behalf of the lender.

(2) Lenders who choose to accept electronic signatures from borrowers must ensure that such signatures meet the standards and requirements set forth in the E-Sign Act, as well as all other applicable federal and state regulations and guidelines. Lenders are charged with the same responsibility of due diligence with electronically signed documents as they are with paper documents. If any electronically signed document is deemed unenforceable and is connected to any fraud, misrepresentation or negligent servicing, the lender bears the risk that any loss claim submitted in relation to the unenforceable document will be denied or reduced in accordance with applicable regulations. Any loss attributed to a lender's failure to collect on the promissory note or enforce the security instrument because of its electronic signature will be treated as negligent servicing under 7 CFR 5001 servicing regulations. Failure to comply with any Federal statute or regulation could result in the denial of a loan guarantee or claim, withdrawal of lending authority and/or debarment from Federal programs.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70355, Dec. 10, 2021; 89 FR 79708, Sept. 30, 2024]

§ 5001.9 Standards for financial information.

(a) All financial information (*e.g.*, financial statements, balance sheets, financial projections, and income statements) must be prepared and submitted in accordance with accounting practices acceptable to the Agency. Such practices can include, but are not limited to, Generally Accepted Accounting Principles (GAAP) and the industry's

standard accounting practice. Unless the applicant or borrower meets the threshold for an audit in accordance with 2 CFR part 200 subpart F, the type of financial statement, *e.g.*, borrower prepared, compiled, reviewed, or audited, required is typically the decision of the lender.

(b) For sole proprietorships and other situations where business assets are held personally, financial statements must be prepared using only the assets and liabilities directly attributable to the applicant's project. For these situations, assets, plus any improvements, must be valued at the lower of cost or market value.

(c) A tax return is not an acceptable financial statement when underwriting a loan guaranteed under this part; however, tax return information may be used to prepare financial statements and to determine REAP eligibility.

[89 FR 79708, Sept. 30, 2024]

§ 5001.10 Federal Register notices and amendments.

Rural Development will issue annual FEDERAL REGISTER notices each year specifying the amount of funds available under this part for OneRD guarantees. Notices may also include the following information applicable to projects specifically funded under a particular notice: Maximum loan amounts, fees, and priority scoring for discretionary points.

§§ 5001.11–5001.99 [Reserved]

§ 5001.100 OMB control number.

The report and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0572–0155.

Subpart B—Eligibility Provisions

§ 5001.101 Introduction.

This subpart addresses the eligibility provisions for projects, borrowers, and lenders. This subpart also includes provisions for projects involving the purchase of cooperative stock or cooperative equity, the conversion of businesses to cooperatives or Employee Stock Ownership Plans (ESOP), and New Markets Tax Credits (NMTC).

(a) *Project eligibility.* Sections 5001.102 through 5001.108 identify requirements for projects to be eligible to receive a loan guarantee under this part. Sections 5001.115 through 5001.119 identify types of projects that are not eligible for a loan guarantee under this part. The Agency will not issue a loan guarantee under this part for any project that does not meet the applicable eligibility criteria as specified.

(b) *Borrower eligibility.* Section 5001.126 identifies the types of borrowers that are eligible to receive a loan guarantee for their projects under this part. The types of borrowers eligible to receive loan guarantees for their projects vary based on the guaranteed loan program they are applying under and that guaranteed loan program's authorizing statute as set forth in § 5001.1. Section 5001.127 identifies conditions that would make an otherwise eligible borrower ineligible for receiving a loan guarantee for its project under this part.

(c) *Lender eligibility.* Section 5001.130 identifies the requirements for a lending entity to be an eligible lender under this part. Section 5001.131 addresses the lender's agreement, which each approved lender must execute with the Agency in order to originate and service guaranteed loans under this part. Section 5001.132 addresses provisions necessary for a lender to maintain its approved lender status.

(d) *Cooperative stock/cooperative equity/conversions.* Section 5001.140 identifies requirements associated with issuing loan guarantees in connection with the purchase of cooperative stock, transferable stock shares, and cooperative equity and for the conversions of businesses to either cooperatives or Employee Stock Ownership Plans (ESOP).

(e) *New Markets Tax Credits.* Section 5001.141 identifies the requirements specific to guaranteed loans involving projects that include NMTC available under the NMTC program authorized by the U.S. Department of the Treasury.

(f) *Use of funds.* Section 5001.121 identifies eligible uses of guaranteed loan funds and § 5001.122 identifies ineligible uses of guaranteed loan funds.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79709, Sept. 30, 2024]

§ 5001.102 Project eligibility—general.

To be eligible for a loan guarantee under this part, a project must meet the requirements specified in this section and those in the applicable section in §§ 5001.103 through 5001.108.

(a) *Service area.* For projects with a defined service area, the boundaries for the proposed service area must be chosen in such a way that no user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude financing or constructing:

(1) Projects in phases (each phase must be financially sustainable without consideration of future phases) when it is not practical to finance or construct the entire project at one time; and

(2) Projects where it is not economically feasible to serve the entire service area, provided the economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof.

(b) *Location.* A project must be located in a State and meet the rural or rural area requirements of the applicable section in §§ 5001.103 through 5001.108.

(c) *Tax-exempt financing.* The agency is prohibited from guaranteeing a project funded with tax-exempt financing. In cases where a project involves both tax-exempt and taxable financing, the portion of the project that involves taxable financing is eligible to receive a loan guarantee if that portion of the project is separate and distinct from the part that is financed by the tax-exempt obligation, and the guaranteed loan is not essential to issuance of the tax-exempt obligation.

(d) *Debt refinancing.* The Agency can guarantee loans for debt refinancing, as described in paragraphs (d)(1) through (5) of this section when the guaranteed loan extinguishes the debt being refinanced. These paragraphs do not apply to REAP loans, see § 5001.121(d)(14) for REAP refinancing provisions. Longer-term financing to pay off a lender's interim construction loan after project completion will not be treated as debt refinancing as long as it meets the requirements for takeout of interim financing in § 5001.121(c)(6). An eligible debt refinancing project is:

(1) Refinancing of debt on one or more loans owed to another creditor. There is no limit on percent of total use of funds if a new lender is refinancing debt owed to another creditor;

(2) Refinancing of debt owed to the applicant lender or any part thereof provided that the applicant lender debt being refinanced does not exceed 50 percent of the total use of funds in the new aggregated federally-guaranteed debt, the applicant lender debt being refinanced is in a current status for the past six months and the new guaranteed loan is providing better rates or repayment terms. Better rates or repayment terms can be shown in a variety of ways including the lender providing a fixed rate over a lower variable rate provided the change is advantageous to the borrower's long-term repayment ability. The current status cannot be achieved by the lender forgiving the borrower's debt or by servicing actions that impact the borrower's repayment schedule; or

(3) Refinancing of debt owed directly to the Federal Government or that is federally-guaranteed, including any guaranteed debt owed to the applicant lender, when a refinance of this debt is consistent with sections 333, ''Special Conditions and Limitations on Loans'' and 306(a)(24)(C), ''Loan Guarantees for Water, Wastewater, and Essential Community Facilities Loans'' of the Consolidated Farm and Rural Development Act (as amended by the Agriculture Improvement Act of 2018, Pub. L. 115–334). Such guaranteed debt shall not be included in the amount of applicant lender debt when calculating the maximum percentage of the total use of funds in the new guaranteed loan as stated in paragraph (d)(2) of this section; and,

(4) When the refinancing is in accordance with paragraphs (d)(1) through (3) of this section, the following requirements must be met:

(i) The Agency has determined that the project is viable, and debt refinancing is necessary to improve cash flow;

(ii) The debt is reflected on the borrower's balance sheet and the original

loan funds were used for project-eligible purposes. Refinancing of existing of lines of credit is considered an eligible purpose for debt refinancing in the B&I program;

(iii) For loans to existing businesses where debt refinancing is a majority purpose of the guaranteed loan, the borrower must demonstrate historical debt service coverage ratios using proposed debt service requirements of not less than 1.1 times, or the borrower's current financial performance demonstrates it has corrected or recovered from impacts or issues adversely affecting its past financial performance. The debt service coverage ratio computed based on the current income statement must be at least 1:1 to demonstrate correction or recovery.

(5) For CF guaranteed loan requests only, refinancing of debt, not including new construction, incurred by a rural hospital to preserve access to a health service when the refinancing will meaningfully improve the financial position of the hospital. The debt can be existing Agency direct loan debt, Agency guaranteed debt, or another lender's debt (including other non-Agency Federal guaranteed debt). Loan requests to refinance rural hospital debt must demonstrate that the new amount of annual debt repayment on the debt being refinanced will be less than the existing amount of annual debt repayment and provide a total debt service coverage ratio of at least 1.1 based on historical cash flow. To calculate the ratio, the new debt service amount will include annual capital expense reserve and annual debt repayment reserve requirements. This information will be provided by the lender on an Agency approved application for loan guarantee and its associated supporting documentation.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62196, Oct. 2, 2020; 89 FR 79709, Sept. 30, 2024]

§ 5001.103 Eligible CF projects and requirements.

For a CF projects to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102 and this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.126.

(a) *Type of project.* The project must be for the construction, enlargement, extension, or to otherwise improve an essential community facility. Essential community facilities include, but are not limited to:

(1) Health care facilities and services, including but not limited to hospitals and assisted living facilities providing daily living and health care assistance in compliance with Federal, Tribal and/or State licensure or certification requirements;

(2) Fire, rescue, and public safety facilities and services;

(3) Community, public, social, educational, or cultural facilities or services, including but not limited to:

(i) Business incubators when not an inherently commercial enterprise, and the applicant demonstrates the following:

(A) Applicant is a mission-driven organization such as a local or regional economic development organization;

(B) The facility will be used to provide technical assistance, training, workforce development, administrative support services and vocational training to address workforce shortages in the community or region; and

(C) Capacity building and support services that include at a minimum the following with the borrower demonstrating expertise in one or more of these services or presents a sustainable economically feasible program to outsource such activities:

(*1*) Business plan development;

(*2*) Administrative support services;

(*3*) Training and technical assistance;

(*4*) Mentoring, coaching, and leadership;

(*5*) Finance and accounting workshops;

(*6*) Programs to access capital; and

(*7*) High-speed internet access;

(ii) Thrift stores that operate as charitable organizations to enrich the quality of life for residents of the rural community they serve demonstrated by the following activities:

(A) Collect and resell used or donated merchandise to community residents and may also provide other services such as job training or food pantries;

(B) Receive donations, gifts, or bequests of money to help fund the organization and its purpose with a significant portion obtained from the rural community it serves.

(C) Profits are reinvested in the facility or in charitable activities in the rural community served to ensure the goals of the organization are met.

(iii) Fairgrounds, agricultural exposition centers, farmers markets, food distribution and food banks;

(4) Transportation facilities such as streets, bridges, roads, ports, and airports;

(5) Utility projects such as hydroelectric generating facilities and related connecting systems and appurtenances; supplemental and supporting structures for other rural electrification or telephone systems including facilities such as headquarters, office buildings, storage facilities, and maintenance shops when not eligible for RUS financing; natural gas distribution systems; and recycling or transfer centers or stations.

(6) Telecommunications end-user equipment as it relates to public safety, medical, or educational telecommunications links when not eligible for RUS financing;

(7) Water infrastructure facilities such as levees, dams, reservoirs, inland waterways, canals, and irrigation systems;

(8) The purchase and installation of renewable energy systems for use by an essential community facility when:

(i) The renewable energy system will help defray the cost of facility operation over the life of the system;

(ii) The renewable energy system will improve the borrower's ability to provide the underlying essential community service, such as providing backup facilities or extending fuel supplies of backup facilities;

(iii) The borrower does not, and will not, have any contract to sell power generated by the renewable energy system; however, receiving credit for excess production is permitted;

(iv) The borrower does not anticipate, and has no plan for, generation of more energy than it will use in a consecutive 12-month period. The borrower may receive credits from a utility for energy production that happens to exceed facility usage during a particular month;

(v) The renewable energy system is commercially available with proven operating history specific to the proposed application; and

(vi) The borrower provides a technical report as part of the financial feasibility study in accordance with § 5001.307(e) (1) and (2), as applicable of subpart D.

(9) Land acquisition and necessary site preparation including access ways and utility extensions to and throughout an industrial park site; and

(10) Community parks, community activity centers, and similar types of facilities that are an integral part of the orderly development of a community (meaning a development that is addressing a need in the community). Recreational components including, but not limited to, playground equipment of an otherwise non-recreational eligible community facility such as childcare, educational, or health care facilities are also eligible.

(b) *Public use.* All facilities financed under the provisions of this section will be for public use.

(1) To demonstrate availability for public use, the borrower may not restrict use of or membership to its facility or service based on race, color, religion, sex, national origin, age, disability, sexual orientation, or marital or familial status Veterans of Foreign Wars and American Legion post facilities must be open and available for use by appointment or lease to community residents or groups.

(c) *Project location.* The project must be located in a rural area as defined in § 5001.3 of this part, except that utility projects serving both rural and non-rural areas are eligible for a loan guarantee regardless of project location. For such utility projects, the Agency will guarantee the rural area portion of the project and only the portion of the project necessary to provide the essential services to rural areas. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas. The availability of funds for CF projects is contingent on its rural area population and the reservation of funds outlined in § 5001.316(e).

(d) *Leased space.* Eligible projects may include leased space to ineligible organizations or leased space used for ineligible commercial activities provided the floor space leased to ineligible organizations or used for ineligible commercial activity is less than 25 percent of the facility's floor space. The ineligible organization and the ineligible commercial activity must be related to and enhance the primary purpose of the eligible project. Examples include a hair salon in an assisted living facility, or a pharmacy in a medical facility.

(e) *Purchase of existing facility.* When the project is to otherwise improve an essential community facility through the purchase of an existing facility as defined in § 5001.3 the following are required:

(1) An appraisal which demonstrates the purchase price is fair and reasonable and represents the market value of the facility through an arm's length transaction; and

(2) If the transaction is necessary to improve the facility, documentation of the improvements that will be required and the plan, including source of funding, to complete those improvements within a reasonable timeframe; or

(3) If the transaction is necessary to prevent a loss of service, documentation in the form of a financial analysis that demonstrates the seller will not have the financial means to continue to operate the facility and provide the needed services.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79709, Sept. 30, 2024]

§ 5001.104 Eligible WWD projects and requirements.

For a WWD project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102 and this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.126.

(a) *Type of project.* The project must be for one or more of the following facilities:

(1) Drinking water facilities, including but not limited to water source, treatment and distribution;

(2) Sanitary sewage facilities, including but not limited to collection and treatment;

(3) Solid waste facilities; or,

(4) Stormwater facilities.

(b) *Public use.* The project must be for a public purpose.

(c) *Project location.* The project must be located in a rural area as defined in § 5001.3 of this part, except that utility projects serving both rural and non-rural areas are eligible for a loan guarantee regardless of project location. For utility service projects serving both rural and non-rural areas, the Agency will guarantee only the portion of the project necessary to provide the essential services to rural areas. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

(d) *Service area.* (1) The project must be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(2) The lender must determine that, when feasible and legally possible, inequities within the project's service area for the same type service proposed will be remedied by the borrower on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70355, Dec. 10, 2021; 89 FR 79710, Sept. 30, 2024]

§ 5001.105 Eligible B&I projects and requirements.

For a B&I project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102, be for a borrower eligible to submit an application for the project in accordance with § 5001.126, and the uses of loan funds include, but are not limited to, the following:

(a) *Purpose.* The purpose of the project must be to improve, develop, or finance business, industry, and employment and improve the economic and

environmental climate in rural communities; the conservation, development, and use of water for aquaculture purposes; and reducing reliance on nonrenewable energy resources through development and construction of solar energy and other renewable energy systems.

(b) *Type of project.* The project must be for one or more of the uses described in paragraphs (b)(1) through (22) of this section.

(1) Purchase and development of land, buildings, or infrastructure for public or private commercial enterprises or industrial properties, including expansion or modernization.

(2) Business acquisitions, start-ups, and expansions if jobs will be created or saved. A business acquisition is considered the acquisition of an entire business, not a partial stock acquisition in a business. However, acquisition or change of ownership between existing owners is an eligible project when the remaining owner(s) held their ownership and actively participated in the business operation for at least the past 24 months and the selling owner will not retain any ownership interest in the business directly or indirectly including through other entities or trusts or property rights.

(3) Purchase and installation of machinery and equipment.

(4) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan.

(5) Pollution control and abatement.

(6) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from a member owned lending institution provided the purchase is required for all their borrowers and is the minimum amount required.

(7) Agricultural production, when not eligible for Farm Service Agency (FSA) farm loan programs assistance and when it is part of an integrated business also involved in the processing of agricultural products. Any agricultural production considered for guaranteed loan financing must be owned, operated, and maintained by the business receiving the guaranteed loan. Examples of potentially eligible agricultural production include but are not limited to an apple orchard in conjunction with a food processing plant; poultry buildings linked to a meat processing operation; or sugar beet production coupled with storage and processing.

(i) The agricultural production portion of any loan must not exceed 50 percent of the total loan or $5 million, whichever is less.

(ii) The limitations in paragraph (b)(7)(i) do not apply to the following types of businesses:

(A) Commercial nurseries engaged in the production of ornamental plants, trees, and other nursery products, such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage;

(B) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, forest nurseries, harvesting of forest products, and related activities, such as reforestation;

(C) The growing or harvesting of mushrooms;

(D) The growing of hydroponics;

(E) The boarding and/or training of animals;

(F) Commercial fishing; and

(G) Production of algae and aquaculture, including conservation, development, and utilization of water for aquaculture.

(8) Tourist and recreation facilities, including hotels, motels, bed and breakfast establishments, and resort trailer parks and campgrounds operated as a public or private commercial enterprise. Owner-occupied housing, such as bed and breakfasts, hotels and motels are only allowed when the pro rata value of a direct owner's living quarters, based on square footage, is deducted from the use of loan proceeds.

(9) Educational or training facilities including other CF projects when not eligible for financing through Rural Housing Service or Community Facilities programs.

(10) Development and construction of broadband and telecommunication systems, including modification of existing systems, that are not otherwise eligible for funding in the RUS program or if funding is unavailable in the RUS program, subject to the public notice filing requirements of 7 CFR 1738.106(a) and the additional reporting requirements of 7 CFR 1738.107.

(11) Industries undergoing adjustment from terminated Federal agricultural price and income support programs or increased competition from foreign trade.

(12) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations.

(13) Financing for mixed-use properties involving both commercial business and residential space is authorized, provided that not less than 50 percent of the business's projected revenue will be generated from business use.

(14) Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair the use or value of the property as security for the loan. The term of the lease must be equal to or greater than the term of the loan. Leasehold improvements are physical enhancements made to property by or on behalf of the property's lessee. When improvements are made to real property and those improvements are permanently affixed to the property, the title to those improvements automatically transfers to the owner of the property upon termination of the lease.

(15) Projects that process, distribute, aggregate, store, and/or market locally or regionally produced agricultural food products to support community development and farm and ranch income.

(i) Subject to each of the following, projects may be located in non-rural areas as well as in rural areas if the project:

(A) Expands or preserves the availability of staple food in underserved areas with moderate and low-income populations by maintaining or increasing the number of retail or institutional outlets that offer an assortment of healthy perishable foods and staple food items;

(B) The project will create or retain quality jobs for low-income residents of the community;

(C) A significant amount of the food is locally or regionally produced and sold; and

(D) Includes an appropriate agreement with retail and institutional clients to inform consumers that they are purchasing or consuming locally or regionally produced agricultural food products. The agreement(s) must be in place prior to issuance of the loan note guarantee and stated as part of the lender's certification at loan closing.

(ii) The Agency will give funding priority to projects that provide a benefit to underserved communities in accordance with § 5001.318(d)(5) of this part.

(16) The purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative or the purchase of transferable cooperative stock in accordance with § 5001.140(a) and (b); or the purchase of stock in a business by employees forming an ESOP or worker cooperative in accordance with § 5001.140(d).

(17) The purchase of preferred stock or similar equity issued by a cooperative or a loan to a fund that invests primarily in cooperatives in accordance with § 5001.140(c).

(18) Loans to cooperatives:

(i) Guaranteed loans to eligible cooperatives may be made in principal amounts up to $40 million if the project is located in a rural area, the cooperative facility being financed provides for the value-added processing of agricultural commodities, and the total amount of guaranteed loans exceeding $25 million does not exceed 10 percent of the funds available for the fiscal year. Guaranteed loans in excess of $25 million in accordance with this provision may only be approved by the Secretary, whose authority may not be redelegated.

(ii) Guaranteed loans to eligible cooperatives may also be made in non-rural areas provided:

(A) The primary purpose of the guaranteed loan is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(B) The borrower satisfactorily demonstrates that the primary benefit of the guaranteed loan will be to provide employment for rural residents;

(C) The principal amount of the guaranteed loan does not exceed $25 million; and

(D) The total amount of guaranteed loans guaranteed under this paragraph does not exceed 10 percent of the funds available for the fiscal year.

(iii) An eligible cooperative may refinance an existing B&I guaranteed loan if the existing loan is current and performing, the existing loan is not and has not been in monetary default or the collateral has not been converted, and there is adequate security and collateral for the new guaranteed loan.

(19) Taxable corporate bonds when the bonds are fully amortizing and comply with all provisions of this part, bond proceeds were used for an eligible purpose in this part, and the lender as bond holder retains the percent of the bond in accordance with § 5001.408(3)(i) of this part. The bonds must be fully secured with collateral in accordance with § 5001.202(b)(4) of this part. The bonds must only provide for a trustee when the trustee is totally under the control of the lender. The bonds must provide no rights to bond holders other than the right to receive the payments due under the bond. For instance, the bonds must not provide for bond holders replacing the trustee or directing the trustee to take servicing actions, such as accelerating the bonds. In accordance with § 5001.127(f), convertible bonds are not eligible under this paragraph due to the potential conflict of interest of a lender having an ownership interest in the borrower. An explanation of the type of bond and other bond stipulations must be attached to the bond.

(i) The bond issuer must obtain the services and opinion of an experienced bond counsel, who must present a legal opinion stating that the bonds are legal, valid, and binding obligations of the issuer and that the issuer has adhered to all applicable laws.

(ii) The bond holder (lender) must purchase all the bonds issued pursuant to the guaranteed and comply with all Agency regulations. There must be a bond purchase agreement between the issuer and the bond holder. The bond purchase agreement must contain similar language to that required in a loan agreement and must not conflict with this part. The bond holder is responsible for all servicing of the guaranteed loan evidenced by the bond, although the bond holder may contract for servicing assistance, including contracting with a trustee who remains under the lender's total control.

(20) Nursing homes and assisted living facilities where constant medical care is provided and available onsite to the residents. Independent living facilities are not eligible in accordance with § 5001.118(a). Independent living facilities are considered residential property as they have many similarities to a multi-family housing complex, whereas nursing home and assisted living facility tenants rely on those entities to provide needed personal or medical care. Properties consisting of both assisted care facilities and independent senior living may be eligible if the availability of the on-site medical services is an optional service to the independent living residents, or if the predominant residents of the facility require assisted living care.

(21) Development and construction of RES, including modification of existing systems that are commercially available and that are not otherwise eligible under REAP, or if funding is not available in the REAP program.

(22) Integrated processing equipment and systems, such as biorefineries, renewable energy systems, and chemical manufacturing facilities, must utilize commercially available technology, equipment, and systems and demonstrate technical merit. The Agency will evaluate the following areas in making the technical merit determination:

(i) Qualifications of the project team;

(ii) Agreements and permits;

(iii) Resource assessment;

(iv) Design and engineering;

(v) Project development;

(vi) Equipment procurement and installation; and

(vii) Operations and maintenance. The demonstration of technical merit is the completion of two operating cycles at its designed production level. ''Operating cycle'' is the average time between the acquisition of materials or the providing of services and the final cash realization of that acquisition or provision of services.

(c) *Facility location.* The project must be located in a rural area, except for loans to cooperative in accordance with paragraph (b)(18)(ii) of this section and for loans to local foods projects in accordance with paragraph (b)(15)(i) of this section where such

projects may also be located in non-rural areas. For an eligible project that located in both rural and non-rural areas, the Agency will guarantee only the amount necessary to finance that portion of the project located in the eligible rural area.

(d) *Capital and equity*. Borrowers are required to have sufficient capital or equity to mitigate the ongoing financial and operational risks of the business. The capital/equity requirement must be met in the form of either cash or earning assets contributed to the business and reflected on the borrower's balance sheet. Transfers of assets at fair market value between related parties, which are not arm's length transactions, must be in accordance with GAAP and require evidence that the transaction was entered into at market terms. Equity cannot include appraisal surplus or bargain purchase gains. Subordinated debt may be included when the subordinated debt is in exchange for cash injected into the business that remains in the business for the life of the guaranteed loan. The note or other form of evidence must be submitted to the Agency in order for subordinated debt to count towards meeting the balance sheet equity requirement. Balance sheet equity will be determined based upon current and projected borrower financial statements. A balance sheet as of loan closing is required and should reflect the new debt and use of proceeds. If there are multiple borrowers, consolidated financial statements should be presented. The following capital and equity requirements must be met at the time of lender's closing of the guaranteed loan.

(1) Existing businesses must meet one of the following requirements:

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1, at loan closing;

(ii) A 10 percent or more of total eligible project costs, borrower investment of equity or other funds into the project including grants or subordinated debt when subject to a standstill agreement for the life of the loan;

(iii) Owner contributed capital, as reflected in the equity section of the balance sheet, that is equal to or greater than 10 percent of net total fixed assets plus depreciation.

(2) New businesses with sales contract(s) with proceeds in an amount adequate to meet debt service and the term of the sales contract(s) are at least equal to the term of the guaranteed loan, and subject to Agency acceptance of the credit worthiness of the counterparty, the borrower must meet one of the following requirements:

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1 at loan closing; or

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and grants) into the project in an amount of 10 percent or more of total eligible project cost;

(3) New businesses with a project involving construction and when the lender will request the loan note guarantee prior to completion of construction must meet one of the following requirements:

(i) A minimum of 25 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 3 to 1, at guaranteed loan closing; or

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and grants) into the project in an amount of 25 percent or more of total eligible project cost;

(4) All other borrowers that are new businesses must meet one of the following requirements:

(i) A minimum of 20 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 4 to 1, at guaranteed loan closing, or;

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and

grants) into the project in an amount of 25 percent or more of total eligible project cost;

(5) Variances in capital and equity requirements:

(i) *Increases.* The Agency may increase the capital or equity requirement specified under paragraphs (d)(1) through (4) of this section for guaranteed loans the Agency determines carry a higher risk. In determining whether a project or guaranteed loan carries a higher risk, the Agency will consider the current status of the industry, concentration of the industry in the Agency's portfolio, collateral coverage, value of personal or corporate guarantees, cash flow, and contractual relationships with suppliers and buyers; credit rating of the borrower; and the strength of the feasibility study and experience of management. The Agency may also increase the capital or equity requirement for new businesses using integrated processing equipment and systems such as biorefineries, renewable energy systems, chemical manufacturing facilities, and businesses producing new products to sell into new and emerging markets.

(ii) *Reductions.* The Agency may reduce the minimum equity requirement for an existing business when personal or corporate guarantees are obtained in accordance with § 5001.204 of this part; and all pro forma statements indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt service coverage ratio.

(6) Certification: The lender must certify that, as of the date the guaranteed Loan was closed, its credit analysis indicated that the borrower had sufficient capital or equity to mitigate the financial and operational risks of the business, and that the borrower met the minimum equity required by the Agency in its conditional commitment, or that the minimum borrower capital contribution toward project costs, as applicable and required by the Agency, was met. A copy of the borrower's loan closing balance sheet must be included with the lender's certification.

TABLE 1 TO § 5001.105(d)—CAPITAL EQUITY REQUIREMENTS SUMMARY

Borrower	Borrower must meet one of the following at the time of the closing of the guaranteed loan:		
	Percent balance sheet equity:	Borrower investment as percent of total eligible project cost:	Balance sheet equity includes owner contributed capital as percentage of total fixed assets:
Existing Business	≥10	≥10	≥10
Borrowers that are new businesses with sales contract(s) adequate to meet debt service and the term of the sales contract(s) are at least equal to the term of the guaranteed loan.	≥10	≥10	N/A
Borrowers that are new businesses for a project involving construction and the lender will request the loan note guarantee prior to completion of construction.	≥25	≥25	N/A
All other borrowers that are new businesses	≥20	≥25	N/A

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 86 FR 70355, Dec. 10, 2021; 89 FR 79710, Sept. 30, 2024; 90 FR 57351, Dec. 11, 2025]

§ 5001.106 Eligible REAP—Renewable Energy System (RES) projects and requirements.

For a REAP RES project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102(a) through (c) and in paragraphs (a) through (e) of this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.126. If taxable bonds are utilized as debt instruments the provisions of § 5001.105(b)(19) must be met.

(a) The project must be for—

(1) The purchase of a new or existing RES;

(2) The purchase of a refurbished RES; or

(3) The retrofitting of an existing RES.

(4) For the purposes of this section, only those hydroelectric sources with a rated power of 30 megawatts or less are an eligible RES.

(b) The RES project must use commercially available technology.

(c) The RES project must be located in a rural area unless the borrower is an agricultural producer and the application supports the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the application can only be for RES components that are:

(1) Directly related to, and their use and purpose is limited to the agricultural production operation, such as vertically integrated operations; and

(2) Part of and co-located with the agricultural production operation.

(d) Where a residence is closely associated with an agricultural operation or rural small business to be served by the RES project, 50 percent or more of the energy to be generated by the RES project must be used by the agricultural operation or rural small business. This provision must be documented with the application and can be demonstrated using either of the methods identified in paragraphs (d)(1) and (2) of this section.

(1) Provide a renewable energy site assessment or other documentation and calculations that demonstrate based on historical energy use that 50 percent or more of the energy to be produced by the RES project will be used in the agricultural operation or rural small business. This includes documentation on historical residential energy use. The Agency may request additional data to determine residential versus business or agricultural operation usage. The actual percentage of energy determined to benefit the rural small business or agricultural operation will be the basis to determine eligible project costs.

(2) The borrower may install or elect to conditionalize funding upon the installation of a device (such as a second meter) that results in 100 percent of the energy generated by the RES project to be used only by the agricultural operation or rural small business.

(e) The RES project must have technical merit. The Agency will use the information provided in the technical report submitted with the application (see § 5001.307(e) of this part) to determine if the project has technical merit. In making this determination, the Agency may engage the services of other Government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate the technical report.

(1) *Technical report areas.* When making its technical merit determination, the Agency will evaluate the technical report using the areas specified in paragraphs (e)(1)(i) through (iii) of this section as applicable.

(i) *RES projects with total project costs of $80,000 or less.* For these projects, the Agency will evaluate the following areas in making the technical merit determination:

(A) Project description;

(B) Resource assessment;

(C) Project economic assessment; and

(D) Qualifications of key service providers.

(ii) *RES projects with total project costs of less than $200,000, but more than $80,000.* For these projects, the Agency will evaluate the following areas in making the technical merit determination:

(A) Project description;

(B) Resource assessment;

(C) Project economic assessment;

(D) Project construction and equipment; and

(E) Qualifications of key service providers.

(iii) *RES projects with total project costs of $200,000 and greater.* For these projects, the Agency will evaluate the following areas in making the technical merit determination:

(A) Qualifications of the project team;

(B) Agreements and permits;

(C) Resource assessment;

(D) Design and engineering;

(E) Project development;

(F) Equipment procurement and installation; and

(G) Operations and maintenance.

(2) *Pass/pass with conditions/fail assignments.* The Agency will assign each area of the technical report, as specified in paragraph (e)(1) of this section, a ''pass,'' ''pass with conditions,'' or ''fail.'' An area will receive a ''pass'' if the information provided for the area has no weaknesses and meets or exceeds any requirements specified for the area. An area will receive a ''pass with conditions'' if the information provided for the area has minor weaknesses which could be conditioned and reasonably resolved by the borrower. Otherwise, if the information provided for the area is conclusively deemed to be a major weakness, or if the area has not been addressed by the applicant, the area will receive a fail.

(3) *Determination.* The Agency will compile the results for each area of the technical report to determine if the project has technical merit.

(i) A project whose technical report receives a ''pass'' in each of the applicable areas will be considered to have ''technical merit.''

(ii) A project whose technical report receives a ''pass with conditions'' in one or more the applicable areas will be considered to have ''conditional technical merit.''

(iii) A project whose technical report receives a ''fail'' in any one area will be considered to be ''without technical merit.''

(4) *Further processing of applications.* A project that is determined to have ''technical merit'' or ''conditional technical merit'' is eligible for further consideration for funding. Projects with ''conditional technical merit'' would be subject to funding conditions that would need to be met to ensure full technical merit prior to completion of the project. A project that is determined to be ''without technical merit'' is not eligible to compete for funding.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79711, Sept. 30, 2024; 90 FR 57352, Dec. 11, 2025]

§ 5001.107 REAP—Energy Efficiency Improvement (EEI) projects and requirements.

For a REAP EEI project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102(a) through (c) and also specified in paragraphs (a) through (d) of this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.126. If taxable bonds are utilized as debt instruments the provisions of § 5001.105(b)(19) must be met.

(a) The EEI project must use less energy on an annual basis than the original building and/or equipment that it will improve or replace as demonstrated in an energy assessment or energy audit as applicable.

(1) If the project's total project cost is greater than $80,000, the energy assessment must be conducted by an energy auditor, an energy assessor, or an individual supervised by either an energy assessor or energy auditor. The final energy assessment must be validated and signed by the energy assessor, the energy auditor who conducted the energy assessment, or by the supervising energy assessor or energy auditor of the individual who conducted the assessment, as applicable.

(2) If the project's total project cost is $80,000 or less, the energy assessment may be conducted in accordance with paragraph (a)(1) of this section or by a person that has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects. Eligible EEI include, but are not limited to:

(i) Efficiency improvements to existing RES; and

(ii) Construction of a new building only when the new building is used for the same purpose as the existing building and if, based on an energy assessment or energy audit, as applicable, it is more cost effective to construct a new building that will use less energy on annual basis than to improve the energy efficiency of the existing building.

(b) The EEI project must be for a commercially available technology.

(c) The EEI project must be located in a rural area unless the borrower is

an agricultural producer and the Application supports the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the application can be for only EEI components that are:

(1) Directly related to and have a use and purpose limited to an agricultural production operation such as vertically integrated operations; and

(2) Part of and co-located within the agricultural production operation.

(d) The EEI project must have technical merit. The Agency will use the information provided in the technical report submitted with the application (see § 5001.307(e)) to determine whether the project has technical merit. In making this determination, the Agency may, at its discretion, engage the services of other Government agencies or other recognized industry experts in the applicable technology field to evaluate and rate the technical report.

(1) *Technical report areas.* When making its technical merit determination, the Agency will evaluate the technical report using the areas specified in paragraphs (d)(1)(i) and (ii) of this section as applicable.

(i) *EEI project with total project costs of $80,000 or less.* For these projects, the Agency will evaluate the following areas to determine the technical merit:

(A) Project description;

(B) Qualifications of EEI provider(s); and

(C) Energy assessment (or energy audit if applicable).

(ii) *EEI projects with total project costs of greater than $80,000.* For these projects, the Agency will evaluate the following areas to determine the technical merit:

(A) Project information;

(B) Energy assessment (or energy audit as applicable); and

(C) Qualifications of the contractor or installers.

(2) *Pass/pass with conditions/fail assignments.* The Agency will assign each area of the technical report, as specified in paragraph (d)(1) of this section, a ''pass,'' ''pass with conditions,'' or ''fail'' according to provisions of § 5001.106(e)(2).

(3) *Determination.* The Agency will compile the results for each area of the technical report to determine if the project has technical merit in accordance with provisions of § 5001.106(e)(3).

(4) *Further processing of applications.* Projects will be further processed in accordance with provisions of § 5001.106(e)(4).

[85 FR 42518, July 14, 2020, as amended at 89 FR 79711, Sept. 30, 2024]

§ 5001.108 Eligible REAP—Energy Efficient Equipment and Systems (EEE) projects and requirements.

For a REAP EEE project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102(a) through (c) and in paragraphs (a) through (d) of this section and be for a borrower that is an agricultural producer eligible to submit an application for the project in accordance with § 5001.126. The EEE project can be located in a rural or non-rural area as long as the energy efficient equipment or systems are used for agricultural production or processing in accordance with paragraph (a) of this section. If the borrower plans to use taxable bonds as debt instruments the provision § 5001.105(b)(19) must be met.

(a) The project must be for the purchase and installation of energy efficient equipment or systems for agricultural production or processing that exceed the following standards:

(1) Energy efficiency building codes, if available;

(2) Federal or State energy efficiency standards, if available; and

(3) Other energy efficiency standards determined appropriate by the Secretary.

(i) If no codes or standards described in such subparagraph apply to the energy efficient equipment or system to be purchased or installed pursuant to such subparagraph, the Secretary shall require, to the maximum extent practicable, such equipment or systems to meet the same efficiency measurements as the most efficient available equipment or system in the market; and

(ii) The Secretary shall not provide such a loan guarantee for the purchase or installation of any energy efficient

equipment or system unless more than one type of such equipment or system is available in the market.

(b) The EEE project must be for commercially available technology.

(c) The EEE project must have technical merit as certified by the vendor/installer. An application that does not include said certification will be deemed incomplete and therefore is not eligible to compete for funding.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79712, Sept. 30, 2024]

§§ 5001.109–5001.114 [Reserved]

§ 5001.115 Ineligible projects—general.

The Agency will not issue a loan guarantee under this part for any of the projects identified in this section, unless otherwise noted. The following are ineligible projects for the CF, WWD, B&I and REAP programs:

(a) Any investment or arbitrage, or any speculative real estate investment other than cooperative stock, transferable stock, cooperative equity in accordance with § 5001.140 and NMTC projects in accordance with § 5001.141.

(b) Golf courses and golf course infrastructure, including par-3 and executive golf courses; racetracks or facilities for the conduct of races by animals, professional or amateur drivers or jockeys; for-profit zoos or safaris; and publicly-owned or non-profit amusement parks, water parks, and similar recreational type facilities inherently commercial in nature and primarily used for recreational purposes.

(c) Motion pictures and theatrical productions.

(d) Funding of political or lobbying activities.

(e) Guaranteeing loans made by other Federal agencies, lines of credit, or lease payments.

(f) Projects that the Agency determines create, directly or indirectly, a conflict of interest.

(g) Properties to be used for primarily commercial rental when the borrower has no control over tenants and services offered, except for industrial-site infrastructure development.

(h) Projects that utilize technology, equipment, or systems that are not commercially available.

(i) Projects that will violate the requirements of 7 CFR part 1970, or any statutes or Executive Orders regarding environmental requirements.

(j) Projects used primarily for the purpose of housing Federal, State, or quasi-Federal agencies, unless it is typical of the area for communities to provide this space.

(k) Community antenna television and radio services or facilities.

(l) Telephone systems. In certain circumstances, when not eligible for assistance through the Agency's telecommunications program these projects may be eligible for assistance under this part.

(m) New combined sanitary and storm water sewer facilities.

(n) Except as provided in § 5001.105(b)(8), owner-occupied housing. Owner-occupied housing, such as bed and breakfasts, and hotels and motels, are only eligible when the pro-rata value of the owner's living quarters, based on square footage, is deducted from the loan proceeds.

(o) Loans on which the interest is excludable from income under current or a successor statute of the Internal Revenue Code. Funds generated through the issuance of tax-exempt obligations cannot be used to purchase the guaranteed portion of any Agency guaranteed loan and an Agency guaranteed loan cannot serve as collateral for a tax-exempt issue.

(p) Residential EEI projects.

(q) Except as provided in § 5001.106(d), residential RES projects.

(r) Loans supporting inherently religious activities, such as worship, religious instruction, proselytization, or to pay costs associated with acquisition, construction, or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted. However, religious organizations may participate in projects eligible for funding under section 306(a)(24) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1926(a)(24), provided they do not use Agency assistance for inherently religious activities in accordance with 7 CFR part 16, ''Equal Opportunity for

Religious Organizations.'' If an organization conducts religious activities, they must be offered separately, in time, or location from programs or services supported with the guaranteed loan. Participation in the religious activities must be voluntary, and not mandatory, for the beneficiaries of the program or services. Religious organizations may not discriminate against a beneficiary or prospective beneficiary, on the basis of religion or religious beliefs. Sanctuaries, chapels, or other rooms that are used as a principal place of worship are ineligible for guaranteed financing under this part.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 86 FR 70356, Dec. 10, 2021; 89 FR 79712, Sept. 30, 2024]

§ 5001.116 Ineligible CF projects.

The following are ineligible projects for the CF program only:

(a) For industrial park sites, the financing of on-site utility systems or business and industrial buildings.

(b) Inherently commercial enterprises: This type of project is typically operated by a private enterprise with an essential characteristic to produce profits. This term does not include projects operated by private enterprises on a not-for-profit basis that provide education, childcare, geriatric care, or health care to rural communities. Inherently commercial enterprises include but are not limited to: grocery stores; television and radio services or facilities; that portion of a water and/or waste disposal facility normally provided by a business or industrial user; and telecommunication facilities or services, including broadband or fiber network services that do not meet the requirements of § 5001.103(a)(6). See § 5001.103(d) for the eligibility of a commercial enterprise leasing space in an eligible project;

(c) Projects where construction is completed prior to filing an application with the Agency. This restriction applies to construction completed by or for the borrower and does not preclude the purchase or acquisition of a building constructed by an independent third party or refinancing of debt in accordance with § 5001.102(d).

(d) Projects where the borrower acts to circumvent the regulations provided in this subpart, causing the borrower or project being eligible when, previously, the borrower or project was ineligible.

(e) Projects involving the purchase of existing facilities in which the transaction's purpose is to primarily retire the debt of the seller in order for the seller to continue to use the facility at a lower cost. Characteristics of ineligible purchase transactions may include the following:

(1) An entity, which may or may not be an eligible CF borrower, forms a new eligible entity or uses an existing eligible related entity to purchase all or part of its assets;

(2) The new entity uses CF guaranteed loan funds to purchase the assets at the agreed upon price and leases the assets back to the seller, generally at a rate which equates to the new debt payments; and

(3) The seller uses the proceeds of the sale to retire its high-cost debt and continues to use the facilities at a lower cost.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79712, Sept. 30, 2024]

§ 5001.117 Ineligible WWD projects.

The following are ineligible projects for the WWD programs only:

(a) That portion of a project normally provided by a business or industrial user, such as wastewater pretreatment.

(b) Provided the existing borrower has the capacity to provide adequate service to their service territory, guaranteed loan funds may not be used to take away customers or service areas of existing USDA WWD Program direct or guaranteed loan borrowers. The requirements and limitations of 7 U.S.C. 1926(b) only apply to this section.

(c) Projects where the borrower acts to circumvent the regulations provided in this subpart, causing the borrower or project being eligible when, previously, the borrower or project was ineligible.

(d) Projects involving the purchase of existing facilities in which the transaction's purpose is to primarily retire the debt of the seller in order for the seller to continue to use the facility at a lower cost.

§ 5001.118 Ineligible B&I projects.

The following are ineligible projects for the B&I program only:

(a) The financing of timeshares, residential trailer parks, apartments, duplexes, or other residential housing where the primary purpose is independent housing except as authorized in § 5001.105(b)(8), or housing development sites except as authorized in § 5001.105(b)(1).

(b) Projects eligible for funding under B&I that are in excess of $1 million that would either:

(1) Likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees. However, this limitation is not to be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations. An exception is when there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area or its original location or in any other area where it conducts such operations; or

(2) Increase direct employment by more than 50 employees, which is calculated to or likely to result in an increase in the production of goods, materials, commodities, or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020]

§ 5001.119 Ineligible REAP projects.

Owner occupied bed and breakfasts are ineligible projects in the REAP program.

§ 5001.120 [Reserved]

§ 5001.121 Eligible uses of loan funds.

Guaranteed loan funds can only be used for the items specified in this section and any other items the Agency identifies in the FEDERAL REGISTER. In addition, RD may allow a recipient of a loan guarantee under this part to use up to 10 percent of project funds to construct, improve, or acquire broadband infrastructure subject to the requirements of 7 CFR part 1980, subpart M.

(a) *CF projects.* Guaranteed loan funds for an essential CF project receiving a loan guarantee under § 5001.1 may be used to pay the expenses identified in paragraphs (a)(1) through (3) of this section.

(1) When necessary to ensure the successful operation or protection of the project authorized in § 5001.103, subpart B:

(i) Costs for the construction or relocation of public buildings, roads, bridges, fences, utilities, or to make other public improvements; and

(ii) Costs for the relocation of private buildings, roads, bridges, fences, or utilities, and other private improvements.

(2) To pay the cost of conduit, such as pipe, tube, or tile for protecting electric wires or cables, and its installation in conjunction with financing facilities authorized in § 5001.103, when the cost of the conduit is less than 25 percent of the total project cost and the conduit is not essential to the operation of the eligible essential facility or service to be financed. The borrower must be the owner of the conduit. The conduit must be installed at the time of project construction and must be for public use. A project example is construction of a road. While work is being completed in preparation for the eligible road project, the borrower takes advantage of the construction to install underground conduit in anticipation of installing fiber optic cables in the near future.

(3) When necessary as part of a guaranteed loan to finance a project:

(i) Guarantee fees, as determined under § 5001.454;

(ii) Lender fees, as provided in § 5001.403;

(iii) Professional service fees and charges provided the Agency agrees that the amounts are reasonable and customary in the area;

(iv) Interest on guaranteed loans until the facility is self-supporting, but not for more than three years; interest on guaranteed loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years; and when the borrower obtains interim financing for the eligible project, the guaranteed loan proceeds may be used to pay off the interim financing as well as the interest on interim financing;

(v) Costs of acquiring interests in land, rights (*e.g.*, water rights, leases, and permits), rights-of-way, and other evidence of land or water control necessary for development of the project;

(vi) Costs of purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities;

(vii) Obligations for construction worked performed prior to filing an Application with the Agency. Construction work must not be started (and obligations for such work or materials must not be incurred) before the conditional commitment is issued. If there are compelling reasons for proceeding with construction before the conditional commitment is issued, lenders may request Agency approval to pay such obligations and not jeopardize receipt of a loan guarantee from the Agency. Such request must comply with the following conditions:

(A) Provide conclusive evidence that the contract was entered into without intent to circumvent the Agency regulations, including but not limited to 7 CFR part 1970;

(B) Modify the outstanding contract to conform to the provisions of this part. When this is not possible, modifications will be made to the extent practicable and, at a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and Executive Orders related to the Agency guarantee.

(C) When construction is complete and it is impracticable to modify the contract, the borrower and lender must provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications; and

(D) The borrower and the contractor must have complied with all statutory and Executive Order requirements related to the Agency guarantee for construction already performed even though the requirements may not have been included in the contract documents.

(4) Refinancing in accordance with §5001.102(d).

(b) *WWD projects.* Guaranteed loan funds for a WWD project receiving a loan guarantee may be used to pay the following:

(1) Constructing, extending, or otherwise improving an eligible facility outlined in §5001.104(a), and may include the cost of materials and labor in addition to the following:

(i) Cost of acquiring interests in land, rights (*e.g.*, water rights, leases, permits, rights-of-way), and other evidence of land or water control or protection necessary for development of the project.

(ii) Purchasing or renting equipment necessary to construct, or extend the facility services, for owner construction.

(iii) Cost of additional borrower labor and other expenses necessary to install, extend, or protect the facility.

(iv) Interest incurred during construction in conjunction with interim financing, and the payoff of the interim loan with the permanent financing.

(v) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses, for construction of a new facility. The lender must provide justification and the Agency must document the reason for granting the longer time.

(vi) Professional service fees and charges provided the Agency approves the amounts as reasonable and customary in the area.

(vii) Water reuse, renewable energy, and other construction projects to improve the sustainability or resilience of an eligible facility.

(2) Stand-alone projects not involving construction may also be made for the following purposes:

(i) Costs of acquiring interests in land, rights (*e.g.,* water rights, leases, permits, rights-of-way), and other evidence of land or water control or protection necessary for the maintenance or operation of the facility.

(ii) Purchase of equipment to operate, maintain, or protect facilities, such as computers, generators, vehicles, backhoes, meters, pipe, and pumps, etc. The purchase of equipment must include installation and not be for the sole purpose of increasing inventory. Owner construction or installation is an option.

(iii) The purchase or acquisition of existing facilities when it is necessary either to improve service or prevent the loss of service.

(iv) The purchase and installation of RESs for use by an eligible facility (even if it does not include construction).

(v) Planning, studies, and designs for incorporating renewable energy or water reuse, or to improve the sustainability or resilience of an eligible facility.

(vi) The Agency may allow a recipient of a loan guarantee under this part to use up to 10 percent of project funds to construct, improve, or acquire broadband infrastructure subject to the requirements of 7 CFR part 1980, subpart M.

(vii) Professional service fees for engineering and environmental services that provide services for preplanning evaluation procedures, such as leak detection, or inflow and infiltration analysis, as reasonable and customary in the area to evaluate an existing facility's need for improvements or repairs. Such services will be in accordance with professional service agreements with copies of analysis to be provided in the application package for such reports as preliminary engineering report, final design with plans and specifications, bidding documents, or the completed environmental review analysis.

(viii) Refinancing in accordance with § 5001.102(d).

(3) Other expenses related to any project under (b)(1) and (2), including:

(i) Guarantee fees, as determined under § 5001.454.

(ii) Lender fees, as provided in § 5001.403.

(iii) Payoff of interim financing including principal and interest.

(c) *B&I projects.* Guaranteed loan funds for a project receiving a loan guarantee under § 5001.1 may be used to pay the expenses identified in paragraphs (c)(1) through (12) of this section.

(1) Purchase and development of land, buildings, and associated infrastructure for commercial or industrial properties, including expansion or modernization.

(2) Business acquisitions provided that jobs will be created or saved. A business acquisition is considered the acquisition of an entire business, not a partial stock acquisition in a business. However, acquisition or change of ownership between existing owners is an eligible use of loan funds when the remaining owner(s) held their ownership and actively participated in the business operation for at least the past 24 months and the selling owner will not retain any ownership interest in the business directly or indirectly including through other entities or trusts or property rights.

(3) Purchase of machinery and equipment.

(4) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan.

(5) Pollution control and abatement.

(6) Takeout of interim financing: Guaranteeing a loan that provides for permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete request for preliminary eligibility review or complete application that proposes such interim financing prior to closing the interim loan. The borrower must take no action until the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives to be considered by the Agency. Interim financing is typically used to pay costs associated with a planned project, such as construction or installation of equipment, however, the Agency will consider, on a case-by-case

basis, other reasons to use interim financing. The term for interim financing loans should be for the construction period plus a reasonable time for the business to begin generation of working capital to amortize the loan. Guaranteed promissory notes that do not convert the interim financing payment schedule to an amortizing permanent schedule in the same note are not allowed. In certain cases, the applicant lender may use interim financing to pay-off a borrower's maturing loan with another lender if it is in the best interests of the borrower. The takeout of interim financing is only eligible when the permanent loan on which the guarantee will be placed takes out the interim financing that financed the planned project and when the lender submits a complete preliminary eligibility review or application to the Agency that proposes the interim financing prior to closing the interim loan. If the interim financing does not meet these requirements, it is considered debt refinancing and must comply with § 5001.102(d). If the guarantee is issued prior to construction, the promissory note must contain and convert the terms of the interim financing to permanent financing. The Agency will not guarantee takeout of interim financing loans that prevent a meaningful environmental assessment prior to Agency loan approval. Even for projects with interim financing, the Agency cannot approve the loan nor issue a conditional commitment until the environmental process is complete. The Agency assumes no responsibility or obligation for interim loans.

(7) Guarantee fees, as determined under § 5001.454.

(8) Lender fees, as determined under § 5001.403.

(9) Professional service fees and charges, provided the Agency approves the amounts as reasonable and customary in the area and fees for construction permits and licenses.

(10) Feasibility studies and business plans.

(11) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(12) Refinancing in accordance with § 5001.102(d).

(d) *REAP projects.* Guaranteed loan funds for a project receiving a loan guarantee under REAP may be used to pay the expenses associated with the items identified in paragraphs (d)(1) through (14) of this section, provided such items are directly related to and their use and purpose are limited to the RES, EEI, or EEE project. The expenses associated with the items specified in paragraphs (d)(8) through (11) of this section cannot exceed more than ten percent of the loan amount. Ten percent is an aggregate amount, not ten percent for each item.

(1) Purchase and installation of new or refurbished RES.

(2) Purchase and installation of energy efficient equipment and systems by eligible agricultural producers.

(3) Construction, retrofitting, replacement, and improvements.

(4) Energy efficiency improvements (EEI) identified by vendor/installer certification or in the applicable energy assessment or energy audit.

(5) Fees for construction permits and licenses, including fees required by an interconnection agreement.

(6) Guarantee fees, as determined under § 5001.454.

(7) Professional service fees and charges related to the project, which may include non-deferred developer fees, provided the Agency approves the amounts as reasonable and customary in the area.

(8) Lender fees, as provided in § 5001.403.

(9) Working capital, which may include interest on interim financing, debt reserves, rent payments, insurance, and packaging and origination fees.

(10) Land acquisition.

(11) Energy assessments, energy audits, technical reports, business plans, and feasibility studies completed and acceptable to the Agency, provided no portion was financed by any other Federal or State grant or payment assistance, including, but not limited to, a REAP energy audit or renewable energy development assistance grant.

(12) For an eligible RES project in which a residence is closely associated

with the rural small business or agricultural operation, the installation of a second meter to separate the residence from the portion of the project that benefits the rural small business or agricultural operation, as applicable.

(13) Land, building, and equipment for an existing RES.

(14) Refinancing outstanding long-term debt. It is not considered refinancing if loans were structured as construction or bridge loans for short-term financing needs (interim financing) in preparation for a long-term loan. Refinancing will be considered when—

(i) The original purpose of the debt being refinanced meets the eligible project requirements of § 5001.106, § 5001.107 or § 5001.108, as applicable, of this part;

(ii) Debt being refinanced does not exceed 50 percent of the total use of funds in the new REAP guaranteed loan;

(iii) Refinancing is necessary to improve cash flow and viability of the project;

(iv) At the time of application, the loan being refinanced has been current for at least the past 6 months (unless such status is achieved by the lender forgiving the borrower's debt); and

(v) The lender is providing better rates or terms for the loan being refinanced.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 86 FR 70356, Dec. 10, 2021; 89 FR 79712, Sept. 30, 2024]

§ 5001.122 Ineligible uses of loan funds.

Projects that receive a loan guarantee under this part cannot use the guaranteed loan funds for those expenses or purposes identified in paragraphs (a) through (n) of this section and for any other item the Agency identifies in accordance with § 5001.10.

(a) Payment in excess of actual costs (*e.g.*, profit, overhead, indirect costs, and wages to owners) incurred by the contractor or other service provider on a contract or agreement that has been entered into at less than an arm's length transaction or has a potential for a conflict of interest. In situations where there is common ownership or an otherwise closely related company is being paid to do construction or installation work for a borrower, only documented costs associated with the construction or installation can be paid with guaranteed loan funds and cannot include any profit or wages to such related person.

(b) Notwithstanding § 5001.102(d), payment on any other Federal loan or debt.

(c) Payment of a Federal judgment, State or Federal tax lien, or other debt owed to the United States.

(d) Loan finder or broker fees.

(e) Refinancing debt that is owned by a loan packager or broker or their respective affiliates.

(f) For loans as specified under CF and WWD, costs normally provided by a business or industrial user (*e.g.*, wastewater pretreatment).

(g) For loans as specified under CF and WWD, any portion of the cost of a project that does not serve a rural area.

(h) Rental for the use of equipment or machinery owned by the borrower.

(i) For purposes not directly related to operating and maintaining the project.

(j) Any EEI not identified in the applicable energy assessment or energy audit.

(k) Agricultural tillage equipment, used equipment, and vehicles are ineligible for loans as specified under REAP. Costs include costs for RES and/or EEI projects that are used to improve a vehicle's ability to propel itself are ineligible uses for loan funds. For example, modifying an existing vehicle's engine to run on renewable fuels or replacing an older vehicle with a new more efficient vehicle are ineligible uses of loan funds. Projects similar to purchasing and installing solar panels to power a refrigerator or the replacement of a refrigerator for a more efficient one on a food truck may be considered eligible uses of loan funds if all other borrower and project eligibility requirements are met.

(l) Distribution or payment to an individual or entity that will retain an ownership interest in the borrower or distribution or payment to a beneficiary of the borrower. Distribution or payment to a member of the immediate family of an owner, partner, or

stockholder will not be permitted, except for change in ownership interest and the Agency determines the price paid to be reasonable based upon an appraisal. This prohibition does not apply to transfers of ownership for ESOPs or worker cooperatives, to cooperatives where the cooperative pays the member for product or services, or where member stock is transferred among members of the cooperative in accordance with § 5001.140 of this part. This paragraph does not preclude the former owner from remaining an employee of the business during a reasonable transition period. The payment of personal debt is considered a distribution or payment to an owner, except for the refinancing of debt for an asset that is used in the business when the owner is a co-borrower on the loan.

(m) For loans as specified under CF, initial operating expenses, short-term, working capital or operating loans; or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses.

(n) Lease payments, including lease to own or capitalized leases. This does not preclude a REAP applicant from leasing out REAP financed and installed equipment to a third party (lessee) such as a non-profit, school district, or municipal government. The third party (lessee) must directly utilize the equipment to fulfill the statutory purposes of REAP, to generate renewable energy or provide energy savings. The borrower must maintain ownership and control of the project for the entire useful life of the project, including site, income and expenses via the lease agreement. Additionally, all other REAP requirements, must be reviewed in this scenario to ensure complete eligibility is obtained with a lease in place. This includes, but is not limited to, project eligibility, including prohibitions on residential use and other prescribed eligible project costs. A REAP applicant may lease out a commercial building, improved with REAP funds, to various tenants. This may include an office complex in which a Federal Government Agency is a tenant. This is allowable as long as conflict of interest requirements are complied with.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79713, Sept. 30, 2024]

§§ 5001.123–5001.125 [Reserved]

§ 5001.126 Borrower eligibility.

To be eligible for a loan guarantee under this part, a borrower must meet the requirements specified in this section at the time of each guaranteed loan's approval and through issuance of the loan note guarantee. A borrower must meet the eligibility requirements specified in paragraph (a) of this section and in paragraphs (b) through (e), as applicable, of this section.

(a) *Legal authority and responsibility.* The borrower must have, or obtain before issuance of the loan note guarantee, the legal authority necessary to construct, operate, and maintain the proposed facility and services and to obtain, give security for, and repay the proposed loan.

(1) *Operate and maintain the facility.* The borrower is responsible for operating, maintaining, and managing the facility and providing for its continued availability and use. The borrower will retain this responsibility even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used for certain projects when they are the only feasible way to provide the service or facility, are the customary practice to provide such service or facility within the industry or in the State and provide for the borrower's management control of the project. Contracts, management agreements, or written leases must not contain options or other provisions for transfer of ownership unless approved by the Agency. The borrower must own and retain control of the facility at all times; however, various types of ownership structures are permitted to bring in passive investor equity. These include but are not limited to partnership flips and inverted leases, which are common in the renewable energy industry. The anticipated release of passive tax credit investor entities resulting in a change in ownership control that does not impact the financial

performance of the loan, as outlined at time of loan closing, does not constitute a transfer or assumption, nor require concurrence from the Agency.

(2) *Co-borrowers.* Except for CF guaranteed loans in situations where any business or affiliate is dependent upon another's operations and are effectively one business or rely upon one another for loan repayment, they must be co-borrowers, unless waived by the Agency in writing when the Agency determines that adequate justification exists to not require the entities to be co-borrowers. Both co-borrowers must meet all requirements in this part. If the operating entity is truly independent and not reliant on another operation to remain viable or repay the debt, the Agency will allow one entity to be the sole borrower.

(b) *CF loan guarantees.* To be eligible for a loan guarantee under CF, a borrower must meet the requirements identified in paragraphs (b)(1) through (4) of this section.

(1) *Borrower type.* Be a public body, including Indian tribes on Federal and State reservations and other federally recognized Indian tribes, or non-profit organization.

(i) Borrowers organized under the applicable State or Tribal for-profit corporation laws may be eligible if they will be operated on a not-for-profit basis for the duration of the guaranteed loan;

(ii) Single member not-for-profit corporations or not-for-profit corporations owned or substantially controlled by other corporations or associations are eligible if the member organization has significant ties with the project service area and provides a payment guarantee.

(2) *Significant ties.* Have significant ties with the project service area (not applicable to public bodies and federally recognized Tribes) as evidenced by the following:

(i) Association with or control by a public body or bodies typically evidenced in the organizational documents of the borrower; or

(ii) Broadly based membership and controlled primarily by members residing in the project service area. Membership must be open without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, or marital or familial status.

(3) *Credit elsewhere.* In accordance with 7 U.S.C. 1983, certify in writing, subject to Agency verification, that the borrower is unable to finance the proposed project from their own resources or through commercial credit without a guarantee, at reasonable rates and terms. A loan guarantee will not be provided to borrowers who are able to obtain sufficient credit elsewhere to finance project costs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the borrower resides, for loans for similar purposes and periods of time, or to borrowers who are able to finance project costs from their own resources.

(4) *Evidence of significant community support.* In accordance with 7 U.S.C. 2009h, the evidence shall be in the form of a certification of support for the project from each affected local government. The certification of support should include sufficient information to determine that the essential community facility will provide needed services to the community or communities and will have no adverse impact on other community facilities providing similar services.

(c) *WWD loan guarantees.* To be eligible for a loan guarantee under WWD, a borrower must meet the requirements identified in paragraphs (c)(1) through (3) of this section.

(1) *Borrower type.* Be a public body, including Indian tribes on Federal and State reservations and other Federally recognized Indian tribes, or non-profit organization.

(2) *Credit elsewhere.* In accordance with 7 U.S.C. 1983, certify in writing, subject to Agency verification, that the borrower is unable to finance the proposed project from their own resources or through commercial credit without a guarantee, at reasonable rates and terms. A loan guarantee will not be provided to borrowers who are able to obtain sufficient credit elsewhere to finance project costs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the

community in or near where the borrower resides, for loans for similar purposes and periods of time, or to borrowers who are able to finance project costs from their own resources. All lenders are required to provide written certification that their borrowers are unable to afford commercial credit at reasonable rates and terms without the guarantee.

(3) *Evidence of significant community support.* In accordance with 7 U.S.C. 2009h, the evidence shall be in the form of a certification of support for the project from each affected local government.

(d) *B&I loan guarantees.* To be eligible for a loan guarantee under B&I, a borrower must meet the requirements specified in paragraphs (d)(1) through (4), as applicable, of this section.

(1) The borrower must be:

(i) A cooperative, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis;

(ii) An Indian Tribe

(iii) A Public Body; or

(iv) An individual.

(2) The borrower must be engaged in or proposing to engage in a business. A business may include manufacturing, wholesaling, retailing, providing services, or other activities that will provide employment or improve the economic or environmental climate in rural communities.

(3) A borrower who is an individual must meet the requirements of (i) through (iii) below. Applications will neither be approved, nor a conditional commitment issued subject to meeting the citizenship requirement.

(i) Be a citizen of the United States;

(ii) Reside in the United States after being legally admitted for permanent residence and must provide a permanent green card as evidence of eligibility; or

(iii) Be a citizen or resident of the Republic of Palau, the Federated States of Micronesia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Republic of the Marshall Islands.

(4) A borrower must demonstrate, to the Agency's satisfaction, that guaranteed loan funds will remain in the United States and the project being financed will primarily create new or save existing jobs for rural U.S. residents. To ensure that loan funds remain in the United States, loans must be collateralized with fixed assets that remain in the United States.

(e) *REAP loan guarantees.* To be eligible for a loan guarantee under REAP, a borrower must meet the requirements specified in paragraphs (e)(1) through (5) of this section.

(1) *Type of borrower.* The borrower must be either an agricultural producer or a rural small business if applying for RES or EEI funding. The borrower must be an agricultural producer if applying for EEE funding. For-profit rural small businesses that provide long-term care services that benefit residents, such as nursing homes and assisted living facilities, are eligible. For-profit rural small businesses that provide short-term housing, such as hotels, are also eligible. Newly formed special purpose entities or equivalents that are clearly created solely for the circumvention of provisions prohibited by REAP statute are not eligible.

(2) *Ownership.* The borrower at the time of application or no later than guaranteed loan closing and for the term of the guaranteed loan must:

(i) Own the project; and

(ii) Own or control the site for the project at the time of application and for the term of the guaranteed loan.

(3) *End users.* If the controlling interest in the applicant entity is otherwise eligible as an applicant and a legal transaction between two parties for the sale of energy in an open market is being proposed, the Agency will not consider the energy end-users as part of the analysis of the eligibility of the applicant. However, if the proposed end-user would be an ineligible applicant, such as an entity which is residential in nature or a non-profit entity, and the REAP applicant entity is a newly formed special-purpose entity with substantially the same ownership as the proposed end-user, then the REAP applicant entity is not eligible.

(4) *Revenues and expenses.* The borrower must have available or be able to demonstrate, at the time of application, satisfactory sources of revenue in an amount sufficient to provide for the

operation, management, maintenance, and any debt service of the project for the term of the loan. In addition, the borrower must control the revenues and expenses of the project, including its operation and maintenance. The borrower may employ a qualified consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(5) *Matching funds.* The borrower must demonstrate evidence of injection of matching funds in the project of not less than 25 percent of total eligible project costs. Passive third-party contributions are acceptable as matching funds for RES projects, including those raised from the sale of Federal tax credits.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70356, Dec. 10, 2021; 87 FR 42297, July 15, 2022; 89 FR 79714, Sept. 30, 2024]

§ 5001.127 Borrower ineligibility conditions.

A potential borrower is ineligible for a guaranteed loan under this part as identified in paragraphs (a) through (g) of this section. The borrower remains ineligible until the condition causing ineligibility is resolved.

(a) An entity is ineligible if any of the conditions identified in paragraphs (a)(1) through (4) of this section applies to the borrower, any owner with more than 20 percent ownership interest in the borrower (does not include passive investors), or any owner with control of the borrower. Entities with delinquent debt, as identified in paragraphs (a)(1) through (a)(4), under a repayment plan are not eligible until the debt is paid in full.

(1) There is an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court).

(2) Delinquency on the payment of Federal income taxes.

(3) Delinquency on Federal debt.

(4) Debarment or suspension from receiving Federal assistance. The lender is responsible for verification of the borrower's status. Verification can be done at *sam.gov*.

(b) An entity is ineligible if it derives more than 15 percent of its annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds or Tribal-authorized gaming proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

(c) An entity is ineligible if it derives income from activities of a prurient sexual nature.

(d) An entity is ineligible if it derives income from illegal drugs, drug paraphernalia, or any other illegal product or activity as defined under Federal statute. A borrower that intends to lease space or enter into a power purchase agreement with a marijuana dispensary is not eligible given our borrower would be receiving income from the marijuana operation which is a violation of Federal laws as marijuana is a controlled substance under Federal law and subject to Federal prosecution under the Controlled Substances Act (21 U.S.C. 812).

(e) An entity is ineligible under B&I projects if it is a charitable or fraternal organization. For purposes of this section, an organization that derives more than 10 percent of its annual gross revenue from tax deductible charitable donations, based on historical financial statements, is considered a charitable organization. Fees for services rendered or that are otherwise ineligible for deduction under the Internal Revenue Code are not considered tax deductible charitable donations.

(f) An entity is ineligible if its lender or any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower with management control or where the borrower or any of its officers, directors, stockholders, or other owners have more than a five percent ownership interest in the lender. Any of the lender's directors, stockholders, or other owners that are officers, directors, stockholders, or other owners of the borrower without management control or ownership less than 5 percent must be recused from any decision-making process associated with the guaranteed loan.

(g) A borrower is ineligible if it is a lending institution, investment institution, or insurance company with exception of REAP or projects for a fund that invests primarily in cooperatives in accordance with § 5001.140, and

NMTC projects in accordance with § 5001.141.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79715, Sept. 30, 2024]

§§ 5001.128–5001.129 [Reserved]

§ 5001.130 Lender eligibility requirements.

To become a lender under this part, the lending entity must meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and become an approved participant in the Agency's electronic system. Paragraph (e) of this section contains provisions associated with lenders that have already been approved by the Agency under one of the guaranteed loan programs identified in § 5001.1of this part. If not yet an Agency-approved lender, the lending entity must include with the application a request for lender approval in accordance with this section.

(a) *General.* The lending entity must:

(1) Be domiciled in a State;

(2) Not be debarred or suspended by the Federal Government or be an affiliated person of such entity that was suspended or debarred;

(3) Be free from default and delinquency on any debt owed to the Federal Government;

(4) Inform the Agency if it is under a consent order, or similar constraint, from a Federal or State agency. The Agency will evaluate the lending entity's eligibility on a case-by-case basis, and assess the risk of loss posed by the consent order or similar constraint, as applicable;

(5) Maintain written standards of conduct covering conflicts of interest; and

(6) Maintain internal audit and management control systems to evaluate and monitor the overall quality of its loan origination and servicing activities.

(7) Be registered in and maintain an account in the System for Award Management (SAM) in accordance with 2 CFR 25.200.

(b) *Regulated lending entities.* Regulated lending entities identified in paragraphs (b)(1) through (10) of this section are eligible to receive a loan guarantee under this part without documentation to the Agency provided they are subject to supervision and credit examination by the applicable agency of the United States or a state, or were created specifically by state statute and operate under the direct supervision of a state government authority.

(1) Federal and State chartered banks.

(2) Farm Credit Bank of the Federal Land Bank and other Farm Credit System institutions with direct lending authority to make loans of the type guaranteed under this part.

(3) Bank for Cooperatives.

(4) Savings and Loan Associations.

(5) Savings banks.

(6) Mortgage companies that are part of a bank-holding company.

(7) The National Rural Utilities Cooperative Finance Corporation.

(8) Credit unions.

(9) State Bond Banks or State Bond Pools.

(10) Other lending entities not specified in paragraphs (b)(1) through (9) of this section that meet the requirements as specified in this paragraph (b).

(c) *Non-regulated lending entities.* The Agency may approve a lending entity that does not meet the criteria of paragraph (b) of this section to become a lender for a period up to five years. Non-regulated lending entity eligibility will expire on January 31 of the fifth year after the date of Agency approval.

(1) *Conditions.* When the lending entity is a multi-tiered entity, the Agency will consider the lending entity in its entirety. In order to be approved as a lender, a non-regulated lending entity must:

(i) Have the legal authority to operate a lending program;

(ii) Be a financially sound institution that has a record of successfully originating at least five commercial loans annually totaling at least $1 million for each of the last three years, with the lending entity's commercial loan portfolio in last five years not exceeding:

(A) Six percent average delinquency of all commercial loans, and

(B) Three percent in commercial loan losses (based on the original principal loan amount);

(iii) Have and agree to maintain balance sheet equity in accordance with § 5001.105(d) of this part of at least 10 percent of assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first six months of being approved as a lender;

(iv) Have and agree to maintain a line of credit issued by a regulated lending entity that is acceptable to the Agency;

(v) Agree to establish and maintain an Agency-approved loan loss reserve equal to one percent reserve of the unguaranteed portion of all guaranteed loans plus an amount equal to the identified anticipated losses.

(vi) Have written policies and procedures to ensure that internal credit controls provide adequate loan making and servicing guidance that adheres to Federal and State fair lending practices;

(vii) Document and assure to the Agency that the lending entity has the capacity to fulfill the lender functions and responsibilities identified in this part, including, but not limited to §§ 5001.201, 5001.202, 5001.207, and 5001.501.

(2) *Written request.* A non-regulated lending entity that seeks to become a lender must submit a written request to the Agency via *OneRDlenderapproval@usda.gov*, and must include the following information:

(i) The request must clearly define the multiple-entity organizational and control structure with a listing of each entity under its control, including any Community Development Entity (CDE) that may request guaranteed loans under § 5001.141. In addition, the non-regulated lending entity must include each such sub-entity in their audited financial statements, commercial loan portfolio, and commercial loan performance statistics;

(ii) Bylaws;

(iii) Audited financial statements for the most recent fiscal year that evidences the required balance sheet equity and that the lending entity has available resources to successfully meet its responsibilities;

(iv) Auditor's most recent management letter and management's response;

(v) An interim financial statement dated within 90 days of the written request, if applicable;

(vi) A copy of any license, charter, State statute, or other third-party evidence of authority to engage in the proposed guaranteed loan making and servicing activities. If licensing by the State is not required, an attorney's opinion stating that licensing is not required and that the lending entity has the legal authority to engage in the proposed guaranteed loan making and servicing activities must be submitted;

(vii) The lender's loan classification scale including their loan classification criteria;

(viii) Information on lending experience, including—

(A) Length of time in the lending business;

(B) Range and volume of lending and servicing activities for the last five years, including a list of the industries for which it has provided financing;

(C) Status of its loan portfolio, including a summary of loans in the portfolio by current loan classification code, a list of any loans restructured or charged off in the previous five years, and the calculated delinquency and loss rates as outlined in paragraph (c)(1)(ii) of this section;

(D) Lending experience of management and loan officers, including staff organizational chart, including names and titles for senior staff;

(E) Largest sources of funds for the last five years and source of funds for the proposed guaranteed loans;

(F) Office location(s) and proposed lending area(s);

(G) An estimate of the number, size, and type of applications the lending entity will develop over the next six months; and

(H) Proposed interest rate structure and loan fees, including any loan origination, loan preparation, and servicing fees.

(ix) Description of programs, financial, and non-financial products and services.

(x) Its lending policies including underwriting standards, credit analysis

policies and procedures, and its problem credit management policies and procedures.

(xi) A third-party external loan origination, lending portfolio, and management review acceptable to the Agency conducted in the previous two years, or a copy of a credit examination less than two years old conducted under an approved credit examination criterion such as CAMELS.

(3) *Approval or disapproval.* The Agency will notify the non-regulated lending entity whether its request to become a lender is approved or rejected. If the Agency rejects the request, the Agency will include in the notification the reason(s) for the rejection.

(4) *Renewals.* To maintain its status as an approved lender, the non-regulated lending entity must submit a written request to the Agency for renewal of its approved lender status at least 60, but not more than 120, calendar days prior to the expiration of the existing lender's agreement to be assured of a timely renewal. A review of the lender's performance will be completed to determine whether the lender has continually met the eligibility criteria described in paragraphs (c) and (d) of this section. The lender's activity in the program and its delinquency/default rate will also be considered when making a determination regarding renewal. Any action by the lender since it was designated an eligible lender that could be cause for revoking its status, in accordance with § 5001.132, will be considered cause for denying the renewal of eligible status. The lender will be notified in writing whether the request is approved, reasons for denial, or any conditions the lender must meet for approval. The lender's written request must provide the information specified in paragraphs (c)(2)(i) and (iii) through (v) of this section; and

(i) A written update of any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans since the original or last renewal date of lender status.

(ii) A description of how the lender is complying with each of the required criteria described in (c)(1) of this section and § 5001.501.

(iii) A new executed lender's agreement.

(iv) The Agency may require lenders with limited guaranteed loan activity over the previous five years, or a lender that has originated guaranteed loans with servicing issues or a loss to the Agency, to resubmit all the information required by paragraph (c)(2) of this section. A lender who is not active in the Agency guaranteed loan programs should provide evidence that they remain active in other commercial lending activity with acceptable underwriting and servicing performance. Lenders with loans that cause a loss to the Agency are a concern and those projects will be reviewed to determine the cause of the loss, including whether the lender's analysis or servicing processes were insufficient.

(v) The renewal will be for a term of 5 years.

(d) *Non-regulated lending entities serving tribal trust lands.* The Agency may approve a lending entity serving tribal trust lands that does not meet the criteria of paragraph (b) or (c) of this section to become a lender for a five-year period. A non-regulated lending entity approved to originate and service guaranteed loans for projects located only on tribal trust lands is restricted to such areas. To make and service guaranteed loans not on tribal trust lands, the lending entity must meet the criteria of paragraph (b) or (c) of this section. When the lending entity is a multi-tiered entity, the Agency will consider the lending entity in its entirety for approval.

(1) *Conditions.* To be approved as a lender, a non-regulated lending entity serving only tribal trust lands must—

(i) Have the legal authority necessary to operate a lending program to borrowers located on tribal trust lands.

(ii) Meet the requirements of paragraph (c)(1) of this section, and prove to be a financially sound institution, as determined by the Agency, on a case by case basis, based on the Agency's risk assessment of the lending entity's capital, adequate liquidity, management capabilities, repayment ability, credit underwriting, balance sheet equity and other financial factors as determined

appropriate. On a case-by-case basis, the Agency may reduce the loan origination requirements of paragraph (c)(1)(ii) of this section for lenders serving only projects located on tribal trust lands.

(2) *Written request.* A non-regulated lending entity serving Tribal trust lands that seeks to become a lender must submit a written request to the Agency via *OneRDlenderapproval@usda.gov* that includes the following information:

(i) Documentation required by paragraph (c)(2) of this section;

(ii) Written certification that the lender intends to only originate guaranteed loans under the regulation for projects located in certain (or specified) tribal lands held in trust for tribes and for tribal members not in such tribal lands but are in their service area;

(iii) Bylaws; and

(iv) Lending experience of management and loan officers, including staff organizational chart, including names and titles for senior staff.

(3) *Approval or disapproval.* The Agency will notify the non-regulated lending entity servicing tribal trust land whether its request to become a lender is approved or rejected. If the Agency rejects the request, the Agency will include in the notification the reason(s) for the rejection.

(4) *Renewals.* To maintain its status as an approved lender, the non-regulated lending entity serving Tribal trust land must submit a written request to the Agency for renewal of its approved lender status at least 60 and not more than 120 calendar days prior to the expiration of the existing lender's agreement to be assured of a timely renewal. A review of the lender's performance will be completed to determine whether the lender has continually met the eligibility criteria described in paragraphs (c) and (d) of this section. The lender's activity in the program and its delinquency/default rate will also be considered when making a determination regarding renewal. Any action by the lender since it was designated an eligible lender that could be cause for revoking its status, in accordance with § 5001.132, will be considered cause for denying the renewal of eligible status. The lender will be notified in writing whether the request is approved, reasons for denial, or any conditions the lender must meet for approval. The lender's written request must provide the information specified in paragraphs (c)(2)(i) and (iii) through (v) of this section; and

(i) A written update of any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans since the original or last renewal date of lender status.

(ii) A description of how the lender is complying with each of the required criteria described in (c)(1) of this section and § 5001.501.

(iii) A new executed lender's agreement.

(iv) The Agency may require lender with limited guaranteed loan activity over the previous five years, or a lender that has originated guaranteed loans with servicing issues or a loss to the Agency, to submit updated information required by paragraph (c)(2) of this section.

(v) The renewal will be for a term of 5 years.

(e) Previously approved lenders. Lenders that have been previously approved by the Agency under one of the guaranteed loan programs identified in § 5001.1(b)(1) through (4) of this part cannot originate new guaranteed loans after the effective date of this rule unless the lender is approved under the applicable conditions of paragraphs (a) through (d), as applicable, of this section.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 86 FR 70356, Dec. 10, 2021; 89 FR 79715, Sept. 30, 2024]

§ 5001.131 Lender's agreement.

When approved to participate as a lender under this part, the lender must execute a lender's agreement before the Agency will issue a loan note guarantee. A new lender's agreement must be executed with any existing lender making new loans on or after October 1, 2020. Approval under one program is approval for all programs. The eligibility expiration date for non-regulated lenders will be five years from the date of the original execution of a lender's

agreement as specified in § 5001.130(c) and (d). There will be only one lender's agreement issued for each lending entity based on their tax identification number. Lender's agreements will not be issued for individual branches. Subsequent loans do not require a new lender's agreement. A lender who fails to renew its lender's agreement and loses its approved lender status must continue to service any outstanding guaranteed loans in conformance with the lender's agreement last in effect and the applicable regulation under which the lender became an approved lender. Such lenders cannot submit requests for new loan guarantees.

[89 FR 79716, Sept. 30, 2024]

§ 5001.132 Maintenance of approved lender status.

Continuation of approved lender status under this part is not automatic. Lenders may lose their approved lender status as described in paragraph (a) of this section. The Agency may also revoke a lender's status as an approved lender or debar the approved lender, as described in paragraph (b) of this section.

(a) *Loss of approved lender status.* A lender will lose its approved status if it—

(1) Fails to conform with the provisions of this part or the applicable guaranteed loan program identified in § 5001.1 of this part;

(2) Has no outstanding guaranteed loans with the Agency for five consecutive years;

(3) Is a regulated lending entity and fails to remain in good standing with its regulator;

(4) Is a non-regulated lending entity and fails to renew its approval status within 5 years of the expiration date of the lender's agreement.

(b) *Revocation of approved status and debarment of lender.* The Agency can revoke a lender's status as an approved lender at any time for cause as specified in the lender's agreement. A decision to revoke a lender's approved status will be made by the Agency and the lender will be notified in writing. The revocation may apply to all branches of the lender, specific branches, or personnel, as appropriate. The lender must revoke the level II eAuthentication privileges of all individuals included in the revocation notice. Cause for revoking lender status includes, but is not necessarily limited to, the circumstances identified in paragraphs (b)(1) through (14) of this section.

(1) Guaranteed loans originated by the lender cause substantial financial loss to the Agency.

(2) Failure to maintain status as an approved lender under the applicable regulations in effect when the lender obtained approved lender status. For lenders approved under this part, this means maintaining compliance with the requirements set forth in § 5001.130.

(3) Conviction of the lender or any of its officers for criminal acts in connection with any loan transaction, whether or not the loan was guaranteed by the Agency.

(4) Violation of usury laws in connection with any loan transaction whether or not the loan was guaranteed by the Agency.

(5) Negligent loan origination.

(6) Knowingly submitting false information when requesting a loan guarantee or basing a loan guarantee request on information known to be false or which the lender should have known to be false.

(7) Failure to correct any Agency-cited deficiency in loan documents in a timely manner.

(8) Failure to provide for adequate construction planning and monitoring in connection with any guaranteed loan to ensure that the project will be completed with the available funds.

(9) Negligent loan servicing.

(10) Failure to obtain and maintain the required collateral for any guaranteed loan.

(11) Using guaranteed loan funds for purposes other than those specifically approved by the Agency in the conditional commitment or amendment thereof.

(12) Violation of any term of the lender's agreement.

(13) Failure to submit reports required by the Agency in a timely manner.

(14) Violation of applicable nondiscrimination laws, including, but not limited to, statutes, regulations, USDA Departmental Regulations, the USDA Non-Discrimination Statement, and

the Equal Credit Opportunity Act. USDA's Non-Discrimination Statement is located on the Agency's website, see *usda.gov/non-discrimination-statement*. In addition to revoking the lender's status, the Agency may debar the lender in compliance with 2 CFR part 180.

(c) *Servicing of outstanding loans.* Any lender who loses its status as an approved lender under any of the conditions identified in paragraph (a) or (b) of this section must reapply under the provisions of § 5001.130 to be reinstated as an approved lender. A lender who loses its approved lender status must continue to service any outstanding guaranteed loans in conformance with the lender's agreement last in effect and the applicable regulation under which the lender became an approved lender. In addition, such lenders cannot submit requests for new loan guarantees.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79716, Sept. 30, 2024]

§§ 5001.133–5001.139 [Reserved]

§ 5001.140 Cooperative stock/cooperative equity.

Loan guarantees described in paragraphs (a) through (d) of this section are only available under B&I guaranteed loans.

(a) *Cooperative stock purchase program.* The Agency may guarantee loans for the purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the five-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(1) The proceeds from the stock sale may be used to recapitalize, to develop a new processing facility or product line, or to expand an existing production facility. Guaranteed loan funds must remain in the cooperative from which stock was purchased, and the cooperative must not reinvest those funds into another entity.

(2) The maximum guaranteed loan amount is $600,000 and all applications will be processed in accordance with §§ 5001.301 through 5001.303, 5001.306, 5001.315, and 5001.318 of this part, as applicable.

(3) The maximum term of the guaranteed loan is seven years when the proceeds from the stock sale are used by the cooperative to recapitalize or are used for working capital. The maximum term allowable for final guaranteed loan maturity is limited to the justified useful life of the assets the cooperative purchases with the proceeds of the stock sale not to exceed 40 years or applicable State statutory limitations, whichever is less.

(4) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or any other right or ability necessary to liquidate and dispose of the collateral in the event of a default by the borrower. The lender and borrower understand that the borrower is fully liable for the entire debt, regardless of the success or failure of the cooperative. The lender is expected to maximize recovery on the loan, including collection of personal, partnership and corporate guarantees. In addition, provisions of the DCIA may impose significant restrictions on delinquent Federal debtors, including eligibility for other Federal programs.

(5) The lender must complete a written credit evaluation of each stock purchase loan and a complete credit evaluation of the cooperative prior to making its first stock purchase loan.

(6) The borrower may provide financial information in the manner that is generally required by commercial agricultural lenders.

(7) A feasibility study of the cooperative is required for startup cooperatives and may be required by the Agency for existing cooperatives when the cooperative's operations will be significantly affected by the proceeds that were generated from the stock sale.

(8) The Agency will conduct an appropriate environmental review on the processing facility and will not process individual applications for the purchase of stock until the environmental

review on the cooperative processing facility is completed.

(b) *Purchase of transferable stock shares.* The Agency may also guarantee loans for the purchase of transferable stock shares of any type of existing cooperative, which would primarily involve new or incoming members. Such stock may provide delivery or some form of participation rights and may only be traded among cooperative members. The lender and borrower understand that the borrower is fully liable for the entire debt, regardless of the success or failure of the ESOP. The lender is expected to maximize recovery on the loan, including collection of personal, partnership and corporate guarantees. In addition, provisions of the DCIA may impose significant restrictions on delinquent Federal debtors, including eligibility for other Federal programs.

(1) The maximum loan amount is $600,000 and all applications will be processed in accordance with §§ 5001.301 through 5001.303, 5001.306, 5001.315, and 5001.318 of this part, as applicable.

(2) The maximum term of the loan is seven years.

(3) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or any other right or ability necessary to liquidate and dispose of the collateral in the event of a default by the borrower.

(4) The lender must complete a written credit evaluation of each stock purchase loan and a complete credit evaluation of the cooperative prior to making its first stock purchase loan.

(c) *Cooperative equity security guarantees.* The Agency may guarantee loans for the purchase of preferred stock or similar equity issued by a cooperative or may guarantee loans to a fund that invests primarily in cooperatives. In either case, the project must significantly benefit one or more entities eligible for assistance under B&I guaranteed loans.

(1) ''Similar equity'' is any special class of equity stock that is available for purchase by non-members and/or members and lacks voting and other governance rights.

(2) A fund that invests ''primarily'' in cooperatives is determined by its percentage share of investments in and loans to cooperatives. A fund portfolio must have at least 50 percent of its loans and investments in cooperatives to be considered eligible for loan guarantees for the purchase of preferred stock or similar equity.

(3) The principal amount of the guaranteed loan cannot exceed $10 million.

(4) The maximum term of the guaranteed loan is seven years when the proceeds are used by the cooperative for working capital and;

(i) In all other cases the maximum term of the guaranteed loan is equal to the lesser of the following but not exceeding 40 years:

(ii) The justified useful life of the funded project assets,

(iii) The maximum term under any applicable State statute; or

(iv) The specified holding period for redemption as stated by the stock offering.

(5) All borrowers purchasing preferred stock or similar equity must provide documentation of the terms of the offering that includes compliance with State and Federal securities laws and financial information about the issuer of the preferred stock to both the lender and the Agency.

(6) Issuer(s) of preferred stock must be a cooperative organization and must be able to issue preferred stock to the public that, if required, complies with State and Federal securities laws.

(7) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a default by a borrower. For the purpose of recovering losses from guaranteed loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from reinvestment of dividends.

(8) Shares of preferred stock that are purchased with guaranteed loan funds cannot be converted to common or voting stock.

(9) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar

equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a default by a borrower on a B&I guaranteed loan, the borrower waives any ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

(10) Guaranteed loans for the purchase of preferred stock must be prepaid in the event a cooperative that issued the stock exercises an early redemption. If the cooperative enters into bankruptcy, to the extent the cooperative can redeem the preferred stock, the Borrower is required to repay the guaranteed loan from the redemption of the stock.

(d) *Employee ownership succession.* The Agency may guarantee loans for conversions of businesses to either cooperatives or ESOP within five years from the date of initial transfer of stock.

(1) The maximum loan amount is $600,000 and all applications will be processed in accordance with §§ 5001.301 through 5001.303, 5001.306, 5001.315, and 5001.318 of this part, as applicable.

(2) The maximum term is 10 years.

(3) The lender must, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a default by a borrower. The lender and borrower understand that the borrower is fully liable for the entire debt, regardless of the success or failure of the cooperative or ESOP. The lender is expected to maximize recovery on the loan, including collection of personal, partnership and corporate guarantees. In addition, provisions of the DCIA may impose significant restrictions on delinquent Federal debtors, including eligibility for other Federal programs.

(4) The lender must complete a written credit evaluation of each stock purchase loan and a complete credit evaluation of the cooperative or ESOP prior to making its first stock purchase loan.

(5) If a cooperative is organized, each selling owner becomes a member with special control rights to protect their stake in the business while a succession plan is implemented. At the completion of the stock transfer, selling owners may retain their membership in the cooperative provided that their control rights are the same as all other members. Any special covenants that selling owners may have held must be extinguished upon completion of the transfer.

(6) If an ESOP is organized for transferring ownership to employees, selling owner(s) may not retain ownership in the business after five years from the date of the initial transfer of stock.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79716, Sept. 30, 2024]

§ 5001.141 New Markets Tax Credits Program.

The New Markets Tax Credits (NMTC) Program is administered by the U.S. Department of the Treasury's (Treasury) Community Development Financial Institutions (CDFI) Fund with NMTC credits allocated to Treasury-certified Community Development Entities (CDE) across the United States to make Qualified Equity Investments (QEI) in low-income communities. NMTC related definitions and terms in this section are governed by section 45(D) of the Internal Revenue Code (26 U.S.C. 45D), and applicable Treasury regulations (26 CFR 1.45D–1). A CDE will generally establish a new subsidiary of a CDE (sub-CDE) for individual NMTC projects. Lenders and their borrowers with guaranteed loan projects that include NMTC investments must comply with the provisions in this section. To be a lender for a guaranteed loan project that involves financing under the NMTC provisions, the lending entity must meet the applicable eligibility criteria in § 5001.130. The Agency will not waive its servicing rights to a guaranteed loan or be a party to any forbearance agreement in conjunction with a NMTC project. Requests for loan guarantees that include NMTC are subject to all applicable program eligibility requirements, credit analysis, and due diligence required by part 5001. In all cases the Agency will undertake efforts to protect the best financial interests of the Federal government and collection of its guaranteed

loan. The Agency will not consider any tax benefit or loss of tax benefits to the CDE, sub-CDE or NMTC investor in the servicing actions of a guaranteed loan.

(a) *Guaranteed Loans Directly to Qualified Active Low-Income Community Businesses (QALICB).* (1) A lender that is CDE or sub-CDE under the direct control of a regulated lender or an approved non-regulated lender does not need to separately meet the requirements of §5001.130 to make a guaranteed loan directly to a qualified active low-income community business (QALICB).

(2) The provisions of §5001.127(f) notwithstanding, a lender that is a CDE or sub-CDE may have an ownership interest in the borrower provided that each condition specified in paragraphs (a)(2)(i) through (iii) of this section is met.

(i) The lender does not have an ownership interest in the borrower prior to the application.

(ii) The lender does not take a controlling interest in the borrower.

(iii) The lender does not provide equity or take an ownership interest in a borrower at a level that would result in the lender owning 20 percent or more interest in the borrower.

(3) Notwithstanding §5001.115(f), a lender that is a CDE or sub-CDE taking an ownership interest in the borrower does not constitute a conflict of interest. The Agency will mitigate the potential for a conflict of interest by requiring appropriate loan covenants establishing, at a minimum, limitations on dividends and distributions of earnings in the loan agreement between the lender and borrower. The Agency will also ensure that the lender limits any waivers of loan covenants and future modifications of loan documents in compliance with this part.

(4) Guaranteed loans made by a lender directly to a QALICB must meet all other program and project eligibility requirements as specified in this part.

(5) For purposes of calculating borrower equity in compliance with §5001.105(d)(1), the CDE (or sub-CDE's) amount of the principal balance of the loan from NMTC investor funds that is subordinated to the guaranteed loan may be considered as equity.

(b) *Guaranteed loans to a NMTC leveraged equity structure.* Tax benefits to a NMTC investor are based on the total amount of funds utilized in the project. The tax benefit calculation includes the sum of the investor's cash investment plus loan proceeds from a leveraged lender into a NMTC investor fund entity. The investor fund entity is generally a new entity established to make a qualified equity investment (QEI) into one or more CDEs or sub-CDEs to support a qualified low-income community investment (QLICI) to a QALICB. The investor fund entity, through its investment, has ownership rights in the sub-CDE that will be making secured QLICI loans to the QALICB. The provisions of §5001.127(g) notwithstanding, either a leveraged lender entity lending to an investor fund entity, or an investor fund entity such as an investor partnership or investor limited liability corporation, may be an eligible borrower for a specific NMTC project as specified in paragraph (b)(1) of this section. For purposes of this section only, the stated term ''borrower'' in paragraphs (b)(1) through (13) of this section applies to both a leveraged lender entity or an investor fund entity as the guaranteed loan borrower in the NMTC project. Paragraphs (b)(2) through (13) of this section identify modifications to this part that apply when the eligible borrower is a leveraged lender entity or investor fund entity in a NMTC project.

(1) To be an eligible borrower using the leveraged equity structure of a NMTC project each condition identified in paragraphs (b)(1)(i) through (v) of this section must be met.

(i) The investor fund entity must be established for a single specific NMTC investment.

(ii) The lender is not an affiliate of the borrower.

(iii) When the borrower is a leveraged lender entity it must relend one hundred percent of the guaranteed loan funds to an investor fund entity. In all cases one hundred percent of the guaranteed loan funds are or will be invested by the investment fund entity in one or more sub-CDEs that will then be loaned directly to a QALICB, as defined by applicable regulations of the

Internal Revenue Service, through a direct tracing method, and such guaranteed loan funds are, or will be used by the QALICB in accordance with the eligibility requirements in subpart B of this part. The QALICB's project must be the ultimate use of one hundred percent of the guaranteed loan funds.

(iv) The QALICB must meet the requirements of an eligible borrower as found in § 5001.126.

(v) The sub-CDE operating agreement with the QALICB must include a provision that the guaranteed lender has approval rights with respect to any substantial loan servicing actions that may be taken by the sub-CDE regarding the collateral or repayment terms of their QLICI loans to the QALICB.

(2) The guaranteed loan amount and percentage of guarantee provisions found in §§ 5001.406 and 5001.407 of this part, respectively, apply to the QALICB and not to the investor fund entity or leveraged lender entity, who would actually be the borrower as defined under this part.

(3) For purposes of calculating borrower equity in compliance with § 5001.105(d)(1), the leveraged lender entity's note from the investor fund may be considered a tangible asset and when the lien associated with the sub-CDE's loan is subordinated, the principal balance of the sub-CDE's loan made to the QALICB from NMTC investor funds may be considered as equity.

(4) The loan terms found in § 5001.402 of this part apply to both the borrower and the QALICB. The maturity and related payment schedule of the lender's guaranteed loan to the borrower must be no longer than the maturity and related payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments can be used for a NMTC loan. The lender may require additional principal repayment by a co-borrower, such as an owner or principal participant of the QALICB. The provisions of § 5001.402(b)(3) notwithstanding, the Agency may consider the payment of interest-only payments by a borrower pursuant to an interest-only term not to exceed seven years on a loan made under an NMTC structure if the lender requires:

(i) A debt repayment reserve fund or sinking fund in an amount at least equal to the guaranteed loan's principal amortization that would have otherwise applied to the loan if equally amortized payments were collected during the seven-year term; and

(ii) Such reserve funds or sinking funds are applied to the guaranteed loan as an additional payment of principal at the end of such interest-only term. The debt repayment reserve fund or sinking fund may be accumulated during the loan terms, or the full amount may be funded at loan closing.

(5) Except for the collateral provisions, § 5001.202(b)(4), § 5001.202(b) of this part applies to both the lender's guaranteed loan to the borrower and the sub-CDE's loan to the QALICB. The collateral provisions found in § 5001.202(b)(4) of this part apply only to the sub-CDE's loan to the QALICB.

(6) The personal, partnership and corporate guarantee provisions of § 5001.204 of this part apply when the guaranteed loan borrower is a leveraged lender entity in a NMTC project. Guaranteed loans made directly to an investor fund entity as the borrower do not require a personal, partnership, or corporate guarantee from the investor fund entity's owner, who is the NMTC tax credit investor and considered a passive investor. The Agency shall obtain the personal, partnership or corporate guarantee from the QALICB ownership for a guaranteed loan to an investor fund entity in compliance with § 5001.204, subject to the eligibility requirements of the NMTC program. The Agency may require additional personal, partnership or corporate guarantees if warranted by an Agency evaluation of potential financial risk. The QALICB is the ultimate user of the guaranteed loan funds, and their owners should provide a guarantee of the guaranteed loan as stipulated in § 5001.204.

(7) The insurance provisions of § 5001.205(d) of this part apply only to the QALICB and the sub-CDE's secured loan to the QALICB.

(8) The financial report provisions of § 5001.504 of this part apply to both the borrower and the QALICB.

(9) The application requirements found in subpart D to this part, as applicable, apply to both the borrower and the QALICB, including the application analysis and evaluation components of § 5001.303. The Agency also requires submission of the loan terms and documents between the sub-CDE and QALICB. As part of the application completed by the lender, the documentation must include comparable industry information and a summary of the NMTC project's funding path and an explanation of the relationships between all parties in the NMTC transaction (an accompanying schematic is encouraged for complicated transactions).

(10) The environmental responsibilities specified in § 5001.207 of this part apply to the NMTC project.

(11) For any application that the Agency assigns a priority score, when assigning the priority score to a NMTC loan application, the Agency will score the project based on the entire NMTC structure and the QALICB's project as the ultimate use of guaranteed loan funds.

(12) The lender is responsible for ensuring that the NMTC project complies with the planning, performing, development and project monitoring provisions in § 5001.205 of this part and the lender is also responsible for ensuring the NMTC project complies with all applicable Treasury NMTC requirements.

(13) Sections 5001.401 through 5001.408 of this part apply to both the borrower and the QALICB in a NMTC transaction.

(14) Agency concurrence of the NMTC structure is required on all projects leveraging the NMTC program.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70356, Dec. 10, 2021; 87 FR 7367, Feb. 9, 2022; 89 FR 79716, Sept. 30, 2024]

§§ 5001.142–5001.200 [Reserved]

Subpart C—Orgination Provisions

§ 5001.201 General origination requirements.

The lender is responsible for originating a guaranteed loan in accordance with the requirements of this part and in accordance with its internal origination policies and procedures to the extent they do not conflict with the requirements of this part. For each application, the lender must prepare a credit evaluation that is consistent with Agency standards found in this part. The Agency reserves the right to review the lender's credit evaluation and request additional information. Lender approval does not constitute Agency approval.

§ 5001.202 Lender's credit evaluation.

For each application, the lender must prepare a credit evaluation that is consistent with Agency standards found in this part. Lenders are required to only submit complete loan applications that have been approved by their institution after completion of their internal credit evaluation. The components of a lender's credit evaluation will include a written review and comment on the ''Five Cs'' of credit that are outlined in § 5001.202(b)(1) through (5). The Agency should be able to obtain sufficient details on the project, the borrower, and the borrower's ability to repay the loan from the lender's credit evaluation.

(a) *Lender's evaluation guidelines.* The lender must conduct a credit evaluation using credit documentation procedures and underwriting processes that are consistent with generally accepted prudent lending practices for commercial, public and project financing, and also consistent with the lender's own policies, procedures, and lending practices. The underwriting process must include a review of each loan for which a loan guarantee is being sought under this part. Applications involving affiliated entities must include a global credit evaluation and if applicable a global historical and projected debt service coverage analysis. The lender should evaluate the relationships between all associated parties to determine potential risks which may affect our borrower and its ability to repay the loan. Entities which may have an impact on the borrower or significantly contribute to the repayment ability of the loan should provide financials for global analysis. Applications involving guarantor(s) must also include a global debt service coverage analysis of the guarantor(s) including the cash flow of

the guarantor(s). In addition, the lender must review all applicable contracts, management agreements, and leases to determine they will not adversely affect either the borrower's repayment ability or the value of the collateral securing the guaranteed loan. The lender's evaluation must address any financial or other credit weaknesses of the borrower and project and discuss risk mitigation requirements imposed by the lender.

(b) *Credit factors.* In performing its credit evaluation, the lender must analyze all credit factors associated with each proposed guaranteed loan and apply its professional judgment to determine that the credit factors and guaranteed loan terms and conditions, considered in combination, ensure guaranteed loan repayment. Credit factors to be analyzed include, but are not necessarily limited to, those areas identified and defined in paragraphs (b)(1) through (5) of this section.

(1) *Character.* Those qualities that generally impel the borrower to meet its obligations as demonstrated by its credit history, including project and borrower debt structure and debt repayment ability. When applicable, an evaluation may include the character of persons with management control or a 20 percent or more ownership interest in the borrower. When the borrower's credit history or character is negative, the lender will provide satisfactory explanations to indicate that any problems are unlikely to recur. The ownership or membership structure of the project and borrower (including membership, sponsors, other equity investors), and the historical performance and experience of ownership and management specific to the project and industry. The historical performance and experience of any entities providing management or administrative services pursuant to contract should also be evaluated. For CF projects the commitment of the rural community or rural area to be served by the project should be evaluated. Borrower's management, and its for-profit, non-profit or governing board, as applicable, will be evaluated to ensure key management personnel are adequately trained and experienced.

(2) *Capacity.* A borrower's ability to produce sufficient cash to repay the guaranteed loan as agreed, including the feasibility and likelihood of the project and borrower to produce sufficient revenues to service the project's debt obligations over the life of the guaranteed loan and, when applicable, result in sufficient returns to investors to ensure successful repayment of the guaranteed loan. The lender shall address any economic safeguards of the project, including capital expenditure budgeting or reserve funds and other contingency reserve funds such as maintenance reserve funds or debt service reserve funds, intended to protect and safeguard the Agency and lender in the event of default. The lender must make all efforts to:

(i) Ensure that the borrower has adequate working capital, operating capital and reserves for capital expenditures, debt service, and maintenance as applicable; and

(ii) Structure or restructure debt so the borrower has adequate debt coverage, documenting as applicable the necessity of any debt refinancing. The evaluation will be supported by a cash flow analysis.

(3) *Capital.* The borrower must have the resources to adequately capitalize the project and demonstrate the ability to generate and maintain sufficient cash flow for its operations. The extent to which project costs are funded by the borrower in relation to project costs funded by the guaranteed loan or other Federal and non-Federal governmental assistance such as grants, tax credits, or other loans must be analyzed.

(4) *Collateral.* This criterion refers to the security pledged for the guaranteed loan. The lender is responsible for obtaining and maintaining proper and adequate collateral for the guaranteed loan. All collateral must secure the entire guaranteed loan. The lender is prohibited from taking separate collateral for the guaranteed and unguaranteed portions of the guaranteed loan or requiring compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the guaranteed loan. Collateral can include, but is not limited to: General obligation

bonds; revenue bonds; pledges of taxes or assessments; assignments of facility revenue and byproduct revenue, as well as other assets such as land, easements, rights-of-way, water rights, buildings, machinery, equipment, inventory; accounts receivable, other accounts, contracts, cash, assignments of leases and leasehold interests. Intangible assets may serve as collateral, provided they do not serve as primary collateral. For purposes of determining compliance with this requirement, leasehold improvements such as buildings and other structures on leased property are considered tangible assets and can serve as primary collateral. It is the lender's responsibility to obtain, document, file, record and take all actions necessary to properly perfect and maintain adequate collateral to protect the interests of the lender and the Agency.

(i) The lender must determine the market value of collateral as established by an appraisal in accordance with § 5001.203.

(ii) The lender should discount collateral consistent with sound loan-to-discounted value practices which must be adequate to secure the guaranteed loan in accordance with this section. To assess collateral adequacy and appropriate levels of discounting, the lender should give consideration to the type, quality, location, marketability, and alternative uses of the collateral and the basis for the valuation of the collateral, *e.g.* collateral valued on a cost or replacement valuation or market or comparable sales valuation may require variance of discount factors. The lender must provide satisfactory justification of the discounts being used.

(5) *Conditions.* This paragraph (b)(5) refers to the general business environment, including the regulatory environment affecting the business or industry, and status of the borrower's industry. Consideration will be given to items listed in paragraphs (b)(5)(i) through (ix) of this section and when applicable the lender should submit supporting documentation (*e.g.,* feasibility study, market study, preliminary architectural or engineering reports, etc.) in accordance with *§§ 5001.304* through *5001.307:*

(i) Availability and depth of resource/feedstock market, strength and duration of purchase agreements and availability of substitutes;

(ii) Analysis of current and future market potential and off-take agreements, competition, type of project (service, product, or commodity based);

(iii) Energy infrastructure, availability and dependability, transportation and other infrastructure, and environmental considerations;

(iv) Technical feasibility including demonstrated performance of the technology and integrated processing equipment and systems, developer system performance guarantees, or technology insurance;

(v) Complexity of construction and completion, terms of construction contracts, experience and financial strength of the construction contractor or engineering, procurement, and construction (EPC) contractor;

(vi) Contracts and intellectual property rights, licenses, permits, and state and local regulations;

(vii) Creditworthiness of any counterparties, as applicable;

(viii) Industry-related public policy issues; and

(ix) Other criteria that the lender or Agency deems relevant to the project.

(6) *Content.* The credit evaluation must be sufficiently detailed to describe the proposed loan, business and project scenario and document that the proposed loan is sound. The credit evaluation must include:

(i) A written evaluation of each credit factor listed in paragraphs (b)(1) through (5) of this section and any additional factors as appropriate; and

(ii) A written evaluation of the feasibility study, business plan, technical report, and engineering and architectural reports, as applicable; and

(iii) Spreadsheets and analysis of the financial statements provided in accordance with § 5001.303, with appropriate ratios and comparisons with industry standards (such as Dun & Bradstreet or the Risk Management Association). The spreadsheets should enable a reviewer to easily scan the data, spot trends, and make comparisons. Steps taken or proposed to address any financial or industry weakness must be reasonable and adequately addressed.

(iv) Financial projections deviating from historical financial performance must be substantiated and documented. The borrower's projections should be consistent with their past performance. Increases to revenues, profit margins or profitability should be reasonable and substantiated in the analysis.

(v) Projected operational cash flow analysis on a quarterly basis for borrowers with seasonal cyclical cash flow.

(vi) Operational cash flow analysis on a quarterly basis from the current financial statements through start-up or occupancy for projects involving construction when lenders are requesting the loan note guarantee prior to completion of construction The lender and borrower are required to provide a construction schedule with their application for a loan guarantee prior to construction completion. The projected cash flow needs should mirror the quarterly construction costs as the project is being completed. The cash flow analysis must indicate whether this cash flow is being provided by the guaranteed loan, borrower equity, or other sources.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 86 FR 70356, Dec. 10, 2021; 87 FR 7367, Feb. 9, 2022; 89 FR 79717, Sept. 30, 2024]

§ 5001.203 Appraisals.

Appraisals of collateral are required as set forth in this section. The lender is responsible for ensuring that appraisal values adequately reflect the actual value of the collateral based on an arm's length transaction. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the lender must submit an estimated appraised value. Prior to the issuance of the loan note guarantee, the estimated value must be supported with an appraisal acceptable to the approval official. If an appraisal is received containing any value attributed to business valuation or as a going concern, the business valuation or going concern value must be deducted from the reconciled market value prior to discounting. The Agency expects that, for appraisals of existing facilities, the appraiser will physically visit the property unless prior permission from the Agency is obtained. Appraisals are not typically required when security consists of either a revenue or general obligation bond or liens on real estate for WWD projects which rely on revenues of the facilities for loan repayment.

(a) *Newly-acquired chattel.* A bill of sale may be submitted to support the value of newly-acquired chattel.

(b) *Existing chattel.* The lender must obtain appraisal(s) for existing chattel collateral when its value exceeds $250,000 and will be used to meet loan to value requirements.

(c) *Real estate.* The lender must obtain appraisals for real estate collateral when the value of the collateral exceeds $250,000 or the current limitation established under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Public Law 101–73, 103 Stat. 183 (1989). Real estate and chattels with a value below these thresholds must be evaluated in accordance with the lender's primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, in accordance with normal banking practices and generally accepted methods of determining value. For construction projects, the lender must obtain the ''As is'' market value and the ''prospective'' market value as of the date of construction completion to determine the value of the real estate property.

(d) *Appraisal standards.* (1) Each real estate appraisal must be conducted by an independent qualified appraiser in accordance with the USPAP or similar Agency approved standard. The appraiser must have the specific qualification, experience, and competency to appraise the type of facility being financed. All real estate appraisals must meet the requirements contained in the FIRREA, and the appropriate guidelines contained in Standards 1 and 2 of the USPAP or similar Agency approved standard, and, unless approved by the Agency approval official, be performed by a State Certified General Appraiser licensed in the State in which the real estate is located.

(2) Chattel appraisals must be conducted by an independent qualified appraiser and must be based on industry recognized standards and reflect the age, condition, and remaining useful life of the equipment.

(e) *Interagency appraisal and evaluations guidelines.* Notwithstanding any exemption that may exist for transactions guaranteed by a Federal Government agency, all appraisals obtained by the lender under this part must conform to the interagency appraisal and evaluations guidelines established by the lender's primary Federal or State regulator, if applicable.

(f) *Environmental considerations.* When the Agency will take a lien on real property, the real estate appraisals must include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral, as determined in accordance with the appropriate ASTM International Real Estate Assessment and Management environmental standards. Potential contamination that has been observed on the property or identified through research or interviews with individuals knowledgeable about the property should be immediately reported to the Agency.

(g) *Appraisal review report.* The lender must submit its complete technical review of the appraisal in an appraisal review report prepared in compliance with USPAP Standards 3 and 4 to the Agency before guaranteed loan closing.

(1) Appraisals must not be more than one year old. However, the Agency may request a more recent appraisal in order to reflect more current market conditions.

(2) The lender must provide documentation that, in addition to the other requirements of this section pertaining to appraisers, the appraiser has the necessary experience and competency to appraise collateral.

(h) *Appraisal fees.* Unless otherwise stated in this part, appraisal fees or any other associated costs will not be paid by the Agency. Appraisal fees are eligible loan purposes. The Agency does not pay for appraisals required at the time of loan application. Appraisals for servicing actions are handled in accordance with section 5001 subpart F.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79718, Sept. 30, 2024]

§ 5001.204 Personal, partnership, and corporate guarantees.

The provisions of this section do not apply to passive investors.

(a) Except as provided in paragraph (c) of this section, Agency-approved, unsecured personal, partnership, and corporate guarantees for the full term of the guaranteed loan and at least equal to the guarantor's percent interest or membership in the borrower times the guaranteed loan amount are required from any person or entity owning a 20-percent or greater interest or membership in the borrower. In the event a portion of the borrower's ownership interest stock is sold or transferred, the Agency reserves the right to require personal or corporate guarantees from the new owners of a 20-percent or more interest in the borrower.

(b) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

(1) Guarantees to be secured;

(2) Guarantees from any person or entity owning less than a 20-percent interest or membership in the borrower; and

(3) Guarantees from persons whose ownership interest in the borrower is held indirectly through intermediate or affiliated entities.

(c) Exceptions to the requirement for personal, partnership or corporate guarantees may be requested by the lender. The lender must document, to the Agency's satisfaction, that collateral, equity, cash flow, and profitability indicate an above-average ability of the borrower to repay the loan. The Agency will evaluate these requests on a case-by-case basis.

(d) Each guarantor must execute an Agency-approved guarantee form in addition to any guarantee form required by the lender.

(e) Any amounts paid by the Agency pursuant to a claim by a guaranteed program lender will constitute a Federal debt owed to the Agency by a guarantor of the loan, to the extent of

the amount of the guarantor's guarantee.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70357, Dec. 10, 2021; 87 FR 7368, Feb. 9, 2022; 89 FR 79718, Sept. 30, 2024]

§ 5001.205 General project monitoring requirements.

In complying with the requirements of this section, the lender may rely on written materials and other reports provided by an independent engineer and other qualified consultants.

(a) *Design requirements.* The lender must ensure that all facilities constructed with guaranteed loan funds are:

(1) Designed using accepted architectural, engineering, and design practices, taking into consideration any Agency comments when the facility is being designed;

(2) Designed in conformance to applicable Federal, Tribal, State, and local codes and requirements;

(3) Constructed to support operations at the level and quality contemplated by the borrower using accepted architectural and engineering practices; and

(4) Compliant with applicable domestic procurement preference requirements including section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act (Pub. L. 117–58).

(b) *Rights-of-ways, easements, and property rights.* The lender is responsible for ensuring that the borrower has:

(1) Obtained valid, continuous, and adequate rights-of-way and easements, in compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) if applicable, needed for the construction, operation, and maintenance of a project; and

(2) Obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the project and to provide the required security.

(c) *Permits, agreements, and licenses.* It is the lender's responsibility to ensure the borrower obtains all permits, agreements, and licenses that are applicable to the project.

(d) *Insurance.* It is the lender's responsibility to ensure the borrower obtains and maintains borrower and project insurance in substance and amount similar to that ordinarily required by lenders in the industry.

(e) *Construction monitoring requirements.* The lender, or its designated agent, will monitor the progress of construction of the project and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, Tribal, State, and local code requirements and that construction proceeds in accordance with the plans, specifications, and contract documents.

(1) *Construction inspections.* The lender must notify the Agency of any scheduled field inspections during construction. The Agency may attend any field inspections the lender may conduct. Any Agency inspection, including those with the lender, are for the benefit of the Agency only (and not for the benefit of other parties in interest) and do not relieve any parties of interest of their responsibilities to conduct necessary inspections. On a case-by-case basis in the event that the Agency determines that there is additional risk to the government, the Agency may require the use of a qualified, independent inspector to inspect construction to ensure the project is being adequately built to meet the borrower's requirements of the borrower's approved project and comply with all applicable codes and legal requirements.

(2) *Issuance of loan note guarantee prior to completion of the project's construction.* Except for projects utilizing non-proven technologies, the lender may request that the loan note guarantee be issued prior to completion of a project's construction. The lender's request will be considered by the Agency, who may require credit risk mitigation. An additional fee for issuance of the loan note guarantee prior to completion of the project's construction will be assessed in accordance with § 5001.454(c) in subpart E. The lender must verify and include evidence of the following in its request:

(i) The promissory note specifying the full term of the note and containing the terms and conditions of each draw period;

(ii) The borrower and lender have entered into a contract with an independent disbursement and monitoring firm with a construction monitoring plan acceptable to and approved by the Agency or, the lender documents that they have the capacity and experience to disburse funds and provides a monitoring plan acceptable to the Agency;

(iii) The borrower and lender have agreed to a detailed timetable for the project with a corresponding budget of costs setting forth the parties responsible for payment. The timetable and budget will be confirmed as adequate for the planned development by a qualified independent consultant (*e.g.*, the project architect or engineer) with demonstrated experience relating to the project's industry. The lender must provide evidence that there is sufficient cash flow to complete the project construction, including contingencies for cost overruns, plus working capital during the business start-up period;

(iv) The borrower has entered into a firm, fixed-price construction contract with an independent general contractor with costs outlined in detail and terms specifying change order approvals, the agreed retainage percentage, and the disbursement schedule. In all cases, borrower equity must be injected prior to any guaranteed loan funds;

(v) Evidence the lender has properly vetted the financial feasibility and past performance of the contractor to show they are able to complete the project or that the lender has mitigated risk in the event the project is never completed, such as requiring a 100-percent performance/payment bond on the borrower's contractor to be maintained until the contractor is released from its obligation. The bonding agent must be listed on Treasury Circular 570;

(vi) Evidence, which the Agency at its sole discretion determines is satisfactory, that the lender has completed the due diligence necessary to confirm that the contractor is able to complete the project based on information including but not limited to the financial statements and past performance of the contractor;

(vii) When applicable, the borrower has entered into a contract with an independent technology development firm guaranteeing completion of the project with the necessary technology to successfully run the project and system performance for projects that utilize integrated processing equipment and systems, such as biorefineries, RESs, and chemical manufacturing plants. The credit underwriting of the independent technology development firm must be satisfactory to and approved by the Agency. This is not limited only to renewable energy projects, but may include energy efficiency, renewable chemical, and biobased manufacturing projects. The intent of the provision is to ensure that all technology proposed for the project can be successfully integrated together to ensure successful installation and performance of the system. The respective technology providers usually guarantee their specific technology with quality parameters of input such that the end-product is what is proposed in both quality and yield. An engineering, procurement, construction (EPC) provider is responsible for the construction and assembly of the plant or facility. They adopt the quality limits and guarantee that the integrated facility that is built will perform according to specifications such that the input and operational bounds are met. The provision is likely applicable to the following types of projects:

(A) *Anaerobic digester.* An anaerobic digester project which uses a biological process that requires specific conditions and environment to be able to produce the product of biogas that can be refined to renewable natural gas (RNG). In some simpler cases the gas will be used for heat or electricity, but in other more involved cases, it will be cleaned and refined to make RNG that is marketable, and quality assessed to enter an interconnect pipeline. These types of projects should be approved and verified by an independent technology firm, for integrated performance integrity and operability as well as yield integrity.

(B) *Landfill biogas.* Like anaerobic digesters projects, a landfill biogas

project will have multiple steps and processes such as collection, clean-up, flaring and refinement to a fuel or the gas can be used to produce electricity. These types of projects should be approved and verified by an independent technology firm for integrated performance integrity and operability, as well as yield integrity.

(C) *Biofuel, biomass, ethanol, biodiesel.* A biofuel, ethanol, biomass, or biodiesel system will have multiple steps in which it must operate in line with the design proposed that has been from demonstration campaigns. It is paramount that an independent technology firm verify and guarantee the operation and performance of these integrated systems as they will have multiple processes which need to work in concert for the project to be successful. These types of projects should be approved and verified by an independent technology firm for integrated performance integrity and yield.

(D) *Solar thermal.* Solar thermal systems must have multiple processes in order to provide the end product of power, hot water, or heat. Due to their potential complexity, these systems should be approved and verified by an independent technology firm for performance integrity and operability.

(E) *Hydrogen.* These types of projects should be approved and verified by an independent technology firm for integrated performance integrity.

(F) *Geothermal.* Depending on system complexity and if it has multiple processes, the project should be fortified with a guarantee that the system will operate definitively.

(G) *Renewable chemical.* A project utilizing a series of chemical processes and reactions to produce a polymer that can be sold to make biodegradable plastics. An example of a BBP project utilizing gasification technology to produce a biochar or soil amendment as an end-user product.

(viii) Evidence, in form and substance satisfactory to the Agency, that there is sufficient contingency funding in place to handle unforeseen cost overruns without seeking additional guaranteed assistance.

(f) *Reporting during construction.* Regardless of when the loan note guarantee is issued, all lenders must report any problems in project development to the Agency within 15 calendar days of identifying the problem. If the loan note guarantee has been issued prior to construction or completion of the project, the lender must provide monthly construction reports that contain:

(1) Certifications for each draw request as follows:

(i) Certification by the independent engineer or qualified consultant to the lender that the work referred to in the draw has been successfully completed; and;

(ii) Certification by the borrower and independent engineer or qualified consultant that the guaranteed loan funds of the prior draw have been applied to eligible project costs in accordance with the draw request and that the contractors have delivered mechanics lien waivers in connection with such draw;

(2) List of invoices;

(3) Details regarding the borrower's equity, other funds, and guaranteed loan funds disbursed to date;

(4) Status of construction; and

(5) Inspection reports; and

(6) Concerns, potential problems, cost overruns, etc.

(g) *Use of guaranteed loan funds.* The lender must ensure that:

(1) All borrower funds are utilized prior to guaranteed loan funds;

(2) Guaranteed loan funds are only used for eligible project costs in accordance with the purposes approved by the Agency in the conditional commitment and in accordance with the plans, specifications, and contract documents; and

(3) The project will be completed within the approved budget.

(h) *Project completion.* Once construction of the project is completed, the lender must obtain and have on file all mechanics lien waivers or releases from all contractors and materialmen. The lender will provide to the Agency:

(1) A copy of the notice of completion or similar document issued by the relevant jurisdiction;

(2) Certification that all funds were used for authorized purposes; and

(3) A written certification that the project will be used for its intended purpose and will meet the borrower's

needs and guaranteed loan purposes in accordance with the application approved by the Agency.

(4) RES or EEI projects and projects that utilize integrated processing systems and equipment, such as biorefineries, renewable energy systems, and chemical manufacturing facilities, unless utilizing the provisions of paragraph (e)(2) of this section, must be constructed, installed, and operated as described in the technical report or on the vendor certification prior to disbursement of guaranteed loan funds. For RES, the system must be operating at the steady state operating level described in the technical report or on the vendor certification for a period of not less than 30 calendar days, unless this requirement is modified by the Agency, prior to disbursement of funds.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 86 FR 70357, Dec. 10, 2021; 89 FR 79718, Sept. 30, 2024]

§ 5001.206 Compliance with USDA Departmental Regulations, Policies, and other Federal laws.

(a) *Departmental regulations.* All projects receiving a loan guarantee under this part are subject to the provisions of USDA's Departmental Regulations, as applicable.

(b) *Other Federal laws.* Lenders and borrowers must comply with other applicable Federal laws including, but not limited to the following:

(1) Equal Employment Opportunity.

(2) Americans with Disabilities Act.

(3) Equal Credit Opportunity Act.

(4) Fair Housing Act.

(5) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

(6) Section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act (Pub. L. 117–58).

(7) 31 U.S.C. 3354 Do Not Pay Initiative.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79719, Sept. 30, 2024]

§ 5001.207 Environmental responsibilities.

Actions taken under this part must comply with 7 CFR part 1970. The Agency is responsible for ensuring that the requirements of the National Environmental Policy Act of 1969 (under 40 CFR part 1500) and related compliance actions, such as Section 106 of the National Historic Preservation Act (under 36 CFR part 800) and section 7 of the Endangered Species Act, are met. The Agency will complete the appropriate level of environmental review in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

(a) *Borrower and lender responsibilities.* Both the borrower and lender must take into consideration the potential environmental impacts of the project at the earliest planning stages. The Agency recommends that the lender contact the Agency to determine environmental requirements as soon as practicable after deciding to apply for a guarantee under this part.

(1) The lender is responsible for becoming familiar and ensuring compliance with Federal environmental requirements. The lender must alert the Agency to any environmental issues related to a project or items that may require extensive environmental review. Proposals that minimize the potential of any project to adversely impact the environment must be developed and provided upon request by the Agency.

(2) The lender must ensure that the borrower has—

(i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, including the provision of all required Federal, State, and local permits;

(ii) Not taken any actions or incurred any obligations with respect to the project that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse impact on the environment, such as the initiation of construction. Taking any such actions or incurring any such obligations could result in project ineligibility; and

(iii) Complied with any environmental mitigation measures required by the Agency.

(b) *Environmental reviews.* The Agency must complete all required environmental reviews, identifying and addressing, as appropriate, disproportionately high and adverse human health

or environmental effects on minority populations and low-income populations, in accordance with 7 CFR part 1970.

(1) The Agency may schedule a site visit if the Agency determines one is necessary in order to determine the scope of the environmental review.

(2) The lender must assist in the collection of additional data when the Agency needs such data to complete its environmental review of the project and mitigation of environmental issues.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79720, Sept. 30, 2024]

§ 5001.208 Conflicts of interest.

The lender must report all conflicts of interests, in writing, to the Agency.

§§ 5001.209–5001.300 [Reserved]

Subpart D—Guarantee Application Provisions

§ 5001.301 Beginning the application process.

(a) The lender must file applications and related documents through their Agency contact.

(b) The lender may complete either a request for preliminary eligibility review in accordance with § 5001.302 or a full application in accordance with §§ 5001.303 through 5001.307, as applicable, to begin the process for obtaining a guaranteed loan. The Agency encourages, but does not require, lenders to file requests for preliminary eligibility reviews in order to obtain Agency comments before submitting a full application.

[89 FR 79720, Sept. 30, 2024]

§ 5001.302 Preliminary eligibility review.

(a) *Contents.* Except as otherwise indicated, each request for a preliminary eligibility review must contain the material identified in paragraphs (a)(1) through (3) of this section. This information may be submitted in a narrative format or utilizing the lender's preliminary lender's analysis or preliminary credit memo.

(1) Regardless of format, the lenders must provide the following information:

(i) Name of the proposed borrower and co-borrower(s) as applicable, organization type, address, contact person, email address, and telephone number;

(ii) Name of the proposed lender, address, telephone number, contact person, email address;

(iii) Amount of the guaranteed loan request; and if known, the percentage of guarantee requested; the proposed rates and terms of the guaranteed loan; and the source(s) of other funding;

(iv) If known, a description of collateral to be offered with estimated value(s), identity of guarantors, and the amount and source of equity, other capital, and matching funds to be contributed to the project; and

(v) A brief description of the project, its location, products or services provided, service area, and, as applicable, availability of raw materials and supplies.

(2) Sufficient information and documentation to enable the Agency to assess borrower, lender, and project eligibility, including summaries or spreadsheets of financial statements or audits, relationships and identity of any affiliates; and copies of organizational documents, organizational charts, and existing debt instruments.

(3) For REAP projects:

(i) Borrower information as outlined in § 5001.307(a) and (b), and project information as outlined in § 5001.307(c).

(ii) For REAP RES projects where a residence is located at or is closely associated with and shares an energy metering devise with a rural small business or agricultural operation, demonstration that 50 percent or greater of the energy to be generated by the RES will benefit the rural small business or agricultural operation.

(b) *Assessment.* Based on the information submitted for the preliminary eligibility review, the Agency will make an informal assessment of the types of guarantee funding applicable to the request, and the eligibility of the borrower, project, and lender. The Agency will provide written informal comments. The assessment may change based on subsequently submitted information, is solely advisory in nature,

does not obligate the Agency to approve a guarantee request, and is not considered a favorable or adverse decision by the Agency.

§ 5001.303 Applications for loan guarantee.

The Agency will accept applications on a continuous basis. For each loan guarantee request, the lender must submit to the Agency a complete application that is in conformance with this section, and §§ 5001.304 through 5001.307, as applicable.

(a) *Complete applications.* Lenders must submit complete applications in order to be considered for loan guarantees. Lenders are encouraged to submit a complete application in a single package; however, the Agency may accept the environmental information required by the Agency and initiate and complete its environmental reviews in advance of receiving a complete application. If an application is incomplete, the Agency will notify the lender in writing of the items necessary to address the incomplete application. Upon receipt of a complete application, the Agency will complete its evaluation.

(b) *Content.* Lenders must provide an analysis of the scope of the project in relation to the borrower's overall operations. The application and lender's analysis should be supported by adequate documentation as applicable to the project and as listed in paragraph (c) of this section. The Agency reserves the right to request additional documentation to support the funding request. All complete applications must contain at a minimum:

(1) Agency-approved application form or system that includes all items noted in this section;

(2) Credit evaluation (conforming to § 5001.202).

(3) Environmental information required by the Agency to conduct its environmental reviews (as specified in § 5001.207(a)(2)(i)).

(4) Required financial statements including:

(i) Current Agency-acceptable balance sheet and year-to-date income statements of the borrower, and any guarantor(s) dated within 90 days of submission of the complete application;

(ii) Agency-acceptable historical balance sheet, income statements, and cash flow statements of the borrower for the lesser of the last three fiscal years or all years of operation; and

(iii) Projected balance sheets, income statements, and cash flow statements or a financial model starting from the current financial statements through a minimum of two years of the project performing at full operational capacity or stable operations. Based on the type of project or at the discretion of the Agency, financial projections or models may be required from current financial statements up to the end of the term of the guaranteed loan. Financial projections must be supported by a list of assumptions showing the basis for the projections. Projected financial statements must include a pro forma balance sheet projected for guaranteed loan closing.

(iv) The Agency may request additional financial statements, financial models, cash flow information, updated financial statements, and other related financial information to determine the financial feasibility of a project and evaluate the credit underwriting of borrower, its affiliates, and any guarantors.

(5) Identify whether or not the borrower has a known relationship or association with an Agency employee. If there is a known relationship, identify each Agency employee with whom the borrower has a known relationship.

(6) At the time of the loan application, the lender must submit its loan classification and credit risk rating classification scale.

(c) *Provisional content.* The following items may also be required based on the type of project being financed or if deficiencies exist in the credit evaluation and more information is needed to adequately determine risk:

(1) For all applications of $600,000 or greater, a draft loan agreement for the guaranteed loan.

(2) Appraisals in accordance with § 5001.203.

(3) Current credit reports or the equivalent on the borrower, any payment guarantors and any person or entity owning greater than a 20 percent or more interest in the borrower or

controls the borrower, except for passive investors and those corporations listed on a major stock exchange. A credit report or its equivalent are not required for elected and appointed officials when the borrower is a public body, or Indian Tribe, or for members of a non-profit organization. Credit reports must be submitted to the Agency for all applications for guaranteed loans in the amount of $200,000 or more. For lenders that are submitting smaller requests, the lender must keep the credit report on file with the lender's application.

(4) Feasibility study: If the Agency is unable to determine a basis for successful repayment of a guaranteed loan based on the documentation and analysis of the five feasibility study components provided in the lender's analysis, borrower's business plan, or other project information, or if the proposed project will have significant impacts on existing operations, the Agency may require an independent feasibility study. The elements of an acceptable feasibility study may vary by project scope and should be prepared by a qualified, independent third party using applicable elements of the project, including but not limited to those outlined in appendix A to subpart D of this part.

(5) Intergovernmental consultation comments in accordance with 2 CFR part 415, subpart C, or successor regulation, unless exemptions have been granted by the State's single point of contact.

(6) Engineering documentation.

(7) Architectural reports.

(8) Energy audits or energy assessments in accordance with § 5001.107.

(9) Energy efficient equipment and systems data in accordance with § 5001.108.

(10) Business plan: Unless the information is contained in the feasibility study or in the credit evaluation, a business plan should be submitted to show how the project will operate and remain viable. This requirement may be omitted when guaranteed loan funds are used exclusively for debt refinancing.

(11) If the application is for five or more residential units, including nursing homes and assisted-living centers, an Affirmative Fair Housing Marketing Plan that is in conformance with 7 CFR 1901.203(c)(3).

(12) If the application is for financing of health care facilities, a certificate of need, if required by Federal or State law.

(13) Department of Labor form as noted in § 5001.306(a)(1).

(14) Pro-forma balance sheet for closing as noted in § 5001.306(a)(2).

(15) Securities and Exchange Commission (SEC) Form 10–K, ''Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934,'' as noted in § 5001.306(a)(4).

(16) Technical reports in accordance with § 5001.307(e).

(17) Certification regarding credit elsewhere in accordance with § 5001.126(b)(3) and (c)(2).

(18) Certification of significant community support in accordance with § 5001.126(b)(4) and (c)(3).

(19) Copies of organizational documents if not already provided with a preliminary eligibility review in accordance with § 5001.302.

(d) *Application modification.* Once a complete application is accepted by the Agency and prior to Agency award of a loan note guarantee, any modification to the application will be treated as a new application and the Agency will process the information accordingly. The submission date of record for a modified application is the date the Agency receives the modified application information.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 86 FR 70357, Dec. 10, 2021; 89 FR 79720, Sept. 30, 2024]

§ 5001.304 Specific application requirements for CF projects.

In addition to the requirements specified in § 5001.303 as applicable, a lender seeking a loan guarantee for a CF project must submit a financial feasibility report prepared by a qualified firm or individual acceptable to the Agency. All projects financed under this section must meet the financial feasibility requirements of this section and must be based on projected taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for project operation and maintenance, debt payments, and

compliance with lender reserve requirements, when applicable. Other sources of revenue or existence of payment guarantors are particularly important in considering the feasibility of eligible recreation projects. The financial feasibility report must take into consideration any interest rate adjustment that may be instituted under the terms of the promissory note. Financial projections for projects that are assisted living facilities, skilled nursing facilities, or similar types of eligible residential facilities must be based on no more than 90 percent occupancy. Utility projects dependent on user fees for debt repayment shall base their income and expense forecast on user estimates supported by either a State statute or local ordinance requiring mandatory hookup or signed and enforceable user agreements. If the primary use of the essential community facility is by a business and the success or failure of the facility is dependent on that business, then the economic viability of that business must also be assessed. For projects that include the purchase and installation of RES that meet the eligibility requirements of § 5001.103(a)(8), a technical report on the RES as outlined in § 5001.307(e)(1) and (2), as applicable, will be included with the applicable financial feasibility report. The type of financial feasibility report required will depend upon the size of the guaranteed loan, the collateral securing the guaranteed loan, and the financial history of the borrower. The two types of financial feasibility report and when they are required are described in paragraphs (a) and (b) of this section.

(a) *Financial feasibility analysis.* The financial feasibility analysis will be prepared by a qualified firm or individual who may be the lender. Financial feasibility analysis requirements are outlined in appendix B to subpart D of this part. The lender's credit evaluation may serve as the financial feasibility analysis provided it includes the items outlined in appendix B to subpart D of this part. A financial feasibility analysis will be required if any of the following circumstances exist:

(1) Guaranteed loans of $25 million or less to existing community facilities;

(2) Guaranteed loans secured by a general obligation bond, or other tax supported income sufficient to pay the debt service for the life of the loan; or

(3) Borrowers with audited financial statements, if the last three years indicate the ability to pay all existing and new debt service.

(4) The Agency may require a feasibility study when the lender's analysis, borrower's business plan, or project information is not sufficient to determine the technical feasibility, market feasibility, or economic viability of the project.

(i) For guaranteed loans greater than $1,000,000.00 to a new entity or an entity conducting a new activity, a feasibility study prepared by an independent qualified consultant acceptable to the Agency is required. The scope of the feasibility study will be determined by the Agency and is dependent on the complexity of the project and the borrower.

(ii) For loans of $1,000,000.00 or less to new and existing entities, the Agency may require a feasibility study when the lender's analysis or other borrower information is not sufficient to determine the technical feasibility or economic viability of the project, or if the project will significantly affect the operations of a borrower who is an existing entity and its historic cash flow.

(b) *Financial feasibility study with examination opinion.* The report must be prepared in accordance with the standards of attestation of the American Institute of Certified Public Accountants, and the preparer must have the requisite professional liability insurance in place. A financial feasibility study with examination opinion will be required for all guaranteed loans that do not meet the requirements for a financial feasibility analysis outlined in paragraph (a) of this section. The financial feasibility study with examination opinion will typically include the items outlined in appendix B to subpart D of this part.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70357, Dec. 10, 2021; 89 FR 79720, Sept. 30, 2024]

§ 5001.305 Specific application requirements for WWD projects.

In addition to the requirements specified in § 5001.303, a lender seeking a loan guarantee for a WWD project must submit the documents specified in paragraphs (a) through (c) of this section.

(a) *Engineering documentation.* (1) Engineering documentation must meet the level of detail the lender would typically require for a standard commercial loan, and include, at a minimum, a description of the proposed project, a cost estimate, the number of residential and non-residential connections, and the population served. The lender may request assistance to clarify the Agency's requirements and regulations; however, the Agency does not provide technical oversight or recommendations as to the technical feasibility of the project.

(2) The lender must ensure that the project is designed utilizing accepted architectural and engineering practices and conforms to applicable Federal requirements (*e.g.*, the seismic requirements of Executive Order 12699 (55 FR 835, 3 CFR, 1990 Comp., p. 269), the debarment requirements of 2 CFR part 180 as supplemented by 2 CFR part 417, American Iron and Steel (Section 746 of Title VII of the Consolidated Appropriations Act of 2017), and the Copeland Anti-Kickback Act (18 U.S.C. 874)); State, local and Tribal codes and requirements; and facility plans or plans and specifications reviewed and approved by the applicable State, local and/or Tribal regulatory agency. The lender must also ensure that the planned project will be completed within the available funds and once completed, will be suitable for the borrower's needs. Upon completion of the project, the lender must certify that all applicable Federal requirements were met.

(b) *Feasibility considerations.* All projects financed under this part must be based on projected taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for project operation and maintenance, any reserves required by the lender, and debt payment. The lender's financial credit analysis must take into consideration any interest rate adjustment that may be instituted under the terms of the loan note guarantee.

(c) *Credit analysis requirements.* In addition to the requirements of § 5001.202, if the majority user of the system is a business and the financial success of the system is dependent on that business, then the economic viability of that business must be assessed.

(d) *Domestic procurement preference.* (1) *American Iron and Steel (AIS).* Guaranteed loans must comply with AIS requirements. Lenders and borrowers are responsible for meeting the AIS requirements of Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and the continuing resolutions adopted thereafter.

(2) *Build America, Buy America Act (BABAA).* BABAA was enacted as part of the Infrastructure and Jobs Act (Pub. L. 117–58) on November 15, 2021 and became effective on May 14, 2022. Under Section 70914(a) of BABAA, ''none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' Additional information may be found on the Agency's Build America, Buy America website at *https://www.rd.usda.gov/build-america-buy-america.*

(3) *Compliance.* Owners are ultimately responsible for compliance with the domestic procurement preference requirements and should consult with the Agency early in project development. Compliance must be certified to prior to the issuance of the loan note guarantee. The lender must include any domestic preference language, provided by the Agency, in the loan agreement and other appropriate loan documents.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79720, Sept. 30, 2024]

§ 5001.306 Specific application requirements for B&I projects.

In addition to the requirements specified in § 5001.303, as applicable, a lender requesting a B&I loan guarantee must submit the information specified in paragraph (a) of this section if the guaranteed loan amount is more than $600,000, or in (b) of this section if the

guaranteed loan amount is $600,000 or less.

(a) *Applications requesting a guaranteed loan in an amount greater than $600,000.* (1) The Agency is required to submit project information to the United States Department of Labor for their concurrence if the proposed guaranteed loan is in excess of $1,000,000.00 and will increase direct employment by more than 50 employees. The lender must provide sufficient project and demographic information to the Agency for completion of a Department of Labor review.

(2) A pro forma balance sheet projected for loan closing.

(3) The Agency may require a feasibility study when the lender's analysis, borrower's business plan, or project information is not sufficient to determine the technical feasibility, market feasibility, or economic viability of the project.

(i) For guaranteed loans greater than $1,000,000.00 to a new business, a feasibility study prepared by an independent qualified consultant acceptable to the Agency is required. The scope of the feasibility study will be determined by the Agency and is dependent on the complexity of the project and the borrower.

(ii) For loans of $1,000,000.00 or less to new and existing businesses, the Agency may require a feasibility study when the lender's analysis or other borrower information is not sufficient to determine the technical feasibility or economic viability of the project, or if the project will significantly affect the operations of a borrower who is an existing business and its historic cash flow.

(iii) A technical report is required for RES identified in § 5001.307(e) and for projects utilizing other integrated processing equipment and systems. The contents of the technical report must be consistent with the requirements of § 5001.307(e)(1) and must provide sufficient detail to enable the Agency to determine technical merit. The report can be provided in the technical feasibility section of a feasibility study or in a separate technical report.

(4) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission (SEC) regulations, a copy of their most recent SEC Form 10–K, ''Annual Report Pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.''

(5) Current financial statements of affiliates.

(b) *Applications requesting a guaranteed loan in an amount of $600,000 or less.* Guaranteed loan applications may be processed under this *paragraph (b)* if the amount of the guaranteed loan does not exceed $600,000, provided the Agency determines that the lender's analysis, borrower's business plan, or other project or borrower information submitted by the lender is sufficient to determine the technical feasibility, market feasibility, and economic viability of the project. If any of the items in paragraphs (a)(1) through (4) of this section apply, the lender must collect the information and maintain it in their file. A lender may need to resubmit or modify an application if the application does not contain sufficient information for the Agency to make an informed loan approval decision.

(1) Lenders submitting applications under this paragraph (b) must include the following information:

(i) Narrative description of the project including the history of the borrower and adequacy of cash flow and borrower equity;

(ii) Required financial statements including a current Agency-acceptable balance sheet and year-to-date income statements;

(iii) Security available for the guaranteed loan including collateral and payment guarantees;

(iv) Strengths and weaknesses of the guaranteed loan and the Lender's need for the loan guarantee to mitigate specific risks.

(2) The lender may elect to not submit the following application documentation to the Agency, but must have the information available in its file for review:

(i) Narrative description of management capabilities and corporate structure of the borrower;

(ii) Environmental information for the project and any environmental reviews;

(iii) Agency-acceptable historical balance sheets and income statements of the borrower and its affiliates;

(iv) Financial statements of any personal, partnership, or corporate guarantors.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79721, Sept. 30, 2024]

§ 5001.307 Specific application requirements for REAP projects.

In addition to the requirements specified in § 5001.303, a lender seeking a loan guarantee for a REAP project must submit the information identified below based on total project costs.

(a) *Borrower eligibility information.* (1) Eligible borrowers must meet the definition of agricultural producer or rural small business as defined in § 5001.3. Agricultural producers seeking funding for a RES or EEI project may apply as either a rural small business or as an agricultural producer, provided they meet the applicable eligibility requirements. Agricultural producers seeking funding for an EEE project must be eligible and apply as an agricultural producer.

(2) The borrower must provide the primary NAICS code applicable to the borrower's business concern and certify on the Agency approved application form or system that it meets the definition of agricultural producer or rural small business. The Agency reserves the right to request supporting documentation to verify borrower eligibility.

(b) *Borrower description.* Describe the ownership of the borrower, including the information specified in paragraphs (b)(1) through (3) of this section, as applicable. Include a description of the borrower's existing farm, ranch, or business operation, including how long the borrower has been in operation. Rural small businesses and agriculture operations owned by Tribes should provide documentation to adequately show the separation of the applicant and the Tribal government.

(1) Describe how the borrower meets the ownership and control requirements as identified in § 5001.126(e)(2).

(2) For each entity(ies) the borrower controls or entity(ies) it is controlled by, provide a list of the individual owners with their contact information. Describe the relationship between the borrower and the other entity(ies), including percentage of ownership and control, management, passive investor ownership, and any products exchanged. Organizational charts to demonstrate the structure of the borrower should be submitted when available.

(3) Identify the ethnicity, race, and gender of the borrower. Identify if the borrower is a veteran. This information is optional and is not required for a complete application but may be used by the Agency to award priority points.

(c) *Project information.* Provide information concerning the project as a whole and its relationship to the borrower's operations, including:

(1) Identification as to whether the project is an RES, EEI, or EEE project. Include a description and the location of the project;

(2) Description of how the project will have a positive effect on resource conservation, public health, and the environment;

(3) Identification of the amount of funds and the source(s) of funds the borrower is proposing to use for the project. Provide written commitments for funds at the time the application is submitted to receive points under this scoring criterion.

(i) For project funding provided by the borrower, documentation may include bank statements that demonstrates availability of funds.

(ii) For project funding that comes from a third party, a commitment letter signed by an authorized official of the third party. The letter must be specific to the project and must identify the dollar amount of any loan or other funding and any applicable rates and terms. If the third-party commitment is for a loan, the commitment must be firm; a letter-of-intent or pre-qualification letter subject to underwriting requirements or contingencies is not acceptable.

(d) *Feasibility study.* For RES projects only, when deemed necessary by the lender or Agency, an analysis conducted in conformance with the definition of feasibility study found in § 5001.3 and with applicable content in appendix A to subpart D of this part.

(e) *Technical report.* All eligible projects must have technical merit and provide information as identified in

§ 5001.106(e), § 5001.107, or § 5001.108 and (e)(1) through (3) of this section.

(1) *Level of detail.* Information provided must be in sufficient detail to enable the Agency to determine the technical merit of the project. Design drawings and process flowcharts are encouraged as exhibits. The technical report requirements can be provided in the technical feasibility section of a feasibility study, instead of completing a separate technical report.

(i) Sufficient information to enable the calculation of simple payback as defined in § 5001.3;

(ii) For RES projects, sufficient information to enable the calculation of the percentage of historical use of energy compared to the amount of renewable energy that will be generated once the project is operating at its steady state operating level. If the project is closely associated with a residence, satisfactory demonstration must be made that 50 percent or more of the projected renewable energy will benefit the agricultural operation or rural small business; and

(iii) Demonstrate that the RES, EEI, or EEE project will operate or perform over the project's useful life in a reliable, safe, and a cost-effective manner, which may include but is not limited to addressing project design, installation, operation, maintenance, and warranties.

(iv) In addition, the following technologies, must provide a technical report in accordance with paragraphs (e)(1)(v) through (viii) of this section, as applicable:

(A) Hydrogen;

(B) Ocean energy;

(C) Geothermal electric generation;

(D) Anaerobic digesters and biogas;

(E) Biomass;

(F) Hybrid applications;

(G) Renewable energy systems with storage components; and

(H) Energy efficiency improvements

(v) For total project costs in the amount of $80,000 or less, a technical report, as identified in § 5001.303(c)(16), prepared in accordance with the following paragraphs, as applicable:

(A) *EEI technical reports.* Each EEI technical report submitted under this section must provide:

(*1*) A description of the proposed EEI, including its intended purpose;

(*2*) Vendor/installer certification that the EEI project uses commercially available technology;

(*3*) Vendor/installer certified projections on the quantity of energy to be saved;

(*4*) Certification by vendor/installer that they are qualified to complete the project as intended;

(*5*) Vendor/installer certification that the EEI system will operate and perform over the project's useful life in a reliable and cost-effective manner; and

(*6*) An estimate of simple payback, including all calculations, documentation, and any assumptions.

(B) *RES technical reports.* Each RES technical report submitted under this section must provide:

(*1*) A description of the proposed RES project, including its intended purpose;

(*2*) Vendor/installer certified projections on energy to be replaced and/or generated, including the quality and availability of the renewable resource to the project; if there is a residence closely associated with the RES project, the historical amount of energy used by the residence and the historical amount of energy used by the agricultural operation or rural small business, as applicable, to satisfactorily demonstrate 50 percent or more of proposed generation will benefit the agricultural operation or rural small business;

(*3*) Vendor/installer certification that the RES project uses commercially available technology;

(*4*) Certification that the vendor/installer is qualified to complete the project as intended;

(*5*) Certification that the project will perform over its useful life in a reliable and cost-effective manner; and

(*6*) The projected financial performance of the project. The description must address total project costs, revenues accrued from the sale or crediting of energy, quantity and value of energy offset, and revenue from byproducts. Include applicable investment and other production incentives and indicate if they are one time or reoccurring incentives. Provide an estimate of simple payback, including all calculations, documentation, and any assumptions.

(C) *EEE technical reports.* Each EEE technical report submitted under this section, regardless of total project costs, must provide:

(*1*) A description of the proposed EEE and its intended purpose, including baseline data, specifications, and efficiency data;

(*2*) Vendor/installer certification that the EEE project uses commercially available technology;

(*3*) Vendor/installer certification of the proposed energy consumption quantity and price per unit of the energy efficiency equipment to be installed;

(*4*) Certification by vendor/installer that they are qualified to complete the project as intended;

(*5*) Vendor/installer certification that the EEE system will operate and perform over the project's useful life in a reliable and cost-effective manner; and

(*6*) An estimate of simple payback, including all calculations, documentation, and any assumptions.

(vi) For EEI guaranteed loan projects with total project costs greater than $80,000, the technical report identified in paragraph (e)(1)(v)(A) of this section applies, except that appendix C to subpart D of this part is to be followed to prepare the report.

(vii) For RES guaranteed loan projects with total project costs greater than $80,000 and up to but not including $200,000, the technical report identified in paragraph (e)(1)(v)(B) of this section applies, except that appendix D to subpart D of this part is to be followed to prepare the report.

(viii) For RES guaranteed loan projects with estimated total project costs of $200,000 or greater, the technical report identified in paragraph (e)(1)(v)(B) of this section applies, except that appendix E to subpart D of this part is to be followed to prepare the report.

(2) *Modifications.* If the technical report is prepared prior to the borrower's selection of a final design, equipment vendor, or contractor, or other significant decision, the borrower may modify the report and resubmit it to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report may require additional environmental documentation in accordance with 7 CFR part 1970.

(3) *Hybrid projects.* If the application is for a hybrid project, technical reports must be prepared for each technology that comprises the hybrid project.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79721, Sept. 30, 2024]

§§ 5001.308–5001.314 [Reserved]

§ 5001.315 Application evaluation and award provisions.

(a) *General.* The Agency will evaluate all applications according to the provisions of this part and may require the lender to obtain additional assistance in those areas where the lender does not have the necessary expertise to originate or service the guaranteed loan. For the purposes of this paragraph (a), ''those areas'' mean:

(1) The type and complexity of the financing (*e.g.*, asset-based financing, cash flow financing, and bond financing); and

(2) Loans to borrowers engaged in industries where the lender has little or no origination and/or servicing experience.

(b) *Evaluation and eligibility determinations.* The Agency will review each complete application to make a formal determination as to: the eligibility of the borrower, lender, project, and guaranteed loan purpose and proposed use of funds; if there is a reasonable assurance of repayment ability; if sufficient collateral and equity exists; if the proposed guaranteed loan complies with all applicable statutes and regulations; and if the environmental review is complete. The Agency will only guarantee loans that are sound and that have a reasonable assurance of repayment.

(1) If the Agency's evaluation and determination in accordance with this paragraph (b) is favorable, the Agency will proceed in accordance with paragraph (c) of this section.

(2) If the Agency's evaluation and determination in accordance with this paragraph (b) is unfavorable, the Agency will notify the lender, in writing, as applicable, identifying the reason(s) for

determining ineligibility and any applicable appeal or review rights. No further processing of the application will occur.

(c) *Priority score.* The Agency will score each eligible application based on the point system for the respective program identified in §§ 5001.316 through 5001.319.

(1) Lenders must provide necessary information related to determining the priority score, if requested by the Agency. To the extent possible, lenders should consider the established priorities of the Agency when submitting projects for a loan guarantee. Higher scoring applications will receive first consideration for funding.

(2) The Agency may establish a minimum priority score for each guarantee program. The Agency will, if established, publish the minimum score in a document in the FEDERAL REGISTER. Applications that do not meet the applicable minimum score will compete with all other guaranteed loan applications for each specific program in a competition on the first business day of September of the Federal fiscal year in which the application is ready for funding.

(d) *Funding selected applications.* Each program identified in § 5001.1 will consider applications for funding in the order they are received by the Agency. If the Agency approves the application and guaranteed funds are available, the Agency will issue a conditional commitment to the lender in accordance with § 5001.451 of subpart E. In the event total loan requests exceed the amount of funding available the applications will be ranked for priority by each program. As applications are funded, the remaining guaranteed loan funding authority may be insufficient to fund the next highest scoring application or applications (where two or more applications receive the same priority score). The Agency will use the procedures described in paragraphs (d)(1) and (2) of this section as often as necessary to consider all applications as appropriate.

(1) If the remaining funds are insufficient to fund the next highest scoring application completely, the Agency will notify the lender and offer the lender the opportunity to accept the remaining funds. If the lender does not accept the offer, the Agency will process the next highest scoring application.

(2) If the remaining funds are insufficient to fund each application that receives the same priority score, the Agency will notify each lender and offer the lenders the opportunity to accept a prorated share of the remaining funds.

(3) Any lender offered less than the full amount requested under either paragraph (d)(1) or (2) of this section can either accept the funds available or request to compete in the next funding cycle. There is no assurance that the application(s) will be funded in a subsequent funding cycle.

(4) If a lender agrees to the lower loan guarantee amount offered by the Agency under either paragraph (d)(1) or (2) of this section, the lender must certify that the purpose(s) of the project can still be met at the lower funding level and must provide documentation that the borrower has obtained the remaining funds needed to complete the project as originally proposed.

(e) *Handling of ranked applications not funded.* The Agency will withdraw from consideration ranked applications that have not received funding as follows:

(1) If an unfunded application has a priority score equal to or greater than any applicable minimum score, the Agency will retain the application for consideration in subsequent funding cycles. If the unfunded application is not selected for funding after 12 months, including the first month in which the application was considered, the Agency will withdraw the application from further funding consideration.

(2) If an unfunded application has a priority score less than any applicable minimum score and remains unfunded after the competition held on the first business day of September of the fiscal year in which the application is ready for funding, the Agency will notify the applicant in writing and withdraw the application from further funding consideration.

(f) *Commencement of the project.* The borrower assumes all risks if the borrower purchases real property or equipment or starts construction of the

project to be financed by a guaranteed loan after the complete application has been received by the Agency, but prior to the Agency's issuance of the conditional commitment and the lender and borrower's acceptance of the conditional commitment.

(g) *Application withdrawal.* During the period between the submission of an application and prior to issuance of the conditional commitment, the lender must notify the Agency, in writing, if the project is no longer viable or the borrower no longer is requesting financial assistance for the project. When the lender notifies the Agency, the Agency will rescind the selection and withdraw the application, as applicable.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79721, Sept. 30, 2024]

§ 5001.316 CF project priority point system and reservation of funds.

This section applies to CF projects seeking a loan guarantee. Paragraphs (a) through (d) of this section outline the criteria and amount of priority points that may be awarded to an application. The highest possible priority score is 55. Paragraph (e) of this section outlines the reservation of funds for projects located in rural areas of 20,000 population or less.

(a) *Population priority.* If the project will be located in a rural community having a population of less than 20,000—15 points.

(b) *Project priority.* If the project will construct, enlarge, extend or otherwise improve a public safety, health clinic, early education, primary or secondary education facility—10 points.

(c) *Leveraging priority.* If the applicant commits other funds to the project in the following percentages:

(1) 50 percent or more–15 points
(2) 20% up to 49%–10 points
(3) 5% up to 19%–5 points

(d) *Administrator priority.* When guaranteed loan funds are requested from a National Office reserve, the Administrator may assign up to 15 points to address:

(1) Geographic distribution of funds;

(2) Emergency conditions caused by economic problems or natural disasters; or

(3) Initiatives that support the Agency's strategic plan.

(e) *Rural priority.* (1) Of the funds available each Federal fiscal year, as published on the Agency's website, the following amounts shall be reserved for projects in rural areas with a population of not more than 20,000 inhabitants:

(i) 100 percent of the first $200,000,000 so made available;

(ii) 50 percent of the next $200,000,000 so made available; and

(iii) 25 percent of all amounts exceeding $400,000,000 so made available.

(2) On July 1 of each year, the Agency will evaluate the dollar amount of complete applications on hand for projects in rural areas with a population of not more than 20,000 inhabitants. The dollar amount of the complete applications will be subtracted from the reserved allocation identified in this paragraph (e) and the remaining amount will be made available through the end of the Federal fiscal year for projects in rural areas with a population of not more than 50,000 inhabitants.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79722, Sept. 30, 2024]

§ 5001.317 WWD project priority points system.

This section applies to WWD projects seeking a loan guarantee. The highest possible priority point score is 150.

(a) *Population priority.* If the project will primarily serve a rural area having a population under 10,000, 20 points will be awarded.

(b) *Health priorities.* If the proposed project is:

(1) Needed to alleviate an emergency situation, correct unanticipated diminution or deterioration of a water supply, or to meet Safe Drinking Water Act requirements which pertain to a water system, 25 points will be awarded;

(2) Required to correct inadequacies of a wastewater disposal system, or to meet health standards which pertain to a wastewater disposal system, 25 points will be awarded; or

(3) Required to meet administrative orders issued to correct local, State, or Federal solid waste violations, 15 points will be awarded.

(c) *Service area priorities.* An application is eligible to receive points under each of the categories identified in paragraphs (c)(1) through (3) of this section if the service area includes:

(1) An eligible area of long-term population decline according to the last three decennial censuses, 5 points will awarded.

(2) A rural county that has had 20 percent or more of its population living in poverty, as defined by the United States Census Bureau, for the last 30 years, 5 points will be awarded.

(3) For a city or county with a current unemployment rate, as determined by the Department of Labor, that is 125 percent of the State-wide rate or greater, 5 points will be awarded. For projects located in certain territories that may not have unemployment rates by localities, if the applicant's proposed service area has an unemployment rate exceeding 125 percent of the national unemployment rate, 5 points will be awarded.

(d) *Other priorities.* Applications are eligible for points under each of the following priorities:

(1) If the proposed project will merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service, 10 points will be awarded.

(2) If the proposed project will enlarge, extend, or otherwise modify existing facilities to provide service to additional rural areas, 10 points will be awarded.

(3) If the applicant is a public body or Indian tribe, 5 points will be awarded;

(4) If the amount funds committed to the project from sources other than Rural Development is:

(i) 50 percent or more, 15 points will be awarded;

(ii) 20 percent to 49 percent, 10 points will be awarded;

(iii) 5 percent to 19 percent, 5 points will be awarded;

(5) If the project will serve Agency identified target areas, 5 points will be awarded;

(6) If the project primarily recycles solid waste products thereby limiting the need for solid waste disposal, 5 points will be awarded; and

(7) If the project will serve an area that has an unreliable quality or supply of drinking water, 10 points will be awarded.

(e) In certain cases, the approval official may award up to 15 points to a project. The points may be awarded to projects in order to improve compatibility and coordination between WWD and other agencies' selection systems, to ensure effective RUS fund utilization, and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time these points are assigned.

(f) *National office priorities.* The Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds, the highest priority projects within a state, and emergency conditions caused by economic problems or natural disasters. The Administrator may delegate the authority to assign the 15 points to appropriate National Office staff.

§ 5001.318 B&I project priority point system.

This section applies to B&I projects seeking a loan guarantee. When applications on hand have the same priority score, the Agency will give preference to applications involving guaranteed loans from veterans. To receive veteran points, a veteran or veterans must own 20 percent or more interest in the borrower and the borrower must sign a certification in its application to indicate that the borrower has veteran status. A maximum of 100 points can be awarded.

(a) *Population priority.* If the project is located in an unincorporated area or in a city with a population under 25,000, 5 points will be awarded.

(b) *Location priority.* An application is eligible to receive points under each of the categories identified in paragraphs (b)(1) through (3) of this section if the project is located within:

(1) A distressed community in accordance with the Economic Innovation Group distressed community index. The list can be found on the Agency's website at: *https://www.rd.usda.gov/onerdguarantee,* 5 points will be awarded.

(2) A rural county that has had 20 percent or more of its population living in poverty, as defined by the United

States Census Bureau, for the last 30 years, 5 points will be awarded.

(3) For a city or county with a current unemployment rate, as determined by the Department of Labor, 125 percent of the State-wide rate or greater, 5 points will be awarded. For projects located in certain territories that may not have unemployment rates by localities, if the applicant's proposed service area has an unemployment rate exceeding 125 percent of the national unemployment rate, 5 points will be awarded.

(4) The boundaries of a federally recognized Indian Tribe's reservation, within Tribal trust lands, or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act, 5 points will be awarded.

(c) *Guaranteed loan features.* An application is eligible to receive points under each of the categories identified in paragraphs (c)(1) through (3) of this section as follows:

(1) If the lender will price the guaranteed loan at an interest rate equal to or less than the equivalent of the *Wall Street Journal* published Prime Rate plus 1.5 percent, 5 points will be awarded.

(2) If the guaranteed loan is less than 60 percent of the total project cost, 5 points will be awarded.

(3) If the business is owned by a qualified veteran, 5 points will be awarded.

(d) *High impact business development investment priorities.* An application is eligible to receive points under each of the categories identified in paragraphs (d)(1) through (7) of this section below:

(1) If the industry is not already present in the local community, 5 points will be awarded.

(2) If the business has 20 percent or more of its sales in international markets, 5 points will be awarded.

(3) If the business is locally owned and managed, 5 points will be awarded.

(4) If the business will produce a natural resource value-added product, 5 points will be awarded.

(5) If the business processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products to underserved communities in accordance with § 5001.105(b)(15)(ii), 5 points will be awarded.

(6) If the business creates or saves a minimum of five jobs with an average wage exceeding 150 percent of the Federal minimum wage, 5 points will be awarded.

(7) If the business offers a healthcare benefits package to all employees and pays at least 50 percent of the healthcare premium, 5 points will be awarded.

(e) *Administrative points.* An application is eligible to receive points under paragraphs (e)(1) through (3) of this section.

(1) For projects awarded under State allocations the State Director may assign up to 10 additional points to an application to account for state-wide distribution of funds for natural disasters, local economic emergency conditions, community economic development strategies, State strategic plans, fundamental structural changes in a community's economic base, or projects that will fulfill an Agency special initiative.

(2) For projects requesting funds from the national reserve account, the State Director may request up to 10 administrative points from the Administrator.

(3) If an application is for a loan in excess of 10 million dollars, the Administrator may assign up to an additional 10 points to account for the nationwide geographic distribution of funds, or projects that will fulfill an Agency special initiative.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70357, Dec. 10, 2021; 89 FR 79722, Sept. 30, 2024]

§ 5001.319 REAP project priority point system.

This section applies to REAP projects seeking a loan guarantee. On a periodic basis, and subject to the availability of funds, the Agency will compete each complete and eligible RES, EEI, and EEE application that is ready to be funded and whose priority score, as determined in this section, meets, or exceeds the minimum priority score. Applications that do not meet the applicable minimum score will be considered as provided in § 5001.315(c)(2). A maximum score of 90 points is possible.

(a) *Environmental benefits.* The Agency will award up to 5 points under this criterion based on documentation or the applicant's indication in the application that the project will have a positive effect on resource conservation, public health, and the environment. If the project will have a positive impact on:

(1) All three impact areas, 5 points will be awarded;

(2) Any two of the three impact areas, 3 points will be awarded; or

(3) Any one of the three impact areas, 1 point will be awarded.

(b) *Energy generated, replaced, saved, or percent efficiency.* The Agency will award up to 25 points under this criterion. Each application is eligible for points under both paragraphs (b)(1) and (2) of this section.

(1) *Quantity of energy generated or saved per RES/EEI loan amount requested, or percent efficiency of EEE project.* The Agency will award up to 10 points under this sub-criterion. Points will be awarded for either the amount of renewable energy generation per dollar of loan amount requested, which includes those projects that are replacing energy usage with a renewable source; or the actual annual average energy savings over the most recent 12, 24, 36, 48, or 60 consecutive months of operation per dollar of guaranteed loan amount requested; or the percent efficiency of the EEE project. The Agency will not award points for more than one category.

(i) *Renewable energy systems.* The quantity of energy generated or replaced per guaranteed loan dollar requested will be determined by dividing the projected total annual energy generated or replaced by the RES or RES retrofit (minus energy for residential use), which will be converted to BTUs, by the guaranteed loan dollars requested. Applications for retrofitting of a RES that are not projecting to increase the amount of renewable energy that the RES is generating, while still eligible for REAP, will not be awarded points under this criteria. Off-the-grid projects and direct-use projects which are not replacements, will be awarded points based on proposed energy generation. Points will be awarded under this sub-criterion based on the annual amount of energy generated or replaced (minus energy for residential use) per dollar of guaranteed loan amount requested for the RES project. The Agency will award up to 10 points as determined under *paragraph (b)(1)(i)(A)* and *(B)* of this section below. If the annual amount of energy generated per dollar of guaranteed loan amount requested calculated under *paragraph (b)(1)(ii)* of this section is:

(A) 50,000 BTUs or higher average annual energy generated or replaced per dollar of guaranteed loan amount requested or higher, 10 points will be awarded; or

(B) Less than 50,000 BTUs annual energy generated or replaced per dollar of guaranteed loan amount requested, points will be awarded according to the result of taking the energy generated or replaced per guaranteed loan dollar requested ÷ 50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(ii) *Energy efficiency improvements.* The Agency will award up to 10 points under this sub-criterion based on the average annual energy saved per dollar of guaranteed loan amount requested for the EEI project. The Agency will award up to 10 points as determined under paragraph (b)(1)(ii)(A) and (B) of this section.

(A) 50,000 BTUs or higher average annual energy saved per dollar of guaranteed loan amount requested, 10 points will be awarded; or

(B) Less than 50,000 BTUs average annual energy saved per dollar of guaranteed loan amount requested, points will be awarded according to the result of taking the energy generated per loan dollar requested ÷ 50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(iii) *Energy efficient equipment and systems.* If the increased energy efficiency of the proposed equipment and systems is—

(A) 75 percent or greater, award 10 points;

(B) Less than 75 percent but equal to or greater than 50 percent, award 5 points;

(C) Less than 50 percent but equal to or greater than 25 percent, award 2.5 points; or

(D) Less than 25 percent, award 0 points.

(2) *Quantity of energy replaced, generated, or saved, or percentage of energy efficiency.* The Agency will award up to 15 points under this sub-criterion. Points will be awarded based on whether the project is for energy replacement, energy generation, or energy savings, or percentage of energy efficiency; points will not be awarded for more than one category.

(i) *Energy replacement.* The Agency will award points under this sub-criterion for an RES project based on the amount of energy replaced by the project compared to the amount of energy used by the applicable process(es) over a 12-month period. If the estimated energy produced is more than 150 percent of the energy used by the applicable process(es), the project will be scored as an energy generation project under *paragraph (b)(2)(ii)* of this section. When calculating the percentage of energy being replaced and whether it is categorized as a replacement or generation, the entire amount of energy produced by the new system will be used in the calculation, regardless of whether the project is being prorated because it shares a meter with a residence or if it has ineligible project costs.

(A) *Documentation for energy replacement.* For a RES project to qualify as energy replacement, the borrower must provide documentation in its application on prior energy use incurred by the borrower. Documentation must be shown that the borrower entity incurred the cost of the historical energy to be replaced, in order for the project to qualify as energy replacement. Replacement of existing direct use renewable energy can be considered in the replacement calculation as long as the borrower entity owns the existing RES system. For a project involving a recent acquisition, historical energy costs of the previous owner can be used to document prior energy use. Applicant entities cannot utilize historical energy costs of affiliate businesses to document prior energy use. Proposed energy use, such as that attributed to an expansion, is not considered in the replacement calculation. For a RES project involving new construction and being installed to serve the new facility, the project can be classified as energy replacement only if the borrower can document prior energy use from a facility that is within plus or minus 10 percent of the size of the facility it is replacing. The estimated quantities of energy must be converted to either BTUs, watts, or similar energy equivalents to facilitate scoring.

(B) *Calculation.* Energy replacement is determined by dividing the quantity of renewable energy that the RES project is estimated would have been generated if it were in place over the most recent 12-month period by the quantity of energy actually consumed over the same period by the applicable energy process(es) that is(are) consuming energy.

(C) *Awarding of points.* Using the results from paragraph (b)(2)(ii)(B) of this section, if the percentage of energy replacement is—

(*1*) Greater than 50 percent, 15 points will be awarded;

(*2*) Greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or

(*3*) Equal to or less than 25 percent, 5 points will be awarded.

(ii) *Energy generation.* If the RES project is intended for production of energy or is a proposed retrofitting of an existing RES which increases the amount of energy generated, the Agency will award 10 points. Applications for retrofitting of an RES that are not projecting to increase the amount of renewable energy that the RES is generating, while still eligible for REAP, will not be awarded points under this criteria. If the borrower cannot document prior energy use, the project will be scored as an energy generation project, regardless of whether or not there is an agreement in place to sell the power.

(iii) *Energy saved.* The Agency will award up to 15 points under this subcriterion for an EEI project based on the percentage of estimated energy saved by the installation of the project as determined by the projections in the applicable vendor certification, energy assessment or energy audit. If the estimated energy expected to be saved over

the same period used in the energy assessment or energy audit, as applicable, will be—

(A) 50 percent or greater, 15 points will be awarded;

(B) 35 percent up to, but not including 50 percent, 10 points will be awarded;

(C) 20 percent up to, but not including 35 percent, 5 points will be awarded; or

(D) Less than 20 percent, no points will be awarded.

(iv) *Energy efficiency*. If the percentage of energy efficiency is—

(A) Greater than 50 percent, 15 points will be awarded;

(B) Greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or

(C) Equal to or less than 25 percent, 5 points will be awarded.

(c) *Commitment of funds*. The Agency will award up to 15 points under this criterion based on the percentage of acceptable written commitment a borrower has from its other funding sources that are documented with a complete application.

(1) *Calculation*. The percentage of written commitment is calculated as follows: Percentage of written commitment = total amount of funds for which written commitments have been submitted with the application ÷ Total amount of matching funds and other funds required.

(2) *Awarding of points*. Using the result from paragraph (c)(1) of this section, the Agency will award points as shown in paragraphs (c)(2)(i) through (iii) of this section.

(i) If the percentage of written commitments is 100 percent of the matching funds, 15 points will be awarded.

(ii) If the percentage of written commitments is less than 100 percent, but more than 50 percent, points will be awarded as follows: ((Percentage of written commitments − 50 percent) ÷ (50 percent)) × 15 points, where points awarded are rounded to the nearest hundredth of a point.

(iii) If the percentage of written commitments is 50 percent or less, no points will be awarded.

(d) *Previous grantees or borrowers*. The Agency will award up to 15 points under this criterion based on whether the borrower has received and accepted a REAP grant award under 7 CFR part 4280 or a guaranteed loan commitment under either this part or 7 CFR part 4280. Received and accepted means REAP grant funds were disbursed and/or a REAP loan note guarantee was issued by the Agency. The determination is based on the fiscal year in which the obligation was made.

(1) If the borrower has never received and accepted a grant award under 7 CFR part 4280 or a guaranteed loan commitment under either this part or 7 CFR part 4280, 15 points will be awarded.

(2) If the borrower has not received and accepted a grant award under 7 CFR part 4280 or a guaranteed loan commitment under either this part or 7 CFR part 4280 within the previous two Federal fiscal years, 10 points will be awarded.

(3) If the borrower has received and accepted a grant award under 7 CFR part 4280 or a guaranteed loan commitment under either this part or 7 CFR part 4280 within the previous two Federal fiscal years, no points will be awarded.

(e) *Existing businesses*. A maximum of 5 points will be awarded for an existing agricultural producer business or rural small business that meets the definition of existing business in § 5001.3. The business must be in operation for at least one full year, not simply a year since legal business formation.

(f) *Simple payback*. A maximum of 15 points will be awarded for this criterion based on the simple payback of the project as defined in § 5001.3. Points will be awarded for either RES, EEI, or EEE; points will not be awarded for more than one category. See definition of simple payback for calculations. Simple payback calculations will be calculated based only on the documented information provided with the application.

(1) *Renewable energy systems*. RESs includes replacement, generation, and direct-use RES projects. If the simple payback of the project is:

(i) Less than 10 years, 15 points will be awarded;

(ii) 10 years up to but not including 15 years, 10 points will be awarded;

(iii) 15 years up to and including 25 years, 5 points will be awarded; or

(iv) Longer than 25 years, no points will be awarded.

(2) *Energy efficiency improvements.* If the simple payback of the project is:

(i) Less than 4 years, 15 points will be awarded;

(ii) 4 years up to but not including 8 years, 10 points will be awarded;

(iii) 8 years up to and including 12 years, 5 points will be awarded; or

(iv) Longer than 12 years, no points will be awarded.

(3) *Energy efficient equipment and systems.* If the simple payback of the project is—

(i) Less than 4 years, 15 points will be awarded;

(ii) 4 years up to but not including 8 years, 10 points will be awarded;

(iii) 8 years up to and including 12 years, 5 points will be awarded; or

(iv) Longer than 12 years, no points will be awarded.

(g) *Administrator priority points.* Under this criterion, the Administrator may award up to 10 points to an application based on the conditions specified in paragraphs (g)(1) through (5) of this section. Under no circumstances will an application receive more than 10 points under this criterion.

(1) The application is for an underrepresented technology.

(2) Selecting the application helps achieve geographic diversity.

(3) The borrower is a veteran or veterans own 20 percent or more in interest in the borrower. In order to receive points, the borrower must sign a certification in its application to indicate that the borrower has veteran status.

(4) Selecting the application helps further a Presidential initiative or a Secretary of Agriculture priority.

(5) The proposed project is located in a federally declared disaster area. Declarations must be within the last 3 calendar years.

(6) The project is located in an area where 20 percent or more of its population is living in poverty, as defined by the United States Census Bureau, for the last 30 years; an underserved community; or an area which has experienced long-term population decline, or loss of employment.

(h) *Unused funding.* After each periodic competition, the Agency will roll any remaining guaranteed loan funding authority into the next competition. At the end of each Federal fiscal year, the Agency may elect at its discretion to allow any remaining multi-year funds to be carried over to the next Federal fiscal year rather than selecting a lower scoring application.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79722, Sept. 30, 2024; 90 FR 30561, July 10, 2025]

§§ 5001.320–5001.400 [Reserved]

APPENDIX A TO SUBPART D OF PART 5001—FEASIBILITY STUDY COMPONENTS

ELEMENTS OF AN ACCEPTABLE FEASIBILITY STUDY

EXECUTIVE SUMMARY
Provide an overview to describe the nature and scope of the proposed project, including the purpose, project location, design features, capacity, and estimated capital costs. Include a summary of the feasibility determinations made for each applicable component.

ECONOMIC	
What is it?	Cost benefit analysis
What are the factors to consider?	Minimum amount of inputs (labor, infrastructure, utilities, renewable resources, feedstocks) to operate successfully Contracts in place and contracts to be negotiated, including terms and renewals Environmental risks Cost of project relative to the increase in revenues or benefits provided Overall economic impact of project including new markets created and economic development

MARKET	
What is it?	Analysis of the current and future market potential, competition, sales or service estimations including current and prospective buyers or users
What are the factors to consider?	Competition Type of project: service, product or commodity based Target market, new versus established End user analysis, captive versus competitive By-product revenue streams Industry risk

TECHNICAL	
What is it?	Analyzing the reliability of the technology to be used and/or the analysis of the delivery of goods or services, including transportation, business location, and the need for technology, materials, and labor.
What are the factors to consider?	Commercial availability Product and process success record and duplication of results Experience of the service providers Roads, rail, airport infrastructure Need for local transportation Labor market Availability of materials Use, age, and reliability of technology Construction risk

FINANCIAL	
What is it?	Analysis of the operation to achieve sufficient income, credit, and cashflow to financially sustain the project over the long term and meet all debt obligations.
What are the factors to consider?	Commercial or project underwriting Management's assumptions Accounting policies Source of repayment Dependency on other entities Equity contribution Market demand forecast Peer industry comparison Cost-accounting system Availability of short-term credit Adequacy of raw materials and supplies Sensitivity analysis

MANAGEMENT	
What is it?	Analysis of the legal structure of the business or operation; ownership, board and management analysis.
What are the factors to consider?	History of the business or organization Professional and educational background Experience Skills Qualifications necessary to implement the project

RECOMMENDATION
Conclude with an opinion and recommendation presented by the consultant

QUALIFICATIONS
Provide a resume or statement of qualifications of the author of the feasibility study, including prior experience.

APPENDIX B TO SUBPART D OF PART 5001— FINANCIAL FEASIBILITY REPORTS

ELEMENTS OF FINANCIAL FEASIBILITY REPORTS

FINANCIAL FEASIBILITY ANALYSIS	
The following is a guide of the minimum items to be addressed in the preparation of the financial feasibility analysis. The level of effort required to prepare the report and the depth of analysis within the report are proportional to the size and complexity of the proposed project. The preparer is expected to fully disclose and analyze all significant factors that may have favorable or adverse effect on the financial success of the proposed facility.	
Existing facility	Explain current capacities; rates or usage; activities; suitability for continued use; alternate usage; deficiencies in servicing; staffing or physical conditions; and any other pertinent information.
Proposed facility	Description of construction and renovation by component parts including capacity of each component part and physical limiting factors.
Need for facility	Explain and document the need for the facility. Include comments regarding: • Service area • Population trends • Similar facilities and services in the area • Usage trends • Community support • Regulatory agency approval • Economy in the service area • Analysis of staff and consultants
Financial information	Explain all assumptions, underlying and expected demand, use, and projections of financial data, such as: • Changes in usage • All income and expenses • Rate structure • Allowance for collectible accounts • Depreciation life and method • Description of long-term debts
Financial statements	The following financial statements must be prepared reflecting 5 years' projections: • Balance sheet for all funds • Statement of income and expense • Statement of cash flow (cash receipts and disbursements) • Comparison data for facilities in similar industry or service (most recent year only)
Qualifications	Provide a resume or statement of qualifications of the preparer of the financial feasibility analysis

FINANCIAL FEASIBILITY STUDY WITH EXAMINATION OPINION
The financial feasibility study with examination opinion is the examination of the prospective financial information provided by the borrower ("management") culminating in an examination opinion on the reliability of the borrower's financial statements and management's underlying assumptions. The examination opinion provides a high level of assurance. The examination opinion will be prepared by a CPA with the necessary expertise to perform the study and backed by their professional liability insurance. Following are the items typically included in a financial feasibility study with examination opinion.
• Signed and dated opinion letter • 5 years historic and 5 years forecasted financial statements • Schedule of ratios pertinent to the industry • Summary of significant financial forecast assumptions and accounting policies • Summary of significant demand forecast assumptions • Sensitivity analysis • Other information deemed appropriate by the preparer

APPENDIX C TO SUBPART D OF PART 5001—TECHNICAL REPORTS FOR ENERGY EFFICIENCY IMPROVEMENT (EEI) PROJECTS WITH TOTAL PROJECT COSTS OF MORE THAN $80,000

TECHNICAL REPORTS FOR ENERGY EFFICIENCY IMPROVEMENT (EEI) PROJECTS WITH TOTAL PROJECT COSTS OF MORE THAN $80,000

For all EEI projects with total project costs of more than $80,000, provide the information specified in Sections A and D and in Section B or Section C, as applicable. If the application is for an EEI project with total project costs of $80,000 or less, please see § 5001.307(e) for the technical report information to be submitted with your application.

If the application is for an EEI project with total project costs of $200,000 and greater, you must conduct an energy audit (EA). However, if the application is for an EEI project with total project costs of less than $200,000, you may conduct either an energy assessment or an energy audit. Energy audits that meet the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHREA) Level II Energy Survey; Analysis and American National Standards Institute (ANSI); or American Society of Agricultural and Biological Engineers (ASABE) S162 Standard for performing on farm energy audits will be considered by the Agency to be acceptable audits.

Section A. Project Information

Describe how all the improvements to or replacement of an existing building and/or equipment meet the requirements of being commercially available. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the EEI(s) is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section B. Energy Audit

If conducting an EA, provide the following information.

(1) *Situation Report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being audited. Any energy conversion should be based on use rather than source.

(2) *Potential Improvement Description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency, including a discussion of reliability and durability of the improvements.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Identify significant changes in future related operations and maintenance costs.

(iv) Describe explicitly how outcomes will be measured.

(3) *Technical Analysis.* Give consideration to the interactions among the potential improvements and the current energy system(s).

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Calculate all direct and attendant indirect costs of each improvement;

(iii) Rank potential improvements measures by cost-effectiveness; and

(iv) Provide an estimate of simple payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the auditor.* Provide the qualifications of the individual or entity which completed the energy audit.

Section C. Energy Assessment

If conducting an energy assessment, provide the following information.

(1) *Situation Report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being evaluated. Any energy conversion shall be based on use rather than source.

(2) *Potential Improvement Description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency.

(3) *Technical Analysis.* Giving consideration to the interactions among the potential improvements and the current energy system(s), provide the information specified in paragraphs (3)(i) through (iii) of this appendix.

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Document baseline data compared to projected consumption, together with any explanatory notes on source of the projected consumption data. When appropriate, show before-and-after data in terms of consumption per unit of production, time, or area.

(iii) Provide an estimate of simple payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the Assessor.* Provide the qualifications of the individual or entity that completed the assessment. If the energy assessment for a project with total project costs of $80,000 or less is not conducted by energy auditor or energy assessor, then the individual or entity must have at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects.

Section D. Qualifications

Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are qualified installer/contractor.

[89 FR 79723, Sept. 30, 2024]

APPENDIX D TO SUBPART D OF PART 5001—TECHNICAL REPORTS FOR RENEWABLE ENERGY SYSTEM (RES) PROJECTS WITH TOTAL PROJECT COSTS OF LESS THAN $200,000 BUT MORE THAN $80,000

TECHNICAL REPORTS FOR RENEWABLE ENERGY SYSTEM (RES) PROJECTS WITH TOTAL PROJECT COSTS OF LESS THAN $200,000 BUT MORE THAN $80,000

Provide the information specified in Sections A through D for each technical report prepared under this appendix.

A renewable energy site assessment may be used in lieu of Sections A through C if the renewable energy site assessment contains the information requested in Sections A through C. In such instances, the technical report would consist of Section D and the renewable energy site assessment.

Note: If the total project cost for the RES project is $80,000 or less, this appendix does not apply. Instead, for such projects, please provide the information specified in §5001.307(e).

Section A. Project Description

Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed. Describe how the system meets the definition of commercially available. Identify the project's location and describe the project site.

Section B. Resource Assessment

Describe the quality and availability of the renewable resource to the project. Identify the amount of renewable energy generated that will be generated once the proposed project is operating at its steady state operating level. If applicable, also identify the percentage of energy being replaced by the system.

If the application is for a bioenergy project, provide documentation that demonstrates that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

Section C. Project Economic Assessment

Describe the projected financial performance of the proposed project. The description must address total project costs, energy savings, and revenues, including applicable investment and other production incentives accruing from government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Provide an estimate of simple payback, including all calculations, documentation, and any assumptions.

Section D. Project Construction and Equipment Information

Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the RES is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section E. Qualifications of Key Service Providers

Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

[89 FR 79724, Sept. 30, 2024]

APPENDIX E TO SUBPART D OF PART 5001—TECHNICAL REPORTS FOR RENEWABLE ENERGY SYSTEM (RES) PROJECTS WITH TOTAL PROJECT COSTS OF $200,000 AND GREATER

TECHNICAL REPORTS FOR RENEWABLE ENERGY SYSTEM (RES) PROJECTS WITH TOTAL PROJECT COSTS OF $200,000 AND GREATER

Provide the information specified in Sections A through G for each technical report prepared under this appendix.

Provide the resource assessment under Section C that is applicable to the project. For hybrid projects, technical reports must be prepared for each technology that comprises the hybrid project.

Section A. Qualifications of the Project Team

Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.

Section B. Agreements and Permits

Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, interconnection agreements and power purchase agreements are necessary for all renewable energy projects electrically interconnected to the utility grid.

Section C. Resource Assessment

Describe the quality and availability of the renewable resource and the amount of renewable energy generated through the deployment of the proposed system. For all bioenergy projects, except anaerobic digesters projects, complete Section C.3 of this appendix. For anaerobic digester projects, complete Section C.6 of this appendix.

(1) *Wind*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

(2) *Solar*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(3) *Bioenergy/Biomass Project*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable biomass resource, including harvest and storage, where applicable. Where applicable, also indicate

shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

(4) *Geothermal Electric Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(5) *Geothermal Direct Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(6) *Anaerobic Digester Project/Biogas.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes or other renewable biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis. If an anerobic digester project, identify the type of operation (*e.g.*, dairy, swine, layer, etc.), along with breed, herd population size and demographics, and the type of waste collection method and frequency information available. For the biogas produced, identify the type of digester (*e.g.*, mixed, plug-flow, attached film, covered lagoon, etc.), if applicable, or the method of capture (landfill, sewage waste treatment, etc.) and treatment. Identify the system designer and determine the digester design assumptions such as the number and type of animals, the bedding type and estimated annual quantity used, the manure and wastewater volumes, and the treatment of digester effluent (*e.g.*, none, solids separation by screening, etc. with details including use or method of disposal).

(7) *Hydrogen Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

(8) *Hydroelectric/Ocean Energy Projects.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a qualified consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(9) *Renewable Energy Systems with Storage Components.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable energy resource, where applicable. Indicate the storage system specifications and the integrity of the system in conjunction with the RES it is integrated with, including application, size, lifetime, response time, capital and maintenance costs associated with the operation as well as the distribution of the stored resource(s).

Section D. Design and Engineering

Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is commercially available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component warranties and the availability of spare parts must be presented.

Section E. Project Development

Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in Section F of this Appendix. Applications should include a concise development schedule with timelines for activities.

Section F. Equipment Procurement and Installation

Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule.

Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

Section G. Operations and Maintenance

Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the RES or EEI shall be monitored and recorded as appropriate to the specific technology.

[89 FR 79724, Sept. 30, 2024]

Subpart E—Loan and Guarantee Provisions

LOAN PROVISIONS

§ 5001.401 Interest rate provisions.

Interest rates, interest rate caps, and incremental interest rate adjustment limitations on a guaranteed loan are negotiated between the lender and the borrower. The interest rate for a guaranteed loan can be either fixed or variable, or a combination thereof, as long as it is a legal rate. Interest rates cannot be more than those rates the lender customarily charges its borrowers for non-guaranteed loans in similar circumstances in the ordinary course of business. The Agency encourages each lender to use the secondary market and pass interest-rate savings on to the borrower. If an interest rate swap is utilized, the guarantee will only cover principal and interest. The lender must provide the Agency with the overall effective interest rate charged to the borrower in the swap transaction. The Agency guarantee does not cover any fees related to the swap.

(a) *Different rates on guaranteed and unguaranteed portion of the* guaranteed *loan.* It is permissible to have different interest rates on the guaranteed and unguaranteed portions of the loan.

(b) *Variable interest rates.* A variable interest rate must be an interest rate that is tied to a published base rate, as published in a national or regional financial publication, and is agreed to by the Agency.

(1) The variable interest base rate must be specified in the promissory note along with any interest factors (*e.g.*, National Prime plus 1.0 percent).

(2) The lender may adjust the variable interest rate at different intervals during the term of the loan, but not more often than quarterly.

(3) The lender must incorporate, within the variable rate promissory note, a provision for adjustment of payment installments to fully amortize the loan by its maturity date.

(c) *Multi-rates.* When multi-rates are used, the lender must provide the Agency with the overall effective interest rate for the entire loan.

(d) *Interest rate changes.* Any change in the base rate or fixed interest rate between issuance of the conditional commitment and loan closing must be approved by the Agency. Approval of such a change must be shown as an amendment to the conditional commitment and must be reflected on the guaranteed loan closing report form.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70357, Dec. 10, 2021; 89 FR 79725, Sept. 30, 2024]

§ 5001.402 Term length, loan schedule, and repayment.

(a) *Term length.* The lender, with Agency concurrence, will establish and

justify the guaranteed loan term based on the use of guaranteed loan funds, the useful economic life of the assets being financed and those used as collateral, and the borrower's repayment ability. The maximum term allowable for final guaranteed loan maturity is limited to the justified useful life of the project or assets used as collateral but may not exceed 40 years or limitations in the applicable State statute, whichever is less.

(b) *Guaranteed loan schedule and repayment.* The lender must structure repayment in consideration of the borrower's cash flow and in accordance with the provisions of this section and the loan agreement. Scheduled guaranteed loan payments shall be made no less frequently than annually. In addition:

(1) Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term.

(2) Guaranteed loans must require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment. Balloon maturities are not allowed, unless required as a loan servicing action. Payments must be amortized to maximize successful loan repayment and may vary by type of business or cash flow.

(3) If the promissory note provides for an interest-only period, interest must be paid at least annually starting on a date that is no more than one year from the date of the promissory note. Scheduling of the first payment of principal and interest will be subject to consideration of whether the facility is operational and generates adequate income. However, the scheduling of the first full principal and interest payment must commence not more than 3 years from the date of the promissory note and be paid at least annually thereafter.

(4) There must be no ''due-on-demand'' clauses without cause. Regardless of any ''due-on-demand'' with cause provision in a lender's promissory note, the Agency must concur in any acceleration of the guaranteed loan unless the basis for acceleration is monetary default.

[86 FR 42518, July 14, 2020, as amended at 86 FR 70357, Dec. 10, 2021; 89 FR 79725, Sept. 30, 2024]

§ 5001.403 Lender fees.

(a) The lender may charge the borrower reasonable, routine, and customary charges and fees for the guaranteed loan provided they are similar to those charges the lender assesses other borrowers for the same type of loan not subject to a loan guarantee. The lender must document such fees in the application. The lender may also charge routine and customary prepayment penalties and late payment fees for the guaranteed loan, which must be stated in the guaranteed loan documents.

(b) Default charges, penalty interest, late payment fees, and additional interest expenses are not covered by the loan note guarantee and cannot be added to the principal or interest due under any loan note guarantee in the event of a loss claim as prescribed in § 5001.521 or a repurchase as prescribed in § 5001.511.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79725, Sept. 30, 2024]

§§ 5001.404–5001.405 [Reserved]

§ 5001.406 Guaranteed loan amounts.

Applicable guaranteed loan amounts depend on the type of project and the source of its funding.

(a) *CF projects.* The maximum amount of a CF guaranteed loan that may be made to a borrower, including the guaranteed and unguaranteed portions of any CF guaranteed loans, the outstanding principal and interest balance of any existing CF guaranteed loans, and any new CF guaranteed loan that is the subject of an application must not exceed $100 million.

(b) *WWD projects.* The maximum amount of a WWD guaranteed loan that may be made to a borrower, including the guaranteed and unguaranteed portions of any WWD guaranteed loans, the outstanding principal and interest balance of any existing WWD guaranteed loans, and any new WWD guaranteed loan that is the subject of an application must not exceed $50 million.

(c) *B&I projects.* The maximum total amount of B&I guaranteed loans (including the guaranteed and unguaranteed portions of any B&I guaranteed loans, the outstanding

principal and interest balance of any existing B&I guaranteed loans, and any new B&I guaranteed loan that is the subject of an application) that may be made to a borrower is limited to a maximum amount of $25 million. The Secretary, whose authority may not be redelegated, may approve, at the Secretary's discretion, guaranteed loans in excess of $25 million and up to $40 million for rural cooperatives that process value-added agricultural commodities in accordance with § 5001.105(b)(18)(i). In addition to the borrower loan limit, there is a guarantor loan limit of $100 million.

(d) *REAP projects.* The amount of a guaranteed loan that will be made available to an eligible project and borrower under this part will be at least $5,000, not to exceed 75 percent of eligible project costs. Borrowers must demonstrate evidence of a financial contribution in the project of not less than 25 percent of total eligible project costs.

(1) The maximum total amount of REAP guaranteed loans made to a borrower, including the guaranteed and unguaranteed portions of all REAP guaranteed loans, the outstanding principal and interest balance of any existing REAP guaranteed loans and the new REAP guaranteed loan that is the subject of an application, must not exceed $25 million.

(2) The total amount of funds available to agricultural producers for energy efficient equipment and systems will not exceed 15 percent of annual funds available to the program.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79726, Sept. 30, 2024]

§ 5001.407 Percentage of loan guarantee.

The percent of loan guaranteed may vary from program to program. The maximum guarantee is 90 percent of eligible guaranteed loan loss The Agency will set annually a guarantee percentage by program that will apply to loans guaranteed within each program. The annual guarantee percentage will take current Federal credit policy into consideration and may be set at or below the maximum allowed authorized by statute. The Agency will announce annual guarantee percentages each fiscal year by publishing a document in the FEDERAL REGISTER in accordance with § 5001.10.

§ 5001.408 Participation or assignment of guaranteed loan.

(a) *General.* The lender may obtain participation in the loan or assign all or part of the guaranteed portion of the guaranteed loan on the secondary market subject to the conditions specified in paragraphs (a)(1) through (5) of this section or retain the entire guaranteed loan.

(1) *Participation.* The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to and possession of the promissory note(s) and retain the lender's interest in the collateral.

(2) *Assignment.* Any assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the lender's agreement and the provisions of this section. The holders and the borrower have no rights or obligations to one another. The holders and the borrower have no rights or obligations to one another.

(3) *Minimum retention by the lender.* Minimum retention at all times must be from the unguaranteed portion of the loan and cannot be participated to another person.

(i) The lender must hold a minimum of 7.5 percent of the total loan amount.

(ii) The lender must retain its security interest in the collateral and retain the servicing responsibilities for the guaranteed loan.

(iii) The Agency can approve a reduction of the minimum retention requirement below the applicable percentage on a case-by-case basis when the lender establishes to the Agency's satisfaction that reduction of the minimum retention percentage is necessary to meet compliance with the lender's regulatory authority.

(4) *Prohibition.* The lender must not assign or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower, borrower's officers, directors, stockholders, other owners, or to members of their immediate families, or to a

parent company, an affiliate, or a subsidiary of the borrower.

(5) *Secondary market.* The lender must properly close their loan and fully disburse loan funds of a promissory note for the purposes intended prior to assignment of the guaranteed portion of the promissory note(s) on the secondary market. The lender can assign all or part of the guaranteed portion of the loan only if the loan is not in default. Default includes a borrower default in payments or a lender default by unpaid periodic guarantee retention fees. A lender using the multi-note system may sell the guarantee on the secondary market for a specific note once that note is fully disbursed, even if other guaranteed notes for the project have not been fully disbursed.

(b) *Lender's servicing fee to holder.* The assignment guarantee agreement must clearly state the guarantee portion of loan as a percentage and corresponding dollar amount of the guaranteed portion of the guaranteed loan it represents and the lender's servicing fee. The lender cannot charge the Agency a servicing fee and servicing fees are not eligible expenses for loss claim.

(c) *Distribution of proceeds.* The lender must apply all loan payments and collateral proceeds received, after payment of liquidation expenses, to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(d) *Promissory note(s).* A loan note guarantee is issued to the lender for a specific promissory note(s) executed between the lender and the borrower. The lender must retain title to and possession of the guaranteed promissory note(s), retain the lender's interest in the collateral, and retain the servicing responsibilities for the guaranteed loan. The lender is prohibited from issuing any additional promissory notes at a later date for the same guaranteed loan.

(1) The lender may assign all or part of the guaranteed portion of the loan, including interest strips, to one or more holders by using an assignment guarantee agreement for each holder. The lender must complete and execute the assignment guarantee agreement and return it to the Agency for execution prior to holder execution.

(2) The lender or holder may request a certificate of incumbency and signature from the Agency.

(3) A holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, assigned under the assignment guarantee agreement. Holders can only reassign the complete block they have received and cannot subdivide or further split their interest in the guaranteed portion of a loan or retain an interest strip.

(4) Upon notification and completion of the assignment through the use of the assignment guarantee agreement, the assignee succeeds to all rights and obligations of the holder thereunder. Subsequent assignments require notice to the lender and Agency using any format, including that used by the Securities Industry and Financial Markets Association (formerly known as the Bond Market Association), together with the transfer of the original assignment guarantee agreement.

(5) The Agency will not execute a new assignment guarantee agreement to affect a subsequent reassignment.

(6) The Agency will not reissue a duplicate assignment guarantee agreement unless:

(i) The original was lost, stolen, destroyed, mutilated, or defaced; and

(ii) The reissue is made in accordance with § 5001.459.

(e) *Rights and liabilities.* When a guaranteed portion of a loan is assigned to a holder using an assignment guarantee agreement, the holder succeeds to all rights of the lender under the loan note guarantee to the extent of the portion purchased. The full, legal interest in the promissory note must remain with the lender, and the lender remains bound to all obligations under the loan note guarantee, lender's agreement, and Agency regulations applicable to the guarantee.

(1) A guarantee and right to require purchase in accordance with § 5001.511 will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the loan guarantee by the lender, except for fraud or misrepresentation of which the holder had

actual knowledge at the time it became the holder or in which the holder participates or condones.

(2) The lender must not represent a conditional commitment of guarantee as a loan guarantee.

(3) The lender must reimburse the Agency for any payments the Agency makes to a holder on the lender's behalf under the loan note guarantee, given the lender would not be entitled to the payments had they retained the entire interest in the loan.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 86 FR 70358, Dec. 10, 2021; 89 FR 79726, Sept. 30, 2024]

§§ 5001.409–5001.449 [Reserved]

GUARANTEE PROVISIONS

§ 5001.450 General.

(a) *Full faith and credit.* A loan note guarantee issued under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder, or which a lender or holder participates in or condones.

(b) *Conditions of guarantee.* A guaranteed loan under this part will be evidenced by a loan note guarantee issued by the Agency.

(1) The entire loan must be secured by the same collateral with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the guaranteed loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior lien position in the guaranteed loan collateral may be considered on a case-by-case basis and must be approved by the Agency during the loan approval process. Requirements for guaranteed loans to purchase cooperative stock are found in § 5001.140.

(2) The lender must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the guaranteed loan.

(3) The lender will receive all payments of principal and interest on account of the entire guaranteed loan and must promptly remit to each holder and participant, if any, its pro rata share of any payment within 30 days of the lender's receipt thereof from the borrower. Holder or participant payments are determined according to their respective interest in the guaranteed loan, less only the lender's servicing fee.

(4) Any claim against a loan note guarantee or assignment guarantee agreement that is attached to, or relating to, a promissory note that provides for payment of interest-on-interest, default charges, penalty interest, or late payment fees will be reduced to remove such interest, fees and charges.

(5) The loan note guarantee is unenforceable by the lender to the extent that any loss is occasioned by:

(i) The violation of usury laws;

(ii) Use of guaranteed loan funds for unauthorized loan purposes in accordance with § 5001.122 or to the extent that those funds are used for purposes other than those specifically approved by the Agency in its conditional commitment or amendment thereof;

(iii) Failure to obtain, perfect, document, and or maintain the required collateral or security position regardless of the time at which the Agency acquires knowledge thereof; and

(iv) Negligent loan origination or negligent loan servicing as determined and documented by the Agency.

(6) The Agency will guarantee payment as follows:

(i) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the guaranteed loan it owns and on interest due (as determined under paragraph (g) of this section) on such portion less any outstanding servicing fee.

(ii) To the lender: Any loss sustained by the lender on the guaranteed portion of the guaranteed loan, including principal and interest (as determined under paragraph (c) of this section) evidenced by the promissory note(s) or assumption agreements entered into in connection with an Agency approved transfer and assumption, and secured advances for protection and preservation of collateral made with the Agency's authorization if applicable.

(c) *Accrued interest payments.* If a loan has been guaranteed by the Agency

prior to October 1, 2020, the Agency will guarantee the lender and any holders accrued interest in accordance with the applicable regulations in effect for the respective program at the time the loan was guaranteed. For all guaranteed loans closed on or after October 1, 2020, the Agency will guarantee accrued interest in accordance with paragraph (c)(1) or (2), as applicable, of this section.

(1) If the lender owns all or a portion of the guaranteed portion of the guaranteed loan or makes a protective advance, the Agency, in its sole discretion, may cover interest on the guaranteed portion for the 90 days from the most recent delinquency effective date. Per paragraph (c)(2) of this section, if applicable, the lender should issue an interest termination letter to any holder(s) and provide the Agency with a copy. The Agency will entertain the payment of interest up to 180 days past the most recent delinquency effective date only if:

(i) The lender, and not the Agency, has repurchased all holder interests in the guaranteed loan in accordance with § 5001.511;

(ii) The lender is actively engaged in a credit resolution with the borrower to bring the account current or fully liquidate the collateral under the terms of a liquidation plan approved by the Agency; and

(iii) Concurrence for inclusion of the extended period of interest to the lender is received from the Agency. The lender must request an extension of accrued interest in writing and document their collection efforts and timeframe for full resolution, which must be within 180 days from the most recent delinquency. Approved collection efforts that will extend longer than 180 days from the most recent delinquency date will be limited to 90 days of accrued interest payment from the Agency.

(2) If the guaranteed loan has one or more holders, the lender will issue an interest termination letter to each holder establishing the termination date for interest accrual and provide the Agency with a copy. The loan note guarantee will not cover interest to any holder accruing after 90 days from the date of the interest termination letter. The Agency at its sole discretion may notify each holder of the interest termination provisions if it is determined that lender correspondence to holders is inadequate.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020; 89 FR 79726, Sept. 30, 2024]

§ 5001.451 Conditional commitment.

(a) *Issuance.* Upon selection of an application in accordance with § 5001.315 in subpart D, the Agency will issue a conditional commitment to the lender, to be accepted by the lender and the borrower, containing conditions under which the Agency will issue a loan note guarantee.

(1) Upon acceptance of the conditional commitment, the lender agrees not to modify the scope of the project, overall facility concept, project purpose, use of guaranteed loan funds, or other terms and conditions without Agency written concurrence in accordance with paragraph (c) of this section.

(2) If the lender decides at any time after receiving a conditional commitment that it no longer wants a loan guarantee, the lender must immediately advise the Agency of the cancellation in writing. Upon written notification from the lender, the Agency will de-obligate the funds associated with the conditional commitment.

(b) *Content.* The conditional commitment will address information required for issuing a loan note guarantee, including but not limited to:

(1) Approved use of guaranteed loan funds (source and use of funds);

(2) Rates and terms of the loan;

(3) Loan agreement requirements to include:

(i) Repayment terms and amortization provisions of the guaranteed loan;

(ii) Description of real property collateral, list of other collateral and identification of the lender's lien priority in the collateral;

(iii) A list of persons and entities guaranteeing payment of the guaranteed loan and their percentage of guarantee;

(iv) Requirement as to the type and frequency of the financial statements to be required for the duration of the guaranteed loan (guarantor statements must be updated at least annually);

(v) Prohibition against borrower assuming liabilities or obligations of others;

(vi) Limitations on borrower dividend payments and compensation of officers, owners and members of borrower;

(vii) Limitations on the purchase and sale of equipment other fixed assets and real estate;

(viii) Restrictions on mergers, consolidations, or sales of the business, project, or guarantee loan collateral without the concurrence of the lender;

(ix) Limitations on significant management changes without the concurrence of the lender;

(x) Maximum debt-to-net worth ratio, when required by the lender or by this part;

(xi) Minimum debt service coverage ratio, when required by the lender or by this part;

(xii) Requirements imposed by the Agency in its conditional commitment;

(xiii) Agency environmental requirements; and

(xiv) Requirement for the lender and the Agency to have reasonable access to the project and financial records including access for periodic inspections of the project and financial records by a representative of the lender or the Agency; and

(xv) Requirement for the borrower to provide the lender and the Agency performance information during the term of the guaranteed loan.

(4) Loan closing requirements;

(5) Lender and borrower certifications;

(6) Collateral and lien position requirements; and

(7) Other requirements necessary to protect the Agency.

(c) *Change requests.* The lender can request, in writing, changes to the conditional commitment with justification. The Agency can deny, solely at its discretion, changes to the conditional commitment even if the changes are otherwise in compliance with this part. All changes to the conditional commitment must be documented by written amendment to the conditional commitment executed by all parties.

(d) *Acceptance or withdrawal of conditional commitment.* The lender and borrower must complete and sign the conditional commitment and return a copy to the Agency within 60 days. If the conditional commitment is not accepted by both the lender and borrower within 60 days, the conditional commitment becomes null and void and the Agency will withdraw the conditional commitment and de-obligate the associated funds.

(e) Modification, and expiration of conditional commitment. The conditional commitment issued by the Agency will be effective for a period of one year or sufficient time to complete the guaranteed loan project prior to loan closing. The lender must submit a written request to the Agency to extend the conditional commitment at least 30 days prior to its expiration date and obtain Agency approval for the extension. The Agency will consider this request only if no material adverse changes in the borrower or the borrower's financial condition have occurred since issuance of the conditional commitment. If a conditional commitment expires, the Agency will notify the lender in writing and may de-obligate the funds. Any additions or modifications to conditions stated in the original conditional commitment must be agreed upon between the lender, the borrower, and the Agency.

[85 FR 42518, July 14,2020, as amended at 86 FR 70358, Dec. 10, 2021; 87 FR 7368, Feb. 9, 2022]

§ 5001.452 Loan closing and conditions precedent to issuance of loan note guarantee.

(a) The lender must not close the guaranteed loan until all conditions of the conditional commitment are met. If, at a later date, it is discovered that all conditions were not met, the lender will be advised in writing that full enforceability of the guarantee by the lender may be compromised if the deficiencies are not corrected.

(b) Simultaneously with or immediately after the guaranteed loan closing, the lender must provide to the Agency the guarantee fee, and the following forms and documents:

(1) An Agency-approved, ''Guaranteed Loan Closing Report'';

(2) A copy of each executed promissory note and collateral security documents;

(3) A copy of the executed final loan agreement, which must include any additional requirements imposed by the Agency in the conditional commitment;

(4) The original, executed Agency-approved guarantee form(s) for any required personal, partnership or corporate guarantees;

(5) The borrower's loan closing balance sheet, if required;

(6) For loans to public bodies, an opinion from recognized bond counsel regarding the adequacy of the preparation, issuance, and enforceability of the debt instruments;

(7) Any other documents required to comply with applicable law or required by this part, the conditional commitment or the Agency; and

(8) When requesting issuance of a loan note guarantee, the lender must certify to each condition identified in paragraphs (b)(8)(iii)(A) through (V) of this section, as applicable.

(i) In making its certification, the lender can rely on certain written materials (*e.g.*, certifications, evaluations, appraisals, financial statements, and other reports) provided by the borrower or other qualified third parties (*e.g.*, independent engineers, appraisers, accountants, attorneys, consultants, or other experts).

(ii) If the lender is unable to provide any of the certifications required under this section, the lender must provide an explanation satisfactory to the Agency.

(iii) The lender may request the loan note guarantee prior to construction in accordance with this part; however, the lender must still certify to all applicable conditions of this paragraph (b)(8)(iii).

(A) All requirements of the conditional commitment have been met.

(B) The financial criteria specified in § 5001.303(b)(4) of this part and any financial criteria contained in the conditional commitment were:

(*1*) Determined in accordance with any applicable requirements in § 5001.9 of this part, and

(*2*) Have been maintained through the issuance of the loan note guarantee. Failure to maintain or attain the minimum financial criteria will result in the Agency not issuing a loan note guarantee.

(C) No major changes have been made in the applicant, project or lender's loan conditions and requirements since the issuance of the conditional commitment, unless such changes have been approved by the Agency.

(D) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower during the period of time from the Agency's issuance of the conditional commitment to issuance of the loan note guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control.

(*1*) The borrower is a legal entity in good standing with its regulator (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the borrower was organized or has a place of business.

(*2*) The borrower meets the eligibility requirements as outlined in § 5001.126(a) and (b) through (e), as applicable.

(E) There is a reasonable prospect that the guaranteed loan and other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application.

(F) The guaranteed loan has been properly closed, and the required security instruments have been properly executed and all security interests obtained by the lender have been or will be properly perfected in accordance with applicable law.

(G) All planned property acquisition has been or will be completed; all development has been or will be substantially completed in accordance with plans and specifications and conforms to applicable Federal, State, and local codes; all equipment required for the project is available, can be procured and delivered within the project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements; and costs have not exceeded the amount approved by the lender and the Agency.

(H) The proposed project complies with all current Federal, State, and

local laws and regulatory rules that affect the project, the borrower, and lender activities, including, but not limited to, equal opportunity and Fair Housing Act requirements and design and construction requirements.

(I) Lender-required insurances are in effect.

(J) All truth-in-lending and equal credit opportunity requirements have been met.

(K) The borrower has marketable title to the collateral then owned by the borrower, subject to the rights of the guaranteed loan and to any other exceptions approved in writing by the Agency.

(L) Where required, necessary or prudent, the borrower has obtained—

(*1*) A legal opinion relative to the title and accessibility to any rights-of-way and easements; and

(*2*) A title opinion or title insurance showing the borrower has good and marketable title to the real property and other collateral and fully addressing all existing mortgages or other lien defects, restrictions or encumbrances. In those cases where there is adequate gap coverage, a title commitment may be acceptable.

(M) All project funds have been or will be disbursed for purposes and in amounts consistent with the conditional commitment (or Agency-approved amendment thereof) and the application submitted to the Agency. Appropriate lender controls were used to ensure that all funds were properly disbursed, including funds for working capital. A copy of a settlement statement by the lender detailing the use of loan and matching/equity funds must be attached to support this certification.

(N) When applicable, the entire amount of the loan for working capital or initial operating expenses have been disbursed to the borrower, except in cases where the Agency has approved disbursement over an extended period of time and funds are escrowed so that the settlement statement reflects the full amount to be disbursed.

(O) When required, personal and/or corporate guarantees have been obtained in accordance with § 5001.204 of this part.

(P) Lien priorities are consistent with the requirements of the conditional commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, materialmen, or other parties have been filed against the collateral and no suits are pending or threatened that would adversely affect the collateral.

(Q) Neither the lender nor any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender.

(R) The loan agreement includes all borrower compliance measures identified in the Agency's environmental review for avoiding or reducing adverse environmental impacts of the project's construction or operation.

(S) The lender will comply with the requirements of the Debt Collection Improvement Act.

(T) The lender has executed and delivered the lender's agreement, completed registration in the Agency's electronic reporting system, and electronically submitted the closing report for the guaranteed loan along with the appropriate guarantee fee.

(U) For all RES and EEI projects, the lender must provide certification that the project has been performing or will perform at a steady state operating level in accordance with the technical requirements, plans, and specifications. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report or vendor certification and will be incorporated into the conditional commitment.

(V) For CF and WWD projects, the lender must also certify that the lender would not make the loan without an Agency loan guarantee.

(W) For WWD projects, if applicable, the lender must certify that the project complied with American Iron and Steel requirements.

(X) For B&I, the capital/equity requirement set forth in the Conditional Commitment was met, as evidenced by a balance sheet as of the date the guaranteed loan was closed, giving effect to

the entirety of the loan in the calculation whether or not the loan itself is fully advanced. A copy of the borrower's loan closing balance sheet must be included with the lender's certification.

(c) For RES projects where applicable, the lender must provide to the Agency a copy of the executed power purchase agreement and/or a permission to operate letter from the energy off-taker.

(d)(1) For all CF projects before the Agency will issue a loan note guarantee on a guaranteed loan to a borrower other than a public body, the articles of incorporation or other organizing documents of the borrower or the loan agreement must include a condition similar to the following:

(2) If the corporation dissolves or ceases to perform the community facility objectives and functions, the board of directors shall distribute all business property and assets to one or more nonprofit corporations or public bodies. This distribution must be approved by 75 percent of the users or members and must serve the public welfare of the community. The assets may not be distributed to any members, directors, stockholders, or others having a financial or managerial interest in the corporation. Nothing herein shall prohibit the corporation from paying its debts.

(e) For all B&I projects a borrower whose project involves locally or regionally produced agricultural food products and is not located in a rural area must include in an appropriate agreement with retail and institutional facilities to which the borrower sells locally or regionally produced agricultural food products a requirement to inform consumers of the retail or institutional facilities that the consumers are purchasing or consuming locally or regionally produced agricultural food products.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62198, Oct. 2, 2020; 86 FR 70358, Dec. 10, 2021; 89 FR 79726, Sept. 30, 2024]

§ 5001.453 Issuance of the loan note guarantee.

The Agency, at its sole discretion, will determine if the conditions specified in the conditional commitment have been met and whether to issue the loan note guarantee.

(a) *Issuance.* When the Agency is satisfied that all of the conditions specified in the conditional commitment have been met and it receives all the required fees plus the executed lender's agreement from the lender, the Agency will issue the documents identified in paragraphs (a)(1) through (3) of this section, as appropriate.

(1) *Loan note guarantee.* The Agency will provide the lender the original loan note guarantee document which the lender must attach to the promissory note. If the lender elected to use the multi-note system, the Agency will issue one loan note guarantee for the set of promissory notes.

(2) *Assignment guarantee agreement.* If the lender assigns any guaranteed portion of a guaranteed loan to a holder, the lender, holder, and the Agency will execute an assignment guarantee agreement for each assignment.

(3) *Certificate of incumbency and signature.* The Agency will provide the holder an executed certificate of incumbency form to verify the signature and title of the Agency official who signed the assignment guarantee agreement.

(b) *Agency review of closing.* The Agency will review the closing documents submitted by the lender for completeness and if all conditions have been met and all documents have been provided, the Agency will issue the loan note guarantee. If the Agency determines that it cannot issue the loan note guarantee, the Agency will notify the lender, in writing, of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the Agency will issue the loan note guarantee.

(c) *Cancellation of obligation.* A lender can submit a written request to the Agency for a partial cancellation. The lender must include in this request the reason for the partial cancellation, the effective date, and the portion to be canceled. If the Agency conditions for issuance of the loan note guarantee are rejected, cannot be met or funds are, in whole or in part, no longer needed, the Agency will cancel the obligation.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62198, Oct. 2, 2020]

§ 5001.454 Guarantee fee.

The guarantee fee is a one-time, nonrefundable fee paid by the lender to the Agency at or before loan closing and is required to be paid before the Agency will issue the loan note guarantee. The guarantee fee rate applied will be the rate as established in the FEDERAL REGISTER for the fiscal year in which a guaranteed loan is obligated. The lender may pass the guarantee fee on to the borrower.

(a) *Guarantee fee calculation*. The one-time guarantee fee is calculated by multiplying the total loan amount by the percentage of guarantee by the guarantee fee rate, which may vary by program.

(b) *Guarantee fee rates*. The guarantee fee rate is established by the Agency in an annual document published in the FEDERAL REGISTER. While the fee rate may vary annually, they will not exceed the limits in table 1. Once the guarantee is obligated, the guarantee fee rate in effect at the time of obligation will remain in place even if the guarantee fee rate changes before the loan note guarantee is issued.

TABLE 1 TO § 5001.454(b)—GUARANTEE FEE

	Maximum guarantee fee (percent)
Community Facilities	4
Water and Waste Disposal	3
Business and Industry	5
Rural Energy for America Program	3

(c) *Loan note guarantee prior to completion*. If the loan note guarantee is issued prior to completion of the project's construction under § 5001.205(e)(2), an additional guarantee fee of 0.50 percent will be added.

(d) *Reduced fee*. Subject to annual limits set by the Agency and published in an annual FEDERAL REGISTER document, the Agency may charge a reduced guarantee fee if requested by the lender when the borrower's project meets any one of the following criteria:

(1) Is located in a rural community that—

(i) Is a distressed community in accordance with the Economic Innovation Group distressed community index. The list can be found on the Agency's website at: *https://www.rd.usda.gov/onerdguarantee;*

(ii) Is experiencing long-term population decline according to the last three decennial censuses;

(iii) Is in a persistent poverty county. A persistent poverty county is any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial census and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States;

(iv) Is in a presidentially declared disaster area, declared within the 24 months preceding the date of the application, and is experiencing trauma as a result of natural disaster;

(v) Is located in a city, county, or state with an unemployment rate, as determined by the Department of Labor, 125 percent or greater of the current national rate; or

(vi) Is located within the boundaries of a federally recognized Indian tribe's reservation or within Tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.

(2) Processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products and promotes access to healthy foods;

(3) Is locally owned and managed, and either

(i) Supports value-added agriculture and provides a market for locally or regionally produced agricultural food product; or

(ii) Produces a natural resource value-added product/manufactures a product from a natural resource.

(4) Is part of a strategic economic development and community development plan on a multi-jurisdictional and multi-sectoral basis in accordance with Section 6401 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334); or

(5) Provides an additional market for existing local businesses by purchasing substantial amounts of products or services from, selling product to, or providing services to existing local and regional businesses. The additional market for existing local businesses

means that the borrower uses industry clusters in the same community as a substantial part of their product manufacturing or service delivery, or the borrower is part of a product chain where they are a substantial part of another local business' product manufacturing or service delivery. The use of local janitorial or maintenance firms, for example, does not meet this criteria.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70358, Dec. 10, 2021; 89 FR 79726, Sept. 30, 2024]

§ 5001.455 Periodic guarantee retention fee.

The Agency will collect a periodic guarantee retention fee from the lender for as long as the loan note guarantee is outstanding in accordance with the annual notice published in the FEDERAL REGISTER in accordance with § 5001.10. Payment of the periodic guarantee retention fee is required to maintain the validity of the loan note guarantee. The lender may pass the fee on to the borrower but may not delay payment of the fee to the Agency while collecting the payment from the borrower. The fee rates may differ by program as published annually in a document in the FEDERAL REGISTER in accordance with § 5001.10. The annual FEDERAL REGISTER notification will include the frequency of payment for the fees.

(a) *Calculation*. The guarantee retention fee is calculated by multiplying the full outstanding principal guaranteed loan balance as of a date(s) as published in the annual FEDERAL REGISTER notification, by the percentage of guarantee, by the fee rate as noted in the guaranteed loan conditional commitment.

(b) *Effective fee rate*. The effective guarantee retention fee rate that is published in a FEDERAL REGISTER document in accordance with § 5001.10 at the time the guaranteed loan is obligated will be noted in the guarantee loan conditional commitment and the fee will remain in effect for the life of the loan note guarantee.

(c) *Payments*. The guarantee retention fee payment frequency and related due date provisions will be published in the annual FEDERAL REGISTER notification.

(1) Guarantee retention fee payments not received within 60 days after their due date are considered delinquent and, at the Agency's discretion, may result in cancellation of the loan note guarantee to the lender. The Agency will provide the lender 30 calendar days' written notice that the fee is delinquent before canceling the loan note guarantee. Holders' rights will continue in effect as specified in the loan note guarantee and assignment guarantee agreement, unless the holder took possession of an interest in the loan note guarantee knowing guarantee retention fees had not been paid.

(2) Until the loan note guarantee is canceled by the Agency, any delinquent periodic guarantee retention fee will bear interest at the promissory note rate.

(3) When the Agency repurchases 100 percent of the guaranteed portion of the guaranteed loan as prescribed in § 5001.511(c), the Agency will discontinue collection of the periodic guarantee retention fee.

(d) *Secondary market prohibition*. Lenders are prohibited from selling any portion of the guaranteed loan on the secondary market if there are unpaid periodic guarantee retention fees.

§ 5001.456 Other fees.

The Agency has the authority and may at its discretion charge additional fees in order to maintain adequate levels of program funding. Prior to the Agency charging any additional fees, the Agency will publish a notice of those fees in the FEDERAL REGISTER in accordance with § 5001.10. All fees will be disclosed in the conditional commitment specific to the project as issued to the lender at the time approval.

(a) Until the loan note guarantee is canceled by the Agency, any delinquent fees will bear interest at the promissory note rate.

(b) Lenders are prohibited from selling any portion of the guaranteed loan on the secondary market if there are unpaid fees.

§ 5001.457 Changes prior to loan closing.

(a) *Change in borrower prior to closing.* Any change in borrower ownership or organization prior to the issuance of the loan note guarantee must meet the applicable guaranteed program's eligibility requirements and must be approved by the Agency.

(b) *Transfer to new lender prior to issuance of the loan note guarantee.* Prior to issuance of the loan note guarantee, a lender can request a transfer of an outstanding conditional commitment to a new lender by providing the Agency with a letter from the lender, the borrower, and the proposed new lender. The request must include the reason(s) the current lender no longer desires to be the lender for the project.

(1) The Agency may approve the transfer from the current lender to the proposed new lender provided the new proposed lender is an eligible lender (see paragraph (b)(2) of this section) and no material adverse changes have occurred in the:

(i) Ownership, control or legal structure of the borrower; and

(ii) Borrower's written plan, scope of work, or the purpose or intent of the project.

(2) The Agency will determine if the proposed new lender is eligible in accordance with § 5001.130 of this part prior to approving the transfer of lender. The new lender must execute a new application form and a lender's agreement (unless the new lender already has a valid lender's agreement with the Agency) and must complete a new credit evaluation in accordance with § 5001.202 of this part. The Agency may require the new lender to provide other updated application items as specified by the Agency.

(3) If the Agency approves the transfer to the new lender, the Agency will issue a letter of amendment to the original conditional commitment reflecting the new lender who must acknowledge acceptance of the amended conditional commitment in writing.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79727, Sept. 30, 2024]

§ 5001.458 Other Federal, State, and local requirements.

Beginning on the date of issuance of the loan note guarantee, lenders and borrowers must—

(a) Coordinate with all appropriate Federal, State, local and Tribal agencies that may have jurisdiction or involvement in each project; and

(b) Comply with all current Federal, State, local, and Tribal laws and rules, as well as applicable regulatory commission rules, that affect the project, the borrower, or lender. Compliance activities include, but are not limited to—

(1) Organization and borrower's authority to design, construct, develop, operate, and maintain the proposed facilities;

(2) Borrowing money, giving security, and raising revenues for repayment;

(3) Land use zoning;

(4) Health, safety, and sanitation standards as well as design and installation standards; and

(5) Protection of the environment and consumer affairs.

§ 5001.459 Replacement of loan note guarantee and assignment guarantee agreement.

If a loan note guarantee or assignment guarantee agreement has been lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the Agency may issue a replacement to the lender or holder, as applicable under the conditions described in paragraphs (a) through (b) of this section. The lender is prohibited from altering or modifying or approving any alterations to or modifications of any loan documents without the prior written approval of the Agency.

(a) *Replacement requirements.* The lender must coordinate the activities of the party who seeks the replacement documents and must submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A written statement of loss which includes:

(i) Legal name and present address of either the lender or the holder who is requesting the replacement forms;

(ii) Legal name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the loan note guarantee or assignment guarantee agreement including the name of the borrower, the Agency's case number, date of the loan note guarantee or assignment guarantee agreement, face amount of the promissory note in which an interest was purchased, date of the promissory note, present balance of the guaranteed loan, percentage of guarantee, and, if an assignment guarantee agreement, the original named holder and the percentage of the guaranteed portion of the guaranteed loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the loan note guarantee or assignment guarantee agreement; and

(vi) For the holder, evidence demonstrating current ownership of the assignment guarantee agreement. If the present holder is not the same as the original holder, the lender must include a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder. If copies of the endorsement cannot be obtained, the lender must submit the best available records of transfer (*e.g.*, order confirmation, canceled checks, etc.).

(b) *Indemnity bond.* An indemnity bond acceptable to the Agency must accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or territory, the District of Columbia or a federally recognized tribal entity. The indemnity bond must:

(1) Be issued by a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570, except when the outstanding principal balance and accrued interest due the present holder, in accordance with § 5001.450(c), is less than $1 million as verified by the lender via a written letter of certification of balance due;

(2) Be issued and payable to the United States of America acting through the Agency;

(3) Be in an amount not less than the unpaid principal and interest; and

(4) Hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reason of the loss or replacement of the instruments.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62198, Oct. 2, 2020; 89 FR 79727, Sept. 30, 2024]

§§ 5001.460–5001.500 [Reserved]

Subpart F—Servicing Provisions

§ 5001.501 General.

The lender is responsible for servicing the entire loan and taking all servicing actions that a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The lender must certify that it will service the guaranteed loan in accordance with this part, its loan servicing policies and procedures, and the lender's agreement. Where a lender's loan servicing policies and procedures address a corresponding requirement in this part or in the lender's agreement, the lender must comply the corresponding requirement in this part, unless otherwise approved by the Agency.

(a) A lender's servicing responsibilities include, but are not limited to,

(1) Periodic borrower visits;

(2) Distribution of guaranteed loan funds;

(3) Collecting payments on guaranteed loans;

(4) Ensuring compliance with the covenants and provisions in the loan agreement, security instruments, and other supplemental agreements relating to the guaranteed loan;

(5) Obtaining and analyzing financial statements;

(6) Ensuring payment of taxes and insurance premiums;

(7) Maintaining liens and lien priority on collateral;

(8) Keeping an inventory of all collateral items, and reconciling the inventory of all collateral sold during guaranteed loan servicing, including liquidation;

(9) Obtaining Agency approvals or concurrence as required; and

(10) Cooperating fully with all oversight and monitoring efforts of the Agency or its representatives as specified in § 5001.502.

(b) The lender must remain mortgagee and secured party of record, notwithstanding the fact that another party may hold a portion of the loan.

(c) The lender must ensure that the borrower has obtained and will maintain all necessary insurance coverage appropriate to the proposed project.

(d) If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the guaranteed loan. If the Agency exercises this right, the lender must cooperate with the Agency to rectify the situation.

§ 5001.502 Oversight and monitoring.

The Agency will employ various oversight and monitoring activities in order to ensure compliance with this part. All lenders involved in any manner with any loan note guarantee issued under this part or under a loan note guaranteed previously issued under a guaranteed loan program identified in § 5001.1 of this part must cooperate fully with the Agency in its oversight and monitoring efforts, including, but not necessarily limited to, those identified in paragraphs (a) through (c) of this section.

(a) *Reports and notifications.* Lenders must submit to the Agency reports and notifications as required by this part. To facilitate the Agency's oversight and monitoring including, but not necessarily limited to, those identified in paragraphs (a)(1) through (4), as applicable, of this section.

(1) *Status reports.* No less than semiannual status reports as of June 30 and December 31 each year (unless more frequent reports are needed as determined by the Agency to protect the financial interests of the government) regarding the condition of the lender's guaranteed loan portfolio (including borrower status and loan classification) and any material change in the general financial condition of any borrower since the last report was submitted. The lender must submit these reports within 30 calendar days after the reporting period, using the appropriate Agency online reporting system.

(2) *Default reports.* Monthly default reports for each guaranteed loan in monetary default using the appropriate Agency online reporting system are due on the 15th working day of each month.

(3) *Notifications.* The lender(s) must notify the Agency by written notification within 15 calendar days of any:

(i) Loan agreement violation by any borrower, including when the borrower is 30 days past due or is otherwise in default of the covenants in the loan agreement;

(ii) Permanent or temporary reduction in the interest rate;

(iii) Downgrade in the lender's loan classification of any guaranteed loan; and

(iv) Protective advances in accordance with § 5001.516.

(4) *Collection activities report.* If a lender is liquidating the assets of a borrower, the lender must also evaluate and provide a report of collection activities regarding the collectability of personal and corporate guarantees.

(b) *Records*—(1) *Lenders.* Upon request by the Agency, the lender must permit representatives of the Agency (or other authorized persons) to inspect and make copies of any of the records of the lender pertaining to each guaranteed loan issued under this part or previously issued under one of the programs identified in § 5001.1 of this part. Such inspection and copying may be made during regular office hours of the lender or at any other time the lender and the Agency agree upon.

(2) *Borrowers.* Except as provided by law, upon request by the Agency, the borrower must permit representatives of the lender (or other authorized persons) to inspect and make copies of any of the records relating to the borrower's project. Such inspection and copying may be made during regular office hours of the borrower or at any other time agreed upon between the borrower and the lender.

(c) *Agency and lender conference.* When requested by the Agency, the lender must consult with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions

and covenants of the loan agreement are being enforced.

(d) *Access to the project.* Until the loan note guarantee is terminated, the borrower must allow the lender and therefore the Agency access to the project and its performance information and permit periodic inspections of the project by an authorized representative of the lender or the Agency.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79727, Sept. 30, 2024]

§ 5001.503 REAP RES or EEI project completion requirements.

Once a REAP RES or EEI project has been completed, the lender or borrower is required to submit the applicable project performance report as identified in paragraphs (a) and (b) of this section by January 31 each year.

(a) *Renewable energy systems.* For RES projects, commencing the first full calendar year following the year in which project construction was completed and continuing for three full years, the borrower must provide an outcome project performance certification noting that either the system has or has not performed at the steady state operating level as described in the technical report filed with the REAP guaranteed loan application, and whether projected jobs created or saved have occurred. If it has not performed as intended, a report detailing the circumstances affecting performance must be provided to the Agency along with the actual energy production of the system (in BTUs, kilowatt-hours, or similar energy equivalents) and the actual number of jobs created or saved as a direct result of the RES project for which guaranteed loan funds were used.

(b) *Energy efficiency improvements.* For EEI projects, commencing the first full calendar year following the year in which project construction was completed and continuing for two full years, the borrower must provide an outcome project performance certification noting that either the energy efficiency improvements have or have not been utilized at or above the projected operating levels as described in the technical report filed with the REAP guaranteed loan application, and whether projected jobs created or saved have occurred. If it has not performed as intended, a report detailing the circumstances affecting performance must be provided to the Agency along with the actual energy savings of the system and the actual number of jobs created or saved as a direct result of the EEI project for which guaranteed loan funds were used.

§ 5001.504 Financial reports.

(a) The lender must obtain the borrower's and any guarantor's financial statements required by this part and the loan agreement. The Agency may require an annual audited financial statement based on a project's circumstances. States, local government, Indian tribes, institution of higher education, and nonprofit organization borrowers who meet the Federal awards expended threshold established in 2 CFR part 200, subpart F, ''Audit Requirements,'' during their fiscal year must submit an audit conducted in accordance with 2 CFR part 200, subpart F.

(b) The lender must submit financial statements obtained under this section to the Agency within 120 days of the end of the borrower's fiscal year. When the borrower's audit is conducted in accordance with 2 CFR part 200, subpart F, audits must be submitted no later than nine months after the end of the borrower's fiscal year or 30 days after the borrower's receipt of the auditor's report, whichever is earlier. If a lender makes reasonable documented attempts to obtain financial statements but is unable to obtain the borrower's (or guarantor's) cooperation, the failure to obtain financial statements does not impair the validity of the loan note guarantee.

(c) Annual financial statements must be in accordance with accounting practices acceptable to the Agency as prescribed in § 5001.9 for all borrowers with a guaranteed loan balance in excess of $600,000. The lender may determine the type and frequency of financial statements for borrowers with a total guaranteed loan balance below $600,000 upon notification and justification to the Agency. This section does not supersede the borrower financial statement requirements of 2 CFR part 200, subpart F.

(d) The lender must analyze the financial statements obtained under paragraph (a) of this section and provide the Agency with a financial analysis including a credit evaluation of trends, strength and weaknesses, ratio analysis, and conclusions, plus any extraordinary transactions; borrower violations of loan covenants and covenant waivers proposed by the lender, any routine servicing actions performed; and other indications of the financial condition of the borrower.

(e) Following the Agency's review of the lender's financial analysis, the Agency will notify the lender in writing of any concerns. The lender must address each concern identified in the Agency's findings by the due date stated in the correspondence.

(f) The lender should routinely confirm the outstanding principal balance of a guarantee held by a holder to avoid any discrepancy and delay in reconciliation in the event of a lender or Agency repurchase of the guaranteed loan from a holder in accordance with § 5001.511.

[85 FR 42518, July 14, 2020, as amended at 89 FR 96860, Dec. 6, 2024]

§ 5001.505 Collateral inspection and release.

(a) *Inspection of collateral.* The lender must inspect the collateral as often as necessary to properly service the guaranteed loan.

(b) *Release of collateral.* The lender must provide written justification for the release and obtain Agency approval before releasing any collateral. The lender is not required to provide justification for the release of collateral when the loan is not in default or liquidation and the collateral being released is a working asset, such as accounts receivable, inventory, and work-in-progress, that are routinely depleted or sold and proceeds used for the normal course of business operations.

(1) *Exceptions to prior approval.* Lenders are not required to obtain Agency approval prior to releasing collateral when the collateral sale proceeds are used to pay down debt in order of lien priority, pay down the guaranteed loan principal, or to acquire replacement collateral.

(2) *Appraisals.* Current appraisals are required on all transactions pursuant to the requirements of § 5001.203 of this part.

(3) *Sale or release transaction.* The sale or release of collateral must be based on an arm's length transaction, unless otherwise approved, in writing, by the Agency when the sale or release of collateral results in paying the guaranteed loan in full and termination of the loan note guarantee. There must be adequate consideration at market value for the release of collateral. Such consideration may include, but is not limited to:

(i) Application of the net proceeds from the sale of collateral to the borrower's debts in order of their lien priority against the sold collateral;

(ii) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value which the lender will obtain as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held;

(iii) Application of the net proceeds from the sale of collateral to the borrower's guaranteed loan or to its business operation in such a manner that a significant improvement to the borrower's debt service ability will be clearly demonstrated. The lender's written request must detail how the borrower's debt service ability will be improved; and

(4) *No adverse impact.* Any release of collateral must not materially cause an adverse effect to the project's operation or financial condition and the remaining collateral must be sufficient to provide for adequate collateral coverage. Such assurance must be supported by written documentation from the lender and be acceptable to the Agency. If the Agency determines that the project may be adversely affected by a release of collateral, the Agency may, at its discretion, require an appraisal on the remaining collateral in accordance with § 5001.203 of this part.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79727, Sept. 30, 2024]

§ 5001.506 Loan transfers and assumptions.

(a) *General.* A lender must obtain prior written Agency approval in accordance with paragraph (c) of this section before the lender conducts a transfer and assumption of a guaranteed loan. The transferee will assume a loan amount at least equal to the outstanding loan balance or the present market value of the collateral, whichever is less. If the transferor is to receive a payment for their equity, the total debt must be assumed. The following conditions must be met:

(1) All transfers and assumptions will have a fee as provided by § 5001.509(b).

(2) For each transfer and assumption, the lender must concur in plans for the disposition of funds, if any, in the transferor's debt service, operations and maintenance, or other reserve accounts.

(3) The lender must confirm that the transfer and assumption can be completed in accordance with applicable laws.

(4) The lender must confirm that the conveyance instruments will be filed, registered, and recorded as appropriate and legally permissible. The transfer and assumption must be made on the Lender's form of assumption agreement and contain the Agency case number of the transferor and transferee. The lender must provide the Agency with a copy of the assumption agreement.

(5) The lender may request a transfer and assumption when the total indebtedness, or less than the total indebtedness, of the guaranteed loan is assumed by another borrower. If the assumption is for less than the total indebtedness, the transfer and assumption must be an arm's length transaction and the transfer must be of all loan collateral.

(6) In the event of default of the guaranteed loan, a transfer and assumption of the borrower's operation and guaranteed loan can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(7) No transfer and assumption is permitted when the Agency has repurchased any guaranteed portion of the guaranteed portion of the loan.

(8) If the transfer is for less than the total indebtedness, the pro rata share of an eligible loss will be paid to the lender after execution of the transfer and assumption documents.

(b) *Documentation.* The lender will provide to the Agency documentation to support the transferee's status as an eligible borrower, and such other documentation as the Agency may request to determine eligibility and credit evaluation.

(1) The new borrower must sign an Agency-approved application form.

(2) The Agency will require personal and/or corporate guarantee(s) in accordance with § 5001.204 of this part, as applicable. Any required new personal, partnership or corporate guarantors of the transferred guaranteed loan must sign an Agency approved guarantee form.

(c) *Agency approval.* The Agency will only approve a transfer and assumption if the transferee will continue the eligible purpose of the guaranteed loan and such transfer and assumption complies with the conditions specified in paragraphs (c)(1) through (3) of this section, as applicable.

(1) Whenever the transferor and transferee are affiliates or related parties, the transfer and assumption must:

(i) Be to an eligible borrower to continue the project for eligible purposes;

(ii) Transfer all the loan collateral; and

(iii) Be for the full amount of the guaranteed loan indebtedness.

(2) A transfer and assumption may be approved when the present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan, and the transfer will be in the best financial interest of the borrower and the Agency.

(3) The Agency prefers to transfer to an eligible borrower subject to the policies and procedures governing the type of guaranteed loan being made, however the Agency will consider approving a transfer of a guaranteed loan to an ineligible borrower only if:

(i) The sale price is greater than it would be if the transfer was to an eligible borrower;

(ii) The transfer to an ineligible borrower is needed as a method for servicing a problem case; or

(iii) When an eligible borrower is not available. All transfers to an ineligible borrower must meet the following requirements:

(A) Transfer fees will be collected, and payments applied, in accordance with § 5001.509(b);

(B) The ineligible borrower agrees to pay the loan balance within the remaining term of the original guaranteed loan in periodic installments that will not result in a balloon payment at the loan's maturity;

(C) Interest rates are at the rate specified in the promissory note of the transferor or at rates customarily charged borrowers in similar circumstances in the ordinary course of business. The rates can be either fixed or variable, and are subject to Agency review and approval;

(D) The ineligible borrower must have the legal authority to enter into the contract and have the ability to repay the loan, as determined by the lender and the Agency. The ineligible borrower must submit a current balance sheet to the lender. The lender must obtain and analyze the credit history of the ineligible borrower.

(d) *Release of liability*. The transferor, including any guarantor, can be released from liability only with prior Agency written approval when the transfer and assumption is for the full outstanding balance of the guaranteed loan. If the assumption is for less than the full amount of the loan and the Agency pays a loss to the lender, the transferor, including any guarantor, are specifically subject to the Debt Collection Improvement Act provisions unless other workout arrangements have been made.

(e) *Loan agreement*. A new loan agreement or an assumption agreement, acceptable to the Agency must be executed to establish the terms and conditions of the loan being assumed.

(f) *Changes in loan terms*. When a transfer or assumption is made to an eligible borrower continuing the project for eligible purposes, the loan terms may remain the same or may be changed whether the transfer is for the total indebtedness or less than the total indebtedness. If the loan terms are to be changed, the lender must submit a request in accordance with this paragraph (f). The changed loan terms must be concurred to by the Agency, all holders, and the transferee (including guarantors). If there are changes in loan terms, the lender's request will require the following:

(1) An explanation of the reasons for the proposed change in the loan terms, and

(2) Certification that the lien position securing the guaranteed loan will be maintained or improved, and proper insurances will continue to be in effect.

(g) *Loan note guarantee*. The lender is responsible for noting each transfer and assumption on all originals of the loan note guarantee.

(h) *Proceeds*. Before the transfer and assumption is closed, the lender must credit any proceeds received from the sale of collateral to the transferor's guaranteed loan debt in order of lien priority.

(i) *Additional loans*. Guaranteed loans may be used to provide additional funds in connection with a transfer and assumption. The Agency will consider approving a guaranteed loan to provide additional funds in connection with a transfer and assumption pursuant to the lender's submission of a complete application in accordance with 7 CFR part 5001, subpart D.

(j) *Credit quality*. The lender must make a complete credit evaluation in accordance with § 5001.202 of this part to determine viability of the project (subject to the Agency review and approval) including any requirement for deposits in an escrow account as security to meet the applicable equity requirements for the project.

(k) *Appraisals*. If the proposed transfer and assumption is for less than the full amount of the guaranteed loan, an appraisal is required on all the collateral being transferred, and the amount of the assumption must not be less than this appraised value. The lender is responsible for obtaining the appraisal, which must conform to the requirements of § 5001.203 of this part. However, if the original appraisal is more than one year old, but less than two years old, the lender may provide an appraisal with a new effective date of

evaluation in lieu of a completely new appraisal.

(l) *Legal opinion.* Prior to Agency approval, the lender must provide the Agency a preliminary written legal opinion that the guaranteed loan can be properly and legally transferred and assurance that the conveyance instruments will be appropriately filed, registered, and recorded. Upon execution of the transfer and assumption, the lender must provide the Agency with a final legal opinion that the assumption is completed, valid, and enforceable, and the assumption is consistent with the conditions outlined in the Agency's conditions of approval for the transfer and complies with all Agency regulations.

(m) *Promissory notes.* The lender must not issue any new promissory notes, release any mortgages and/or deeds of trust on the existing debt being transferred. An allonge may be attached to existing promissory notes as needed.

(n) *Loss/repurchase resulting from transfer and assumption.* (1) Any resulting loss must be processed in accordance with § 5001.521.

(2) If a holder owns any of the guaranteed portion of the loan, such portion must be repurchased by the lender or the Agency in accordance with § 5001.511.

(o) *Cash down payment.* The lender may allow the transferee to make cash down payments directly to the transferor provided:

(1) The transfer and assumption are made for the total indebtedness to an eligible borrower to continue the project for eligible purposes;

(2) The lender recommends that the cash be released, and the Agency concurs prior to the assumption being completed. The lender can require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed; and

(3) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness.

(p) *Change in control of borrower.* The Agency will deem that a transfer and assumption has occurred whenever there is a significant change in the control of the borrower.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79727, Sept. 30, 2024]

§ 5001.507 Lender transfer.

(a) After the issuance of a loan note guarantee, a lender may sell or transfer the entire loan to a new lender with prior written approval of the Agency. The Agency may approve the sale or transfer to a new lender if the following conditions are met. The new lender:

(1) Is an eligible lender in accordance with § 5001.130 of this part and is approved as such;

(2) Is able to service the loan in accordance with the original loan documents;

(3) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities; and

(4) The transfer to the new lender is requested in writing by the borrower, the proposed new lender, and the original lender of record, if still in existence.

(b) Upon Agency approval, the original lender must transfer to the new lender the:

(1) Original promissory note and loan security documents;

(2) Original loan note guarantee;

(3) Original personal and corporate guarantee(s);

(4) Loan payment history; and

(v) The new lender must agree to accept the current loan terms, including the interest rate, secondary market holder (if any), collateral, loan agreement terms, and guarantors. The new lender can modify the loan terms after acquisition only by submitting a written request to the Agency and receiving Agency approval.

(vi) The new lender must certify to the Agency that the loan transfer has been completed in accordance with applicable laws and all provisions of the original loan remain in full force and effect.

(c) The Agency will not pay any loss or share in any costs (*e.g.*, legal fees, appraisal fees and environmental assessments) for a voluntary transfer of

lender. This includes situations where a lender is merged with or acquired by another lender and situations where the lender has failed and been taken over by a Federal regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender. However, in situations where the lender has failed and been taken over by a Federal regulator and the loan is liquidated rather than being sold to another lender, the Agency will pay losses and share in costs as if the Federal regulatory agency were an approved new lender.

(d) In cases when there is a transfer to a new lender or when a lender has been merged with or acquired by another lender, the Agency and the new lender must execute a new lender's agreement, unless the new lender already has a valid lender's agreement with the Agency.

(e) After Agency approval of a transfer of lender, all terms of the original loan note guarantee shall transfer to the benefit of the new lender.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79727, Sept. 30, 2024]

§ 5001.508 Mergers.

Agency approval. All borrower mergers or consolidations (herein referred to as ''mergers'') require approval by the Agency and the lender. The Agency may approve a merger when—

(a) The resulting organization will be eligible for a guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower;

(b) The merger is in the best interest of the government and the merging organization;

(c) The resulting organization can meet all required conditions as contained in specific loan agreements; and

(d) All property can be legally transferred to the resulting organization.

§ 5001.509 Servicing fees.

The lender may pass the servicing fees on to the borrower but may not delay payment of the fee to the Agency while collecting the payment from the borrower.

(a) *Guarantee retention fees.* Where the lender is required to pay a periodic guarantee retention fee (see § 5001.455), the fee is due for the entire payment period even if the loan note guarantee is terminated or transferred before the next retention fee payment is due.

(b) Borrower *transfer fee.* The Agency will charge the following fees:

(1) A one-time, $1,500 nonrefundable transfer fee at the time of transfer to an eligible borrower.

(2) Payment of a one-time nonrefundable transfer fee of 1 percent of the guaranteed loan balance to ineligible borrowers.

§ 5001.510 Subordination of lien position.

(a) *Request for subordination.* A lender seeking a subordination of its lien position in collateral must submit a written request to the Agency. The lender must include in the request a financial analysis of the servicing action. The financial analysis must be fully supported by current financial statements, less than 90 calendar days old, of the borrower and guarantors. The lender must receive written Agency approval prior to the subordination.

(b) *Agency approval.* Agency approval of the subordination request requires that:

(1) The subordination of the lender's lien position enhances the borrower's business and is in the best financial interest of the Agency;

(2) The lien to which the guaranteed loan is subordinated is for a fixed dollar amount or fixed credit limit and for a fixed term, after which the guaranteed loan lien priority will be restored;

(3) Remaining collateral is sufficient to provide for adequate collateral coverage of the guaranteed loan after taking into account the lender's discount of collateral consistent with the lender's sound loan-to-discounted value practices and satisfactory justification of the discount used. The Agency may require a current independent appraisal in accordance with § 5001.203. However, if the original appraisal is more than one year old, but less than two years old, the lender may provide an appraisal with a new effective date of evaluation in lieu of a completely new appraisal;

(4) Lien priorities remain for the portion of the loan collateral that was not subordinated;

(5) The subordination of collateral to a line of credit does not extend beyond the term of the line of credit and in no event exceeds more than three years.

(6) Subordination to a tax-exempt obligation is strictly prohibited in compliance with OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables.''

[85 FR 42518, July 14, 2020, as amended at 89 FR 79727, Sept. 30, 2024]

§ 5001.511 Repurchases from holders.

(a) *General.* A holder can make written demand on either the lender or the Agency to repurchase the unpaid guarantee portion of the loan when the borrower is in monetary default or when the lender has failed to pay the holder its pro-rata share of any payment made by the borrower within 30 days of the lender's receipt thereof from the borrower. When making written demand on the lender, the holder must concurrently send a copy of the demand letter to the Agency.

(1) The lender is encouraged to repurchase the guarantee, upon written demand of a holder, to facilitate the accounting of funds, resolve any loan problem, and resolve the monetary default, where and when reasonable. The benefit to the lender is that it may reassign the guaranteed portion of the loan and then continue collection of its servicing fee, if any, when the monetary default is cured.

(2) When a lender receives a written demand for repurchase from a holder, the lender must notify any other holder and the Agency within 30 calendar days of receipt of the written demand. The lender must inform all parties if the lender will repurchase the unpaid guaranteed portion of the loan from the requesting holder.

(3) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(b) *Repurchase by lender for loan servicing purposes.* If the lender, borrower, and holder are unable to agree to restructuring of loan repayment, interest rate, or loan terms to resolve any loan problem or resolve any default and repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must reassign the guaranteed portion of the loan to the lender. The reassignment must be for an amount not less than the holder's unpaid principal and accrued interest, in accordance with § 5001.450(c) of this part, on such portion less the lender's servicing fee.

(1) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(2) The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain.

(3) Any repurchase from a holder may only be made after the lender obtains the Agency's written approval.

(c) *Agency repurchase.* If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion of the loan for loan servicing purposes. A holder can submit a written demand to the Agency for repurchase only if the lender declines to repurchase. If a prior written demand was not made upon the lender, the Agency will notify the lender and allow up to seven calendar days for the lender to exercise their option to repurchase as provided in this section.

(1) *Lender does not repurchase.* If the lender does not repurchase the unpaid guaranteed portion of a loan as provided in paragraph (a) of this section, the Agency will, within 30 calendar days after written demand to the Agency from the holder, purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase or the interest termination date, whichever is sooner, less the lender's servicing fee. The guarantee will pay accrued interest to the holder on the loan as determined under § 5001.450(c) of this part.

(2) *Written demand content.* The holder must include in its written demand to the Agency:

(i) A copy of the written demand made upon the lender;

(ii) A copy of the lender's denial to repurchase the unpaid guaranteed portion of the guaranteed loan;

(iii) Evidence of the right to require payment from the Agency as provided by the holder or duly authorized agent.

Such evidence must consist of the original assignment guarantee agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan;

(iv) The amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date; and

(v) When the initial holder has assigned its interest, the original assignment guarantee agreement and an original of each Agency-approved reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee.

(3) *Payment.* Unless otherwise agreed upon, payment will not be later than 30 calendar days from the date of demand.

(i) Upon request by the Agency, the lender must promptly furnish (within 30 calendar days of such request) a current statement, certified by an appropriate authorized officer of the lender, of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-calendar-day payment requirement.

(iii) If a repurchase of a guaranteed loan includes the capitalization of interest, interest accrued on the capitalized interest will not be paid to the holder.

(4) *Subrogation.* When the Agency purchases a loan from a holder it assumes all rights that were previously held by the holder.

(5) *Servicing fee.* When the Agency purchases the guaranteed portion of the loan from a holder, the lender's servicing fee will stop on the date that interest was last paid by the borrower. The lender can neither charge a servicing fee to the Agency nor collect such fee from the Agency.

(6) *Accrued interest.* If the Agency repurchases 100 percent of the guaranteed portion of a loan and becomes the holder, interest accrual on the loan will cease until the lender resumes remittance of the pro rata payments to the Agency.

(7) *Establishing interest termination date.* When a guaranteed loan has been delinquent more than 60 calendar days and no holder comes forward or when the lender has accelerated the account, and subject to the expiration of any forbearance or workout agreement, the lender, or the Agency at its sole discretion, must issue a letter to the holder(s) establishing the interest termination date in accordance with § 5001.450(c)(2).

(8) *Obligations and rights.* Purchase by the Agency neither changes, alters, or modifies any of the lender's obligations to the Agency arising from the lender's agreement, guaranteed loan or loan note guarantee, nor does it waive any of the Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the loan note guarantee.

(9) *Accelerated loan.* When the lender has accelerated the loan and the lender holds all or a portion of the guaranteed loan, an estimated loss claim must be filed by the lender with the Agency within 60 calendar days from the date the loan was accelerated. Accrued interest paid to the lender in accordance with § 5001.450(c)(1).

(10) *Interest termination during bankruptcy.* When a borrower files a Chapter 7 liquidation plan, the lender shall immediately notify the Agency and submit a liquidation plan. The Agency will establish an interest termination date based on the date interest was last paid to the lender. When a borrower files either a Chapter 9 or Chapter 11 bankruptcy restructuring plan, the Agency and lender shall meet to discuss the bankruptcy procedure, the ability of the borrower to meet their restructuring plan, the lender's treatment of accruing interest, and potentially establish an interest termination date

for the guaranteed loan. If the restructuring bankruptcy Chapter 9 or Chapter 11 is converted to a liquidation bankruptcy Chapter 7 by court order, the interest termination date will be the date of such conversion.

[85 FR 62198, Oct. 2, 2020, as amended at 89 FR 79728, Sept. 30, 2024]

§ 5001.512 Additional expenditures and loans.

The lender shall not make additional expenditures on behalf of, or provide new loans to, the borrower without notification to the Agency even though such expenditures or loans will not be guaranteed. The lender shall not approve additional expenditures or new loans where the expenditure or loan will violate, or cause a violation of, any of the loan covenants in the borrower's loan agreement.

§ 5001.513 Interest rate changes.

(a) *Interest rate freezes.* The guaranteed loan interest rate will freeze at the earliest uncured default date and will remain unchanged until the cancellation of the loan note guarantee in compliance with § 5001.524.

(b) *Reductions.* The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. After a permanent reduction, the loan note guarantee will only cover losses of interest at the reduced interest rate.

(1) When the Agency is a holder, the lender must obtain Agency approval before implementing the reduction. The lender must provide a copy of the modification agreement to the Agency for approval. The Agency will approve the reduction only when it is demonstrated that the change is more viable than liquidation and that the government's financial interests are not adversely affected.

(2) Factors that the Agency will consider in determining whether to approve the change are the Government's cost of borrowing money; the monetary recovery is greater than the liquidation recovery; and the project's continued viability as demonstrated by a financial feasibility analysis.

(c) *Increases.* Unless a temporary interest rate reduction occurred, increases in fixed interest rates and increases in variable interest rate structure are prohibited.

(d) *Fixed rate to variable rate change.* Fixed rates can be changed to variable rates to reduce the borrower's interest rate only when the variable rate has a ceiling that is less than or equal to the original fixed rate.

(e) *Variable rate to fixed rate change.* Variable rates can be changed to a fixed rate at the request of the borrower, agreement of the holder, if any, and Agency concurrence.

(f) *After adjustments.* The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by paragraph § 5001.401.

(g) *Documentation.* The lender is responsible for the legal documentation of interest rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new promissory notes can be issued. The lender must provide copies of all such documents to the Agency within 10 calendar days of the change.

(3) In a final loss settlement when qualifying interest rate changes are made in compliance with this part, the lender must calculate interest based on the periods the given rates were in effect. The lender must maintain records that adequately document the accrued interest claimed, which must be determined in accordance with § 5001.450(c).

[85 FR 42518, July 14, 2020, as amended at 86 FR 70358, Dec. 10, 2021]

§ 5001.514 Lender failure.

(a) *General.* In the event a lender fails or ceases to service a guaranteed loan, the Agency will make the successor lending entity aware of the statutory and regulatory requirements and will provide instruction to the successor lending entity on a case-by-case basis. Such instructions may include the Agency's determination that the Agency will service the entire loan or the guaranteed portion of the loan.

(1) Any successor lender must take such action that a reasonable lender would take if it did not have a loan

note guarantee to protect the lender and Agency's mutual interest.

(2) A successor entity approved by the Agency as a lender will be afforded the benefits of the loan note guarantee in the sharing of any loss and eligible expenses subject to the limits that are set forth in the regulations governing the loan guarantee.

(b) *Non-regulated lender.* If the successor lending entity is a non-regulated lender, the lending entity is prohibited from making changes to the lender's agreement and related documents on the guaranteed loan. The successor lending entity must comply with the provisions of this part, including promptly applying to become a lender if not already an eligible lender. If the successor lending entity is not or fails to become a lender as set forth in § 5001.130 of this part within 60 calendar days, the loan note guarantee will not be enforceable.

(c) *Regulated lender.* Where the failed lending entity is an FDIC regulated lender, the FDIC and the Agency will enter into an Inter-Agency Agreement regarding the FDIC's role as the successor lending entity, and all parties are to abide by this agreement or successor document(s). This agreement sets forth the duties and responsibilities of each Agency when a lender fails. When the FDIC is not the successor to a failed regulated lender, the regulatory agency serving as the successor lending entity and the Agency will abide by terms of the lender's agreement as executed by the originating lender. The Agency reserves the right to request a meeting with the successor lending entity to further define the duties and responsibilities of each agency when a lender fails.

(d) *No successor entity.* In the event no successor lending entity can be determined, the Agency reserves the right to enforce the provisions of the loan documents on behalf of the lender or to purchase the lender's interest in the loan.

§ 5001.515 Default by borrower.

When there is a default by a borrower, the lender must act prudently and expeditiously in working with the borrower to bring the account current or cure the default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in accordance with § 5001.517 and in a manner that will minimize any potential loss.

(a) *Default notification and meetings.* The lender must notify the Agency within the timeframe as provided in § 5001.502(a)(3)(i).

(1) The lender will provide this notification by submitting the guaranteed loan borrower default status report in the Agency's electronic reporting system. The lender must update the loan's status each month until such time as the loan is no longer in default.

(2) If a monetary default exceeds 30 calendar days, the lender must meet with the borrower and, if necessary, the Agency within 45 calendar days of the date of the default to discuss the situation. The lender must provide the Agency with a written summary of the meeting, including any decisions and actions agreed upon within 10 calendar days of the meeting.

(b) *Curative options.* In considering curative actions, providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective. The lender may consider temporary curative actions (*e.g.,* payment deferments or collateral subordination) provided they strengthen the loan and are in the best financial interest of the lender and the Agency.

(1) Curative actions (subject to the rights of any holder and Agency concurrence) include, but are not limited to, the following options:

(i) Deferment of principal and/or interest payments;

(ii) An additional unguaranteed temporary loan by the lender to bring the account current;

(iii) Re-amortization of or rescheduling the payments on the loan excluding capitalization of accrued interest;

(iv) Transfer and assumption of the loan in accordance with § 5001.506;

(v) Reorganization;

(vi) Liquidation;

(vii) Changes in interest rates in accordance with § 5001.513. Any interest payments must be adjusted proportionately between the guaranteed and unguaranteed portion of the loan; and

(viii) Troubled debt restructure.

(2) The term of any deferment, rescheduling, re-amortization, or moratorium cannot exceed the lesser of the remaining useful life of the collateral or remaining term of the loan as set forth in § 5001.402(b) of this part.

(i) During a period of deferment or moratorium on the guaranteed loan, the lender's non-guaranteed loan(s) and any stockholder or affiliate loans must also be under deferment or moratorium.

(ii) Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for successful repayment of the guaranteed loan and the remaining life of the collateral supports the action.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62199, Oct. 2, 2020]

§ 5001.516 Protective advances.

Protective advances are allowed only when they are necessary to preserve the value of the collateral. Therefore, a lender must exercise sound judgment in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance.

(a) Protective advances must be reasonable with respect to the outstanding loan amount and the value of the collateral being preserved.

(b) A lender cannot make protective advances in lieu of additional loans.

(c) A lender must obtain written Agency approval for any protective advance that will cumulatively amount to more than $200,000, or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less, to the same borrower. Payment of real estate taxes by the lender is considered a protective advance, subject to the requirements of this section, and does not require Agency advance approval.

(d) Protective advances constitute an indebtedness of the borrower to the lender and must be secured by collateral to the same extent as the original guaranteed loan. It is the lender's responsibility to ensure that any protective advances are secured by the collateral of the guaranteed loan.

(e) Notwithstanding § 5001.22(c) of this part, upon Agency approval, protective advances can be used to pay Federal tax liens or other Federal debt.

(f) A Protective advance claim will be paid only at the time of the final payment as indicated in the report of loss. In the event of a final loss, protective advances may accrue interest at the promissory note rate from the date of such advance and will be guaranteed at the same percentage of loss as provided for in the loan note guarantee. The loan note guarantee will not cover interest on the protective advance accruing after the interest termination date.

(g) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued interest times the percentage of guarantee regardless of any protective advances made.

(h) Holders do not have an interest in protective advances.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79728, Sept. 30, 2024; 89 FR 97477, Dec. 9, 2024]

§ 5001.517 Liquidation.

In the event of one or more incidents of default or third-party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the lender, with Agency consent, must provide for liquidation in accordance with paragraphs (a) through (n) of this section. The lender is responsible for initiating actions immediately and as necessary to assure a prompt, orderly liquidation that will provide maximum recovery. The Agency reserves the right to unilaterally conclude that liquidation is necessary and require the lender to assign the collateral to the Agency and the Agency will then liquidate the loan per paragraph (o) of this section.

(a) *Decision to liquidate.* A decision to liquidate a loan or proceed otherwise must be made when the lender determines that the default cannot be cured or when the Agency and the lender determine that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or proceed otherwise with the borrower must be made as soon as possible when one or more of the following exist:

(1) The loan is 90 calendar days behind on any scheduled payment and the

lender and the borrower have not been able to cure the delinquency;

(2) Delaying liquidation will jeopardize full or maximum recovery on the loan; or

(3) The borrower or lender is uncooperative in resolving the problem or the Agency or lender has reason to believe the borrower is not acting in good faith, and immediate liquidation would minimize loss to the Agency.

(b) *Repurchase of loan.* When the decision to liquidate a loan is made, if any portion of the loan has been sold or assigned under § 5001.408 of this part and has not already been repurchased, the lender must make provisions for repurchase in accordance with § 5001.511.

(c) *Lender's liquidation plan.* Within 30 calendar days after the lender decides to liquidate a loan, the lender must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include at least the following information:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments. Such proof may include copies of executed notes; and copies of mortgages or deeds of trust recorded in the appropriate jurisdiction;

(2) A copy of the payment ledger, if available, or other documentation that reflects the current outstanding loan balance, accrued interest to date, and the method of computing the accrued interest. If the interest rate was a variable rate, the lender must include documentation of changes in the agreed upon base rate and when the changes in the loan rate became effective.

(3) A full and complete list of all collateral and a listing of all liens held and status of such liens, plus any personal and corporate guarantees;

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from guarantors;

(5) Necessary steps for preservation of the collateral including any anticipated protective advances;

(6) The market value and the potential liquidation value, or estimates thereof, of all the collateral securing the loan.

(i) These values or estimates of the collateral must be obtained by the lender through an independent appraisal. If the outstanding balance of principal and interest is less than $250,000, the lender may, instead of an appraisal, obtain these values or estimates by using their primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value. A copy of the appraisal or valuation will be provided to the Agency with the liquidation plan or as soon as it is available.

(ii) The procedure used to obtain these values or estimates of the collateral must include an evaluation of the impact of any release of hazardous substances, petroleum products, or other environmental hazards.

(iii) Any independent appraiser's fee, including the cost of the environmental site assessment if necessary, will be shared equally by the Agency and the lender;

(7) Proposed protective bid amounts on collateral to be sold at auction and a description to show how the amounts were determined.

(i) A protective bid can be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest.

(ii) The protective bid must not exceed the amount of the loan balance plus applicable foreclosure expenses and must be based on the liquidation value and estimated net recovery considering prior liens and outstanding taxes, expenses of foreclosure, and estimated expenses for holding and reselling the property. Foreclosure expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens;

(8) Copies of the borrower's latest available financial statements;

(9) Copies of each guarantor's latest available financial statements;

(10) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense. These may include attorney, auctioneer, and other professional fees for services the lender will need to contract to maximize recovery on the loan. Cost could also include legal representation to protect Agency/lender joint interest in bankruptcy or receivership;

(11) Estimated protective advance amounts with justification. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard and flood insurance premiums affecting the collateral, and other expenses necessary to protect the collateral. Protective advances may include advances necessary to maintain services or address unique situations with proper justification. If the lender has advanced funds without agency approval during the life of the loan, such expenditures or loans will not be guaranteed;

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(13) Legal opinions, if needed by the lender's legal counsel; and

(14) A schedule to periodically report to the Agency on the progress of liquidation, not to exceed every 60 days.

(d) *Partial liquidation plan.* If actions are necessary to immediately preserve and protect the collateral, the lender may submit a partial liquidation plan and, when approved by the Agency, submit a complete liquidation plan prepared by the lender in accordance with *paragraph (c)* of this section.

(e) *Approval of liquidation plan.* The lender cannot implement its liquidation plan before obtaining written approval from the Agency. The Agency will approve or disapprove the plan within 30 calendar days of its receipt. In order to ensure prompt action, the lender may submit its liquidation plan with an estimate of collateral value, and the Agency may approve the liquidation plan subject to the results of the final liquidation appraisal.

(1) If the Agency approves the lender's liquidation plan, the lender must:

(i) Proceed expeditiously with liquidation. The lender must actively market the collateral for a reasonable period of time. If after this period of time the lender is unable to sell the collateral, then consideration should be given to submission of a final loss claim based on the fair market value of the collateral prior to its ultimate disposition;

(ii) Take all legal action necessary to liquidate the loan in accordance with the approved liquidation plan; and

(iii) Update or modify the liquidation plan when conditions warrant, including a change in value based on a liquidation appraisal.

(iv) If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the lender must obtain the Agency's written approval prior to proceeding with the proposed changes if the revised liquidation costs exceed 10 percent of the amount proposed in the liquidation plan approved by the Agency.

(2) If the Agency does not approve the lender's liquidation plan, the Agency will meet with the lender to resolve the concern(s). Until the concerns are resolved, the lender must take such actions that a reasonable lender would take without a guarantee and keep the Agency informed, in writing, of those actions. Once the revised liquidation plan is approved by the Agency, the lender must proceed in accordance with paragraphs (e)(1)(i) through (iii) of this section.

(f) *Acceleration.* The lender must proceed to accelerate the loan as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other required legal actions. The guaranteed loan will be considered in liquidation once it has been accelerated and a demand for payment has been made upon the borrower.

(1) If the sole basis for acceleration is a non-monetary default, the lender must obtain concurrence from the Agency prior to accelerating the loan. In the case of monetary default, the lender may accelerate the loan without prior approval by the Agency, although Agency concurrence must still be given no later than the time the Agency approves the liquidation plan.

(2) The lender must provide the Agency a copy of the acceleration notice, or

other acceleration document sent to the borrower.

(g) *Estimated loss claim and payment.* If the lender is conducting the liquidation and owns any or all the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 calendar days. The Agency will process the estimated loss claim and will make final loss payments in accordance with § 5001.521.

(h) *Liquidation expenses.* (1) The guarantee will not cover liquidation expenses in excess of liquidation proceeds under any circumstances.

(2) When a liquidation is performed by the lender, the Agency must approve, in advance and in writing, the lender's estimated liquidation expenses of collateral.

(3) Liquidation expenses must be reasonable and customary and must provide a demonstrated economic benefit to the lender and the Agency. The lender and Agency will share liquidation expenses equally. To accomplish this, the lender must deduct 50 percent of the liquidation expenses from the collateral sale proceeds.

(i) *Accounting and reports.* The lender must account for funds during the period of liquidation and must provide the Agency with reports on the progress of liquidation including disposition of collateral and resulting costs. If in the course of implementing the approved liquidation plan the lender determines additional procedures are necessary for the successful completion of the liquidation or otherwise makes any other changes to or deviations from the approved liquidation plan, the lender must identify in the report such procedures, changes, and deviations.

(j) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender must transmit to the Agency within 14 calendar days the Agency's pro rata share of any payments received from the borrower, liquidation, or other proceeds using an Agency approved form.

(k) *Disposition of collateral.* (1) Disposition of collateral acquired by the lender must be approved, in writing, by the Agency when—

(i) The lender's cost to acquire the collateral of a borrower exceeds the potential recovery value of the security and the lender proposes abandoning the collateral in lieu of liquidation; or

(ii) The acquired collateral is to be sold to the borrower, affiliates or members of the borrower or to borrower's stockholders or officers, or the lender or lender's stockholders or officers.

(2) A recommendation by the lender for abandonment of collateral is considered a servicing action under 7 CFR 1970.8(e) and a separate NEPA review is not required.

(l) *Disposition of personal or corporate guarantees.* The lender must take action to maximize recovery from all personal and corporate guarantees, including seeking deficiency judgments when there is a reasonable chance of future collection.

(m) *Compromise settlement.* Compromise settlements must be approved by the lender and the Agency. The lender must provide complete current financial information on all parties obligated for the loan. At a minimum, the compromise settlement must be equivalent to the value and timeliness of that which would be received from attempting to collect on the guarantee. Any guarantor cannot be released from liability until the full amount of the compromise settlement has been received. In determining whether to approve a compromise settlement, the Agency will consider, among other things, whether the compromise is more financially advantageous than collecting on the guarantee.

(n) *Liquidation provisions selection.* (1) If a lender has made a loan guaranteed under one of the programs identified in § 5001.1 of this part, the lender has the option to liquidate the loan under the provisions of this part or under the entire provisions of applicable regulation at the time the loan was guaranteed by the Agency.

(2) The lender must notify the Agency in writing within 10 calendar days after its decision to liquidate as to which regulatory provisions it chooses to use. If the lender does not notify the

Agency in writing within these 10 calendar days, it must use the liquidation provisions in this part.

(o) *Agency liquidation.* The Agency will liquidate a guaranteed loan at its option only when it is a holder and there is reason to believe the lender is not likely to undertake liquidation efforts that will result in maximum recovery. When it conducts a liquidation, the Agency will apply proceeds derived from the sale of the collateral first to reasonable liquidation expenses and second to the guaranteed portion of the loan.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79728, Sept. 30, 2024]

§ 5001.518 [Reserved]

§ 5001.519 Bankruptcy.

(a) *Lender's responsibilities.* The lender is responsible for protecting the guaranteed loan and the collateral securing it in bankruptcy and any related appellate proceedings. These responsibilities include, but are not limited to, the following:

(1) Taking actions that result in greater recoveries and avoiding actions that are likely not to be cost-effective;

(2) Monitoring confirmed bankruptcy plans to determine borrower compliance, and, if the borrower fails to comply, pursuing appropriate relief, including seeking a dismissal of the bankruptcy plan;

(3) Requesting modifications of any proposed bankruptcy plan whenever it appears that the lender could obtain additional recoveries via plan modification;

(4) Filing a proof of claim, when necessary, and all the necessary papers and pleadings concerning the case;

(5) Attending and, when necessary, participating in meetings of the creditors and all court proceedings;

(6) Immediately seeking adequate protection of the collateral if it is subject to being used by the trustee in bankruptcy or the debtor in possession;

(7) When appropriate, seeking involuntary conversion of a pending chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings;

(8) Submitting a default status report within 15 calendar days after the date when the borrower defaults and every 30 calendar days thereafter until the default is resolved or a final loss claim is paid by the Agency; and

(9) Informing the Agency within 10 working days upon notification of the filing of a bankruptcy case and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings, at a minimum, on a bi-monthly basis.

(b) *Appraisals.* In a Chapter 9 or Chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if the Agency has determined that an independent appraisal is necessary. With written Agency consent, the lender and Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings.

(c) *Repurchase from the holder.* The Agency or the lender, with the approval of the Agency, can initiate the repurchase of the unpaid guaranteed portion of the loan from the holder. If the lender is the holder, an estimated loss payment may be filed at the initiation of a Chapter 7 proceeding or after a Chapter 9 or Chapter 11 proceeding becomes a liquidation proceeding. Any loss payment on loans in bankruptcy must be approved by the Agency.

(d) *Reports of loss during bankruptcy.* In bankruptcy proceedings, the lender must use the report of loss form for reporting all estimated and final loss determinations. Payment of loss claims will be made as provided in this section.

(1) *Estimated loss payments.* (i) If a borrower has filed for bankruptcy and all or a portion of the debt has been discharged, the lender must request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the bankruptcy and any related appellate proceedings. The Agency will treat all subsequent claims of the lender during bankruptcy and any related appellate proceedings as revisions to the initial estimated loss. At its option, the Agency may process a revised estimated loss payment in accordance with any court-approved changes in the bankruptcy plan. Once

the bankruptcy plan has been satisfactorily completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest rate reduction under the terms of the bankruptcy plan.

(ii) The lender must use the report of loss to request an estimated loss payment and to revise any estimated loss payments during the bankruptcy plan. The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim.

(iii) Upon completion of a bankruptcy plan, the lender must—

(A) Enter the data directly into the Agency's electronic system; and

(B) Provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. Where the actual loss sustained is different than the estimated loss paid, the difference will be handled in accordance with § 5001.521(h).

(2) *Bankruptcy loss payments.* (i) The lender must request a bankruptcy loss payment of the guaranteed portion of the accrued interest and principal discharged by the court for all bankruptcies when all or a portion of the debt has been discharged. Unless a final court decree approves a subsequent change to the bankruptcy plan that is adverse to the lender, only one bankruptcy loss payment is allowed during the bankruptcy. Once a final court decree has discharged all or part of the guaranteed loan and any appeal period has run, the lender must submit the documentation necessary for the Agency to review and adjust the bankruptcy loss claim to reflect any actual discharge of principal and interest.

(ii) The lender must use the report of loss to request a bankruptcy loss payment and to revise any bankruptcy loss payments during the course of the bankruptcy. The lender must include with the bankruptcy loss claim documentation to support the claim, as well as any revisions to this claim.

(iii) Upon completion of a bankruptcy plan, restructure, or liquidation, the lender must enter the data directly into the Agency's electronic reporting system.

(iv) If an estimated loss claim is paid during a bankruptcy and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss will be filed to terminate the loan.

(3) *Interest losses as a result of bankruptcy reorganization.* Interest losses as a result of bankruptcy reorganization will be paid as described in paragraphs (e)(3)(i) and (ii) of this section, as applicable.

(i) For guaranteed loans closed for which the Agency has not issued an interest termination letter—

(A) The loss of interest income sustained during the period of the bankruptcy plan will be processed in accordance with paragraph (d)(1) of this section;

(B) The loss of interest income sustained after the bankruptcy plan is confirmed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction that extends beyond the period of the bankruptcy plan; and

(C) If an estimated loss claim is paid during the operation of the bankruptcy plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss will be filed to terminate the loan.

(ii) For guaranteed loans closed for which the Agency has issued an interest termination letter, the Agency will not compensate the lender for any difference in the interest rate specified in the loan note guarantee and the rate of interest specified in the bankruptcy plan.

(4) *Final bankruptcy loss payments.* The Agency will process final bankruptcy loss payments when the loan is fully liquidated.

(5) *Application of loss claim payments.* The lender must apply estimated loss payments first to the principal balance of the guaranteed portion of the debt and then to the interest of the guaranteed portion of the debt. In the event a court attempts to direct the payments to be applied in a different manner, the lender must immediately notify the Agency in writing.

(6) *Protective advances.* If approved protective advances, as authorized by § 5001.516, were incurred in connection with the initiation of liquidation action and were required to protect the collateral as result of delays in the case or failure of the borrower to maintain the security prior to the borrower having filed bankruptcy, the protective advances together with accrued interest, as determined under § 5001.450(c) of this part, are payable under the guarantee in the final loss claim.

(e) *Liquidation expenses during bankruptcy proceedings.* (1) The liquidation expenses will be in compliance with § 5001.517(h).

(2) Reasonable and customary liquidation expenses in bankruptcy may be deducted from liquidation proceeds of collateral. In the case of Chapter 11 reorganizations or Chapters 11 or 7 liquidation, only expenses authorized by the court can be deducted from the collateral proceeds, unless the liquidation is by the lender.

(3) When a bankruptcy proceeding results in a liquidation of the borrower by a bankruptcy trustee appointed under 11 U.S.C. 701, 702, 703, or 1104, expenses will be handled as directed by the court, and the lender cannot claim liquidation expenses for the sale of the assets.

(4) If the property is abandoned by the bankruptcy trustee and any relief from the stay has been obtained, the lender will conduct the liquidation in accordance with § 5001.517.

(5) Proceeds received from partial sale of collateral during bankruptcy can be used by the lender to pay reasonable costs (*e.g.*, freight, labor, and sales commissions) associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim request.

(6) Legal fees as a result of a bankruptcy are limited by the Agency to an amount not to exceed 3 percent of the current principal balance and are only recoverable from liquidation proceeds. Legal fees in excess of 3 percent of the current principal balance shall be borne by the lender and are not recoverable from liquidation proceeds or any loss claim by the lender.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79728, Sept. 30, 2024]

§ 5001.520 Litigation.

(a) In all litigation proceedings involving the borrower, the lender is responsible for protecting the rights of the lender and the Agency with respect to the loan and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the lender is not adequately protecting the rights of the lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the lender and Agency, on behalf of the lender or the Agency. If the Agency exercises this right, the lender must cooperate with the Agency. The Agency will assess against the lender any cost the Agency incurs with such action.

(b) Notwithstanding any other provision of this part, the Agency reserves the right to be represented by the U.S. Department of Justice in any litigation where the Agency is named as a party.

§ 5001.521 Loss calculations and payment.

Unless the Agency anticipates a future recovery, the Agency will make a final settlement with the lender after the collateral is liquidated or after settlement and compromise of all parties has been completed. The Agency has the right to recover losses paid under the guarantee from any party that may be liable.

(a) *Report of loss form.* The lender must use the report of loss form for all estimated and final loss claim requests.

(b) *Estimated loss claim.* The lender must submit to the Agency a completed report of loss form for all estimated loss claims. In calculating the estimated loss, the lender must use the estimated or current appraised liquidation value of the collateral.

(c) *Estimated loss payment.* The Agency will approve estimated loss payments only after it has approved the lender's liquidation plan. For a loan which has been approved by the Agency for a debt write-down (or debt restructure), the maximum amount of loss payment will not exceed the percent of guarantee multiplied by the difference between the outstanding principal and

interest balance of the loan before the write-down and the outstanding balance of the loan after the write-down.

(1) The amount of an estimated loss payment must be credited first as a deduction from the principal balance of the loan with any remaining balance to accrued interest.

(2) The estimated loss payment cannot be applied as a payment on the loan for purposes of reducing the unpaid balance owed by the borrower for status reporting or any debt collection actions against the borrower or any guarantors.

(d) *Reduction of loss claims payable.* (1) Negligent loan origination and negligent loan servicing will result in a reduction of loss claims payable under the guarantee to the lender if any losses have occurred as the result of such negligence. The Agency will assess against the lender any cost to the Agency associated with actions taken by the Agency necessary to protect the Agency's interests with respect to the loan where a lender is not in compliance with its origination and servicing responsibilities. The extent of the reduction, which could be a total reduction of the loss claims payable, will depend on the extent of the losses incurred as a result of the negligent loan origination or servicing.

(2) Non-compliance with the requirements of *§ 5001.205(a)* or *§ 5001.305(a)* will result in a reduction of loss claims payable. The Agency's review of the non-compliance could result in a total reduction of the loss claim payable. The Agency's review of the non-compliance could result in a total reduction of the loss claim payable. The lender must ensure during loan making and project development that the project is designed utilizing accepted architectural and engineering practices and conforms to applicable Federal requirements including the seismic requirements of Executive Order 12699 (55 FR 835, January 5, 1990), State and local codes and requirements, and facility plans or plans and specifications reviewed and approved by the applicable State regulatory agency. The lender must also ensure that the planned project will be completed within the available funds and once completed, will be suitable for the borrower's needs.

(3) Any delinquent fees, including any interest due thereon, will be deducted from any loss payment due the lender.

(e) *Final loss claim.* Except for certain unsecured personal or corporate guarantees as provided for in this section, the lender must submit a final report of loss to the Agency within 30 calendar days after liquidation of all collateral is completed. The Agency will not guarantee interest beyond the interest termination date or this 30-day period, other than for the period of time it takes the Agency to process the loss claim. The lender must apply the total amount of the loss payment remitted by the Agency to the guaranteed portion of the loan debt. At the time of final loss settlement, the lender must notify the borrower that the loss payment has been so applied. Such application does not release the borrower from liability. Once the lender receives a final loss payment from the Agency, the Agency will collect any outstanding debts owed to the government in accordance with part 3 of this title.

(1) *Loss.* In the event of a loss, the loan note guarantee will not cover—

(i) Interest to the lender accruing after the interest termination date;

(ii) Any interest accrued as the result of the borrower's default on the guaranteed loan over and above that which would have accrued at the Agency-approved promissory note rate on the guaranteed loan (*e.g.*, default interest rate); or

(iii) Any late fees, penalties, bond fees, interest rate swap charges, liquidation expenses, and other costs unless authorized under paragraph (e)(7) of this section.

(2) *Accounting of funds.* Before the Agency will approve a final report of loss, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. The lender must document and show that all the collateral has been accounted for and properly liquidated, and that liquidation proceeds have been properly accounted for and applied correctly on the loan.

(3) *Audit.* Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender must make its records available to and otherwise assist the Agency in making any investigation or audit of the report of loss. The documentation accompanying the report of loss must support the amounts reported. The Agency must be satisfied that the lender has maximized the collections in conducting the liquidation.

(4) *Guarantees.* The lender must determine the collectability of unsecured personal and corporate guarantees required in accordance with § 5001.204 of this part. The lender must promptly collect or otherwise dispose of such guarantees prior to completion of the final loss report. However, if collection from the guarantors appears unlikely or will require a prolonged period of time, the lender must file the report of loss when all other collateral has been liquidated. Unsecured personal or corporate guarantees outstanding at the time of the submission of the final report of loss will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(5) *Federal debt.* Any amounts paid by the Agency on account of liabilities of a borrower constitute a Federal debt owed to the Agency by the borrower. In such case, the Agency can use all remedies available to it to collect the debt from the borrower, including offset in accordance with part 3 of this title.

(i) Any amounts paid by the Agency pursuant to a claim by a lender constitute a Federal debt owed to the Agency by a third-party guarantor of the guaranteed loan, to the extent of the amount of the third-party guarantee. In such case, the Agency can use all remedies available to it to collect the debt from the third-party guarantor including offset in accordance with part 3 of this title.

(ii) The Agency may consider a compromise settlement of a debt owed to the Agency after it has processed a final report of loss and issued a 60-day due process letter. Any funds collected by the Agency will not be shared with the lender.

(6) *Protective advances.* In those instances where the lender made authorized protective advances, the lender can claim recovery for the guaranteed portion of any loss of monies advanced as well as interest resulting from such protective advances. These claims must be included in the final report of loss. The lender must provide receipts and a breakdown of protective advances as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(7) *Liquidation expenses.* As provided in § 5001.517(e), certain reasonable liquidation expenses are allowed during the liquidation process. The lender cannot claim any liquidation expenses in excess of liquidation proceeds.

(i) Liquidation expenses are recoverable only from liquidation proceeds. The Agency will deduct liquidation expenses from the liquidation proceeds of the collateral unless the costs have been previously determined by the lender (with Agency concurrence) to be protective advances. The lender must provide receipts and a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(ii) The Agency may approve legal fees as liquidation expenses provided that the fees are reasonable, require the assistance of attorneys, and cover legal issues pertaining to the liquidation that could not be properly handled by the lender, its employees or in-house counsel. Approved legal expenses are limited by the Agency to an amount not to exceed 3 percent of the current principal balance and will be shared by the lender and Agency equally. This includes those instances where the lender has incurred such expenses from a trustee conducting the liquidation of assets. Legal fees in excess of 3 percent of the current principal balance shall be borne by the lender and are not recoverable from liquidation proceeds or any loss claim by the lender.

(iii) The lender cannot claim the guarantee fee or the other Agency fees as authorized liquidation expenses, and

In-house expenses of the lender are not allowed.

(8) *Accrued interest.* If the lender holds all or a portion of the guaranteed loan, the Agency will guarantee accrued interest in accordance with § 5001.450(c) of this part.

(i) Accrued interest eligible for payment under the guarantee on a defaulted loan will be discontinued when the estimated loss is paid. Interest will not be paid beyond the interest termination date.

(ii) The lender must support accrued interest by documenting how the amount was accrued, including attaching a copy of both the promissory note and ledger. If the interest rate was a variable rate, the lender must include documentation of changes in both the selected base rate and the loan rate.

(iii) If a restructuring of a guaranteed loan includes the capitalization of interest, the guarantee will not cover the interest accrued on the capitalized interest.

(9) *Acquiring property titles.* If a lender acquires title to property, any loss will be based on the collateral value at the time the lender obtains title. Alternatively, the lender can calculate the final loss settlement using the net proceeds received at the time of the ultimate disposition of the property if—

(i) The lender has submitted to the Agency a written request to use this option within 15 calendar days of acquiring title; and

(ii) The Agency approves the request prior to the lender submitting any request for estimated loss payment.

(f) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits contained in the loan note guarantee. If the lender conducts the liquidation, loss occasioned by accruing interest will be covered to the interest termination date, provided the lender proceeds expeditiously with the liquidation plan approved by the Agency. If the Agency conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date the Agency accepts this responsibility.

(g) *Rent.* The lender must apply any net rental or other income that it receives from the collateral to the guaranteed loan debt.

(h) *Final loss payment.* The Agency will make loss payments after it has reviewed the complete final report of loss, all collateral has been properly liquidated and accounted for, and the Agency has determined that liquidation expenses are reasonable and within approved limits.

(1) Any estimated loss payments made to the lender will be credited against the final loss payment on the guaranteed loan.

(2) Once the Agency approves the report of loss and supporting documents submitted by the lender—

(i) If the actual loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(ii) If the actual loss is less than the estimated loss payment, the lender must reimburse the Agency for the overpayment plus interest at the promissory note rate from the date of payment of the estimated loss.

(iii) If the Agency conducted the liquidation, it will provide an accounting to the lender and will pay the lender in accordance with the loan note guarantee.

[85 FR 42518, July 14, 2020, as amended at 89 FR 79728, Sept. 30, 2024]

§ 5001.522 Future recovery.

After a final loss claim has been paid, the lender must use reasonable efforts to collect from any party still liable for future recovery unless the Agency notifies the lender otherwise. Any net proceeds from future recovery will be split pro rata between the lender and the Agency based on the percent of the loan guarantee even if the loan note guarantee has been terminated. Once the Agency determines a debt is Federal debt and provides notice to the lender, that Federal debt is excluded from future recovery. The lender must cease all collection efforts against the borrower and any individual or corporate guarantors upon referral of the debts by the Agency for collection in accordance with part 3 of this title. The Agency will not share with the lender any collection of Federal debt made by the Federal Government from any liable party to the guaranteed loan.

§ 5001.523 Property acquired by the lender.

(a) *Collateral preservation.* When a lender acquires title to the collateral and the final loss claim is not paid until final disposition, the lender must proceed as quickly as possible to develop a plan to fully protect the collateral from deterioration (weather, vandalism, etc.). Hazard insurance in an amount necessary to cover the market value of the collateral must be maintained.

(b) *Collateral sale.* (1) Upon acquiring the collateral, the lender must prepare and submit without delay to the Agency a plan on the best method for the sale of the collateral, keeping in mind any prospective purchasers. The Agency must approve the plan in writing. If an existing approved liquidation plan addresses the disposition of acquired property, no further review is required unless modification of the plan is needed.

(2) Whenever the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, the lender should consider abandonment of the collateral. If the lender seeks to abandon the collateral, the lender must obtain written Agency approval before abandoning the collateral.

(c) *Re-title collateral.* Any collateral accepted by the lender must not be titled in the Agency's name in whole or in part.

§ 5001.524 Termination of loan note guarantee.

Each loan note guarantee issued under this part or under one of the guaranteed loan programs identified in § 5001.1 of this part will terminate automatically when one of the events described in paragraphs (a) through (c) of this section occur. The lender will maintain its guaranteed loan files for at least three years after termination of the loan note guarantee.

(a) The guaranteed loan is paid in full;

(b) Full payment by the Agency of any loss claim or compromised settlement except for future recovery provisions; or

(c) Written request from the lender to the Agency to terminate the guarantee, which will be effective the date the Agency receives the request provided that the lender holds all the guaranteed portion of the loan.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62199, Oct. 2, 2020]

§§ 5001.525–5001.600 [Reserved]

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