DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

RIN 0570–AA71

Rural Microentrepreneur Assistance Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes the Rural Microentrepreneur Assistance Program. This interim rule provides technical and financial assistance in the form of loans and grants to qualified Microenterprise Development Organizations (MDOs) to support microentrepreneurs in the development and ongoing success of rural microenterprises.

DATES: This interim rule is effective June 28, 2010. Comments must be received on or before July 27, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via commercial mail delivery or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

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

FOR FURTHER INFORMATION CONTACT: Lori Washington, Loan Specialist, Business Programs, Specialty Programs Division, USDA, Rural Development, Rural Business-Cooperative Service, Room 6868, South Agricultural Building, Stop 3225, 1400 Independence Avenue, SW., Washington, DC 20250–3225; Telephone: (202) 720–9815, E-mail: *lori.washington@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be significant and has been reviewed by the Office Management and Budget in conformance with Executive Order 12866. The Agency conducted a qualitative benefit cost analysis to fulfill the requirements of Executive Order 12866. Based on the results of this qualitative analysis, the Agency has identified potential benefits to prospective program participants and the Agency that are associated with improving the availability of microlevel business capital, business-based training and technical assistance, and enhancing the ability of microlenders to service the microentrepreneurs to whom they are making their microloans.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA), Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. With certain exception, section 205 of UMRA requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This interim rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Participation in this program is voluntary. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

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

Executive Order 12988, Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given this rule; and

(3) Administrative proceedings in accordance with the regulations of the Department of Agriculture National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

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

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C 601–612). Rural Development has determined that this action will not have a significant economic impact on a substantial number of small entities for the reasons discussed below. While, the majority of MDOs expected to participate in this Program will be small businesses, the average cost to an MDO is estimated to be approximately 1 percent of the total mandatory funding available to the program in fiscal years 2009 through 2012. Further, this regulation only affects MDOs that choose to participate in the program.

Executive Order 12372, Intergovernmental Review of Federal Programs

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

Rural Development will conduct intergovernmental consultation using RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities,"

available in any Rural Development office, on the Internet at *http://www.rurdev.usda.gov/regs* and in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers assigned to this program is 10.870.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320), the information collection provisions associated with this interim rule have been submitted to the Office of Management and Budget (OMB) for approval as a new collection and assigned OMB number 0570–XXXX. In the publication of the proposed rule on October 7, 2009, the Agency solicited comments on the estimated burden. The Agency received no public comment letters in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a notice in the **Federal Register.**

Title: Rural Microentrepreneur Assistance Program.

OMB Number: 0570–XXXX (assigned).

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The collection of information is vital to Rural Development to make decisions regarding the eligibility of projects and loan and grant recipients in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are being used for the purposes for which they were awarded. Microenterprise development organizations seeking funding under this program will have to submit applications that include specified information, certifications, and agreements as stated in the interim rule.

The estimated information collection burden has decreased by approximately $38,500, from $275,844 estimated for the proposed rule to $237,339 estimated for the interim rule. The majority of this decrease is attributable to removing enhancement grants from the interim rule. This change was made in response to public comment, but will be re-evaluated by the Agency upon receipt of public comment on enhancement grants after the interim rule is published.

E-Government Act Compliance

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

I. Background

Title VI, Section 6022 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, June 18, 2008) (the Act) established the Rural Microentrepreneur Assistance Program (RMAP). This interim rule implements the program to make loans and grants to microenterprise development organizations (MDOs) to support microentrepreneurs in the development and ongoing success of rural microenterprises.

Under this program, the Agency will make available to MDOs direct loans and grants. As provided in the Act, MDOs that qualify for direct loans (participating microlenders) will use the funds borrowed from the Agency to make fixed interest rate microloans of not more than $50,000 at a term not to exceed 20 years to microentrepreneurs for startup and growing rural microenterprises.

The Agency will also make available technical assistance (TA) grants for microlenders and technical assistance only (TA-only) grants for entities that provide training and technical assistance to microentrepreneurs and microenterprises but do not wish to fund microloans under this program. The TA grants will be annual grants made to participating microlenders to provide business based training and technical assistance to microentrepreneurs that have received or are seeking a microloan from a microlender under this program.

TA-only grants will also be made available, on a limited basis, to MDOs that are not participating in the program as microlenders.

II. Discussion of the Interim Rule

USDA Rural Development is issuing this regulation as an interim rule, with an effective date of June 28, 2010. All provisions of this regulation are adopted on an interim final basis, are subject to a 60-day comment period, and will remain in effect until the Agency adopts a final rule.

III. Changes to the Rule

This section presents changes from the proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rule. Some changes, however, are being made to clarify proposed provisions. Unless otherwise indicated, rule citations refer to those in this interim rule.

A. Highlighted Changes

The following list highlights some of the changes made to the rule. These changes are also discussed in the section specific change portion that follows this list. All changes resulting from public comments are explained in detail in that portion of the preamble.

- Creation of a technical assistance only grant program for non-lending MDOs.
- Deferral of the enhancement grant category.
- Increasing the maximum size of technical assistance grants.
- Implementation of a simplified interest rate structure.
- Removing the maximum margin requirement on loans made by the microlender to the microentrepreneur.
- Implementation of a minimum score for qualification as a microlender or grantee.
- Adjusting the cost share and matching requirements, including limiting the cost share requirement to loans and the matching requirement to grants.
- Allowing microlenders two cost share options for establishing the rural microloan revolving fund.

B. Section-Specific Changes

Purpose and Scope (§ 4280.301)

There were two primary changes to this section:

First. The Agency added discussion concerning the availability of technical assistance-only grants as one of the types of funding to be available under the program (§ 4280.301(a)(4) and (d)).

Second. The Agency clarified that participating microlenders can use the

TA grants to provide technical assistance not only to microentrepreneurs who have actually received a loan from the microlender, but also to microentrepreneurs who are seeking a loan from the microlender (§ 4280.301(a)(2)).

As the purpose of this Program is to support the development and ongoing success of rural microentrepreneurs and microenterprises, microentrepreneurs are encouraged to contact the Agency for a list of MDOs in or near their geographic area that are participating in this Program.

Definitions and Abbreviations (§ 4280.302)

The Agency made changes to the definitions section of the rule, including adding several new definitions. Except for terms in which the changes were grammatical, the following identify each affected term.

Agency personnel. Because no Agency personnel are eligible for a microloan under the interim rule, revised by removing the last clause ("who are more than 6 months from separating from the Agency") because it is no longer necessary.

Close relative. Added to clarify the implementation of § 4280.323(d) concerning the restrictions on the use of loan funds.

Default. Has been simplified for purposes of clarity.

Eligible project cost. Has been added as part of the implementation of the cost share requirement.

Facilitation of access to capital. To clarify this term, the words "access to" have been added.

Fiscal year. Added the word "Federal" for clarity.

Indian tribal government employee. Has been removed as a conforming change.

Loan loss reserve fund. Revised by removing text not associated with the definition of the term, but which was also covered elsewhere within the rule.

Microborrower. Added for clarification in implementing the rule.

Microentrepreneur. Revised to clarify that both the microentrepreneur and the microenterprise to be assisted under the program must be located in a rural area. In addition, the phrase "business financing" was replaced with "business capital." Lastly, a sentence was added to note that a microentrepreneur who has received a loan under this program may also be referred to as a microborrower within the rule.

Military personnel. Revised to add the words "or grade" after the word "rank"; "United States" after the word "active"; "active duty" after the word "their"; and to remove to the word "enlisted".

Nonprofit entity. Has been simplified and reference to the "U.S. Internal Revenue Service" has been removed.

Rural microenterprise. Revised the term to "microenterprise" and expanded the definition for clarity.

Rural microloan revolving fund. Revised for clarity.

Significant outmigration. Removed because the term is not used in the interim rule for the reasons discussed in the responses to comments.

State. Added to clarify the applicability of the program.

Review of Appeal Rights and Administrative Concerns (§ 4280.304)

In paragraph (a), the words "a microlender, or grantee MDO" were added after the word "MDO" to clarify the applicability of this paragraph.

Nondiscrimination and Compliance With Other Federal Laws (§ 4280.305)

In paragraph (a), "Applicant" was replaced with "Any entity receiving funds under this subpart" to clarify the applicability of this paragraph.

Forms, Regulations, and Instructions (§ 4280.306)

This section has been added to identify where applicants can access forms, regulations, and instructions noted within the subpart.

Program Requirements for MDOs (§ 4280.310)

This section has been revised and redesignated. The substantive changes are described below:

First. The citizenship requirements have been clarified to apply only to non-profit entities (paragraph (a)(2)), not American Indian tribes or United States public institutions of higher education.

Second. In addition to moving the requirements specific to potential microlenders into paragraph (a)(4), the Agency has added a new provision (paragraph (a)(4)(ii)) regarding obtaining an attorney's opinion regarding the microlender's legal status and its ability to enter into program transactions at the time of initial entry into the program.

Third. A minimum score threshold has been added for MDOs to be considered for receiving an award under this subpart (paragraph (b)). Generally, applicants must receive at least 70 points out of 100 in order to be eligible to receive an award under the program.

Fourth. The Agency removed "is delinquent in meeting U.S. Internal Revenue Service (IRS) requirements" from the list of provisions identifying ineligible applicants.

Loan Provisions for Agency Loans to Microlenders (§ 4280.311)

A number of changes have been made to this section, including grammatical changes and redesignation of paragraphs. The substantive changes are described below:

First. The Agency revised the provisions associated with the cost share requirements by applying them only to loans and identifying two options for how microlenders can establish Rural Microloan Revolving Funds (RMRFs). The provisions also allow microlenders the option of setting up multiple RMRFs (paragraph d)). Because of this revision, a conforming change was made to paragraph (c) to refer to "RMRF" funds instead of "Agency loan" funds.

Second. The provisions concerning the term of a loan have been recast to state that a term shorter than 20 years will be considered if requested by the applicant MDO and must be agreed to by the microlender and the Agency (paragraph (e)(3)).

Third. The number of days loan closing must take place has been revised to within 90 days, rather than 60 days as proposed, before funds would be forfeited (paragraph (e)(8)).

Fourth. Revised the number of day microlenders have to make at least one microloan from within 30 days to within 60 days of disbursement (paragraph (e)(10)). Further, failure to make a microloan within this time period may result in the microlender not receiving any additional funds from the Agency and may result in the Agency demanding return of any funds already disbursed to the microlender.

Fifth. Revised substantially the interest rate provisions. In the interim rule, each microloan made to a microlender during the first five years of participation will bear an interest rate of 2 percent and each loan made to the microlender after the fifth year of participation will bear an interest rate of 1 percent (paragraph (e)(12)).

Sixth. Revised several dates in the section, including the date when the Agency will calculate and amortize the microlender's debt after the deferral period (*e.g.,* (paragraph (e)(13)).

Seventh. Removed the provisions associated with negative amortization and reamortization (proposed § 4280.311(d)(15)(i) and (ii)).

Eighth. Modified the rule to indicate that loans can be used to recapitalize existing Agency funded RMRFs (paragraph (f)(2)).

Ninth. Added a provision to provide microlenders 30 days to replenish the loan loss reserve fund (LLRF) if it falls

below the required amount (paragraph (g)(2)(i)).

Tenth. Removed the phrase "and partially funded" in paragraph (g)(4).

Eleventh. Added a conforming change to the requirement for maintaining a minimum 100 percent of the amount owed by the microlender to the Agency for those microlenders with 3 years or less experience (paragraph (h)(2)).

Twelfth. Added a provision requiring microlenders to provide Agency access to any of the microlender's records pertaining to any microloan made to the microlender under this program. This was added to enable the Agency to better enforce the provision of this program (paragraph (h)(7)).

Thirteenth. Added a provision requiring prior written Agency approval before the microlender makes any key personnel changes (paragraph (h)(8)).

Loan Approval and Closing (§ 4280.312)

This section has been added and is comprised of proposed § 4280.311(g) and (h) for clarity. Changes to these paragraphs are:

- The promissory note and security agreement have been added to the list of items that may be used to demonstrate that the RMRF and LLRF have been established and the LLRF has been, or will be, funded as described in § 4280.11(f)(4) prior to loan closing (paragraph (c)(1)).
- This section has been clarified to explain what constitutes "sufficient evidence" to demonstrate that no law suits are pending or threatened that would adversely affect the security of the microlender when the security instruments are filed (paragraph (c)(3)).

Grant Provisions (§ 4280.313)

This section has been redesignated (proposed § 4280.312) and a number of changes have been made, including grammatical changes and reordering of paragraphs. The substantive changes are described below:

First. The calculation of the maximum TA grant amount has been revised such that the maximum annual TA grant to any one microlender could be $205,000 (paragraphs (a)(1)(i) and (b)(2)). The maximum TA grant amount for a microlender is now calculated as 25 percent of the first $400,000 of outstanding microloans owed to the microlender under this program, plus an additional 5 percent of the outstanding loan amount owed by the microborrowers to the lender over $400,000 up to and including $2.5 million.

Second. The addition of provisions that a microlender who expends more than 10 percent of its TA grant funding on administrative expenses will be considered in performance default and may have to forfeit funding (paragraph (b)(3)(iii)).

Third. Provisions have been added to address funding of the TA-only grants (paragraphs (a)(1)(ii) and (c)).

Fourth. The matching requirements have been revised (paragraph (a)(2)).

Fifth. The Agency added a provision requiring prior written Agency approval before the microlender makes any key personnel additions (paragraph (a)(5)).

Sixth. The grant oversight provisions were moved from this section and consolidated with those in § 4280.320.

MDO Application and Submission Information (§ 4280.315)

Most of the changes to the section reflect a reorganization of the provisions found in the proposed rule. Substantive changes include:

- Redefining less experienced MDOs as those with 3 years or less experience, rather than less than 3 years experience, and redefining more experienced MDOs as those with more than 3 year experience, rather than 3 or more years experience;
- Requiring certificates of good standing to be not more than 6 months old;
- Adding documentation requirements for TA-only grant applications;
- Requiring documentation that the applicant has certified to the Agency that it cannot find credit elsewhere (pursuant to the requirements as provided in the Consolidated Farm and Rural Development Act (Sec. 333(1));
- Revising and simplifying the requirement associated with separate applications to indicate that MDOs may only submit and have pending for consideration, at any given time, one application, regardless of funding category; and
- Requiring all applicants seeking status as a microlender to identify which cost share option(s) they will use to set up their RMRF(s) and the amount(s) and source(s) of the non-Federal share.

Application Scoring (§ 4280.316)

A number of changes have been made to this section, including grammatical changes, redesignation of paragraphs, and clarification as to whether the information to be submitted applied to rural or non-rural microentrepreneurs and microenterprises, or both, and to microloans or loans or the microlenders entire portfolio. The substantive changes are described below:

The Agency notes that, except for applications from microlenders with more than 5 years experience with this program:

1. The maximum number of points that each application can receive is 100;

2. Each application will be scored against the criteria specified in § 4280.316(a) for which it can receive a maximum of 45 points;

3. Each application will be scored against the criteria specified in § 4280.316(b), (c), or (d), as applicable, for which it can receive a maximum of 55 points; and

4. An application must receive at least 70 points in order to be eligible.

Applications from lenders with more than 5 years experience in this program will be scored on a pass/fail basis. Those applications that pass will be assigned a score of 90 points.

Figure 1 illustrates the RMAP scoring process.

Application Requirements for All Applicants (§ 4280.316(a))

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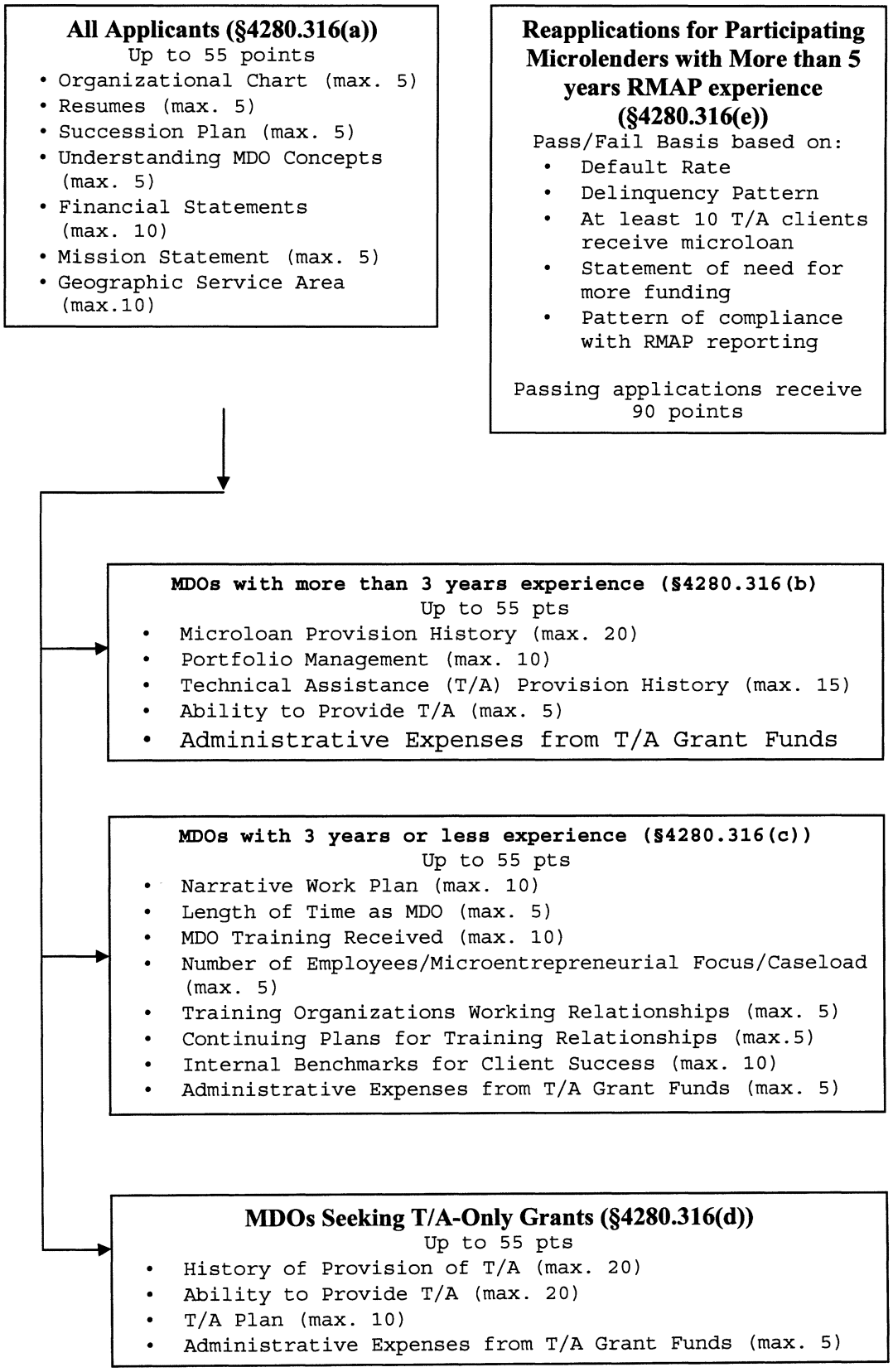

Figure 1. Summary of RMAP Scoring

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Changes to these application requirements are mostly editorial in nature; there were no changes in the basic scoring criteria or points to be awarded. Substantive changes included:

- Indicating that there should be a corresponding resume for each of the key individuals noted and named on the organizational chart;
- Noting that the mission statement does not need to be submitted twice if it is already included in other submitted documents; and
- Deleting "as well as the needs of the service area" and reference to areas of significant outmigration from the scoring criterion addressing information regarding the geographic area to be served.

Program Loan Application Requirements for MDOs Seeking To Participate as RMAP Microlenders With More Than 3 Years of Experience (§ 4280.316(b))

There were several important changes associated with the scoring criteria for these applications, including:

- Removing reference to demographic group and replacing that term with reference to racial and ethnic minorities, women, and the disabled in Figure 1;
- Replacing reference to the U.S. Census Bureau with the "applicable decennial census for the State" (paragraph (b)(1)(v));
- Replacing "race, ethnicity, and socio-economic status" with "racial and ethnic minority status" and indicating that disability will be defined as under The Americans with Disabilities Act under the scoring criterion for diversity (paragraph (b)(1)(v));
- Replacing "percentage points" with "percent" (paragraph (b)(1)(v));
- Removing the scoring criterion for outmigration and adding "non-rural" to the total number of microentrepreneurs that received both microloans and TA services in the scoring criterion for history of provision of technical assistance to microentrepreneurs (paragraph (b)(3));
- Removing "socially-disadvantaged" and clarifying that the percentage of rural entrepreneurs that received both microloans and TA services will be broken down by racial and ethnic minority, disabled, and gender in paragraph (b)(3)(iii); and
- Adding a new scoring criterion on the ratio of TA clients that also received microloans during each of the last three years (paragraph (b)(4)).

With the removal of outmigration as a scoring criterion for loans and the addition of the new scoring criterion, the points associated with most of the criteria also changed.

Application Requirements for MDOs Seeking To Participate as RMAP Microlenders With 3 Years or Less Experience (§ 4280.316(c))

There are no significant substantive changes to the scoring criteria for these applications other than a redistribution of points.

Application Requirements for MDOs Seeking Technical Assistance-Only Grants (§ 4280.316(d))

This is a completely new set of scoring criteria required by the addition to the interim rule of providing technical assistance grants to MDOs that are otherwise not participating as a microlender. The criteria included address: History of provision of technical assistance to microentrepreneurs, ability to provide technical assistance to microentrepreneurs, technical assistance plan, and proposed administrative expenses to be spent from TA grant funds.

Re-Application Requirements for Participating Microlenders With More Than 5 Years Experience as a Microlender Under This Program (§ 4280.316(e))

The substantive changes to this section were to:

- Replace "the number of businesses" with "the number and percent of program microentrepreneurs and microenterprises" and replace "after loan repayment" with "after microloan disbursement" in paragraph (e)(1)(iii);
- Add to paragraph (e)(2) "over the life of its participation in the program" to indicate the appropriate timeframe that data are to be reported;
- Provide better guidance on requirements for assessing overall program performance with regards to the successful use of TA dollars (paragraph (e)(2)(iii));
- Replaced proposed § 4280.316(e)(2)(iv), because it is duplicative of § 4280.316(e)(1)(iii), with a request for a statement discussing the need for more funding; and
- Removing proposed § 4280.316(e)(2)(vi) regarding other such issues as deemed appropriate.

Selection of Applications for Funding (§ 4280.317)

A few changes have been made to this section as briefly described below:

- The introductory text is revised to clarify that all applications will be scored on a 100-point scale and will be ranked together and to allow the Administrator to prioritize applications that score the same for geographic diversity. This latter provision is added in order to facilitate the distribution of limited program funds throughout rural America, because the Agency does not want program funds to be concentrated in a few states.
- Provisions for application packages have been added (paragraph (a)(1)).
- Provisions associated with internal procedures were removed (proposed § 4280.317(c) and (d)).
- Clarification that awardees have 90 days to close or forfeit their funding (paragraph (d)).

Grant Administration (§ 4280.320)

The changes made to this section addressed presentation of the requirements and updating and revising the forms to be submitted. This section now also states that if a microlender has more than one grant from the Agency, a separate report must be made for each.

Loans From the Microlenders to the Microentrepreneurs and Microenterprises (§ 4280.322)

A number of changes have been made to this section, including grammatical changes and reordering of paragraphs. *The substantive changes are described below:*

- The provision limiting the margin of the interest rate on the loan made to the microborrower has been deleted. Instead, the microlender may establish its margin of earnings but may not adjust the margin so as to violate Fair Credit Lending laws. In addition, margins must be reasonable so as to ensure that microloans are affordable to the microborrowers (paragraph (b)(3)).
- The provisions in § 4280.322(c) concerning insurance requirements have been revised by removing "except that * * * excessive."
- The requirement that a microborrower has been turned down has been removed and replaced with more appropriate options for meeting the test that have a lesser impact on the microborrower's ability to build a favorable credit history. (paragraph (d)), In the introductory text of paragraph (f), the rule clarifies that Agency loan funds may be used for any legal business purpose provided it is not identified in § 4280.323 as ineligible.
- The rule includes clarification on the eligibility of military personnel for funding under the program (paragraph (g)). The rule also clarifies that Indian Tribal government employees will be treated as any other MDO employee regarding eligibility for a microloan.

Ineligible Microloan Purposes (§ 4280.323)

A few changes have been made to this section:

- Reference to "his/her family members" has been removed (paragraph (d));
- The paragraph on military personnel has been moved to § 4280.322;
- Reference to swimming pools has been removed from (paragraph (l);
- Proposed paragraphs (o) and (p) have been removed; and
- Lines of credit and subordinated liens were added as an ineligible purpose (paragraphs (n) and (o)).

IV. Discussion of Comments

The proposed rule was published in the **Federal Register** on October 7, 2009 (74 FR 51713), with a 45-day comment period that ended November 23, 2009. Comments were received from 48 commenters yielding over 450 individual comments on the proposed rule, which have been grouped into similar categories. Commenters included members of Congress, Rural Development personnel, microenterprise development organizations, trade associations, states, universities, environmental organizations, and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters. Responses to the comments on the proposed rule are discussed below.

General

Comment: Several commenters provided general support for the program, and positive discussion of other microenterprise development activities and programs to address rural need.

One commenter provided general support for the program's efforts to build the capacity of the microenterprise development industry to achieve new levels of performance and effectiveness. Due to tightened credit markets as a result of the recession, microlenders face increased demands to provide capital and technical assistance to both start-ups and existing microentrepreneurs.

Several commenters stated that they strongly support this commenter's comments on the proposed rule.

Response: The Agency appreciates the support for the program reflected by the commenters, acknowledges the microenterprise development work that has produced positive activity both in the United States and abroad for several decades, and looks forward to formalizing the Agency's participation in this economic development sector.

Comment: One commenter stated that they believe RMAP will do much good in reversing the economic and financial crisis in rural communities. With many rural areas underserved or not served at all by MDOs, the Agency should be doing all it can to recruit as many qualified organizations as possible to become engaged in rural training and microentrepreneur lending. The proposed rule's scoring should encourage the effort to build MDO networks to serve these communities with as many organizations with the necessary expertise as possible.

Response: The Agency acknowledges the commenter's support.

Funding Allocations

Comment: Four commenters stated that the terms of the proposed rule make it difficult to determine how USDA will make decisions on applications that seek funding from different components (the so-called "enhancement grants" and the loans/TA grants) without stating how much of available funding goes to each component. The commenters recommended that the final rule should contain information concerning program funding, including the subsidy rate that will be used to calculate the RMAP loan program level and legislative intent in the USDA FY 2010 appropriations bill. If this information is unattainable or otherwise not available, the commenter recommended that all RMAP dollars not previously identified by Congress as loan subsidy dollars be used to provide TA training grants to MDOs.

Response: The Agency considered a standard division among the program components and determined that such a balance should be adjustable in future years based on market demands and conditions. Therefore, the Agency has not included program funding in the rule with one exception. As noted later in this preamble, the Agency plans to use up to 10 percent of program funding each year for technical assistance only grants for MDOs that are not otherwise participating in the program. The Agency will publish program levels annually in a Notice of Funding Availability (NOFA).

Existing MDO Emphasis

Comment: Several commenters were concerned that the proposed rule applies exclusively to existing MDOs, especially those heavily involved in lending. The commenters stated that one of the purposes of the law is to build and enhance microenterprise services in rural areas, particularly remote rural areas and believe the application and scoring emphasis on MDO history (particularly an MDO's lending history) implies funding only for existing MDOs, and the "enhancement grants" provision (of the proposed rule) is defined in terms of "microlenders" and "projects" and activities that enhance the microlenders' capabilities, implying that funds will go exclusively for existing MDOs involved in lending. According to the commenters, this upsets the intended balance in RMAP between training, technical assistance (not connected to loans to MDOs) and lending, and between existing MDOs and developing a network of MDOs in unserved and underserved rural areas. The commenters suggested that the final rule restore the intended balance in both respects.

Response: With regard to the comment concerning training and technical assistance, the Agency agrees that microlenders who are not participating in RMAP as lenders should have access to technical assistance grants in order to provide such assistance to rural microentrepreneurs. Thus, the Agency has included in the rule § 4280.301 provisions for MDOs who are otherwise not participating in the program to be eligible to receive technical assistance grants.

With regard to the comment concerning existing MDOs and developing a network of MDOs, the Agency disagrees with the commenters that the rule does not address both. As provided in both the proposed rule and this interim rule, MDOs with less than 3 years experience are eligible to compete for program funds. Thus, this would allow for developing a network of MDOs. However, to further meet the need for developing a network, the Agency is requesting that comments and suggestions regarding the delivery of an enhancement grant program be submitted (*see* Section V of this preamble).

Administrative Management

Comment: One commenter expressed concern that the interest rate criteria specified were too complex for the current automated systems to monitor or effectively manage.

Response: During the development of the regulation, the program area has been engaged in system requirements discussions with Agency information technology staff. The Agency anticipates that, by the time the first applications are received, systems (the Rural Utilities Loan Servicing System (RULSS)) will be ready to accommodate the interest rate provisions in the rule.

Comment: One commenter stated that the program should be aligned with existing Rural Development programs and administrative capabilities. The

commenter believes that the Administrative requirements overall are too complex to manage within existing Agency systems and substantially out of sync with other Agency programs to be cost-effective to the taxpayer for management. According to the commenter, the proposed rule must align payment and deferral options with the Intermediary Relending Program (IRP) in order to be cost-effective.

Response: The Agency disagrees with the commenter's characterization of the proposed RMAP regulation. The Agency is in the process of placing its administrative systems under RULSS. RMAP will be aligned with other similar programs to leverage electronic reporting resources with the objective of improved information-gathering and more efficient program management. The RMAP program will begin the program area's move to newer, more flexible, more responsive administration of the program. This is expected to result in improved electronic reporting, less paper-based program administration, and mitigation of duplicative or unnecessary work, thereby allowing RMAP to be implemented efficiently.

Furthermore, RMAP is different from the IRP and, thus, certain provisions will not align intentionally with the IRP. Finally, the Agency believes that the RMAP provisions are very similar to other existing Federal microenterprise programs and the participating entities will understand the provisions contained in RMAP.

Comment: One commenter believes that the rule as proposed could cause issues with Office of the Inspector General (OIG) audits.

Response: The Agency believes that OIG audits are helpful in terms of suggesting program improvements. It further believes that programs that are efficiently and effectively managed will have few negative comments as the result of such audits.

Micromanagement

Comment: One commenter stated that as proposed there is too much micro-management in the program, especially if the MDO is applying for the minimum loan amount of $50,000. According to the commenter, the reporting burden is too great to make it worth their while.

Response: Reporting requirements for this program have been kept to a minimum as a result of instituting an electronic reporting system. Reporting is flexible, automated, and easily accessed by lenders, grantees, and agency personnel.

Loans, TA Grants, Enhancement Grants

Comment: A number of commenters believe that the proposed rule should be revised to maintain the intent of Congress by restoring the balance between the funding for loan capital and funding for training and technical assistance. As one claimed, the proposed rule is in "direct contradiction to the law" because it eliminates all grants to microenterprise programs to provide business training to existing and prospective microentrepreneurs. The commenter stated that, by eliminating the training funds (and by capping technical assistance funds), the proposed rule will make it difficult for organizations to fund the staff needed to work with borrowers and other clients.

Another commenter stated that the proposed rule directs most of the RMAP funds to loan capital and gives short shrift to support for training, financial planning, and critical support services that MDOs offer. The proposed rule does this by limiting the purposes of grants to support microenterprise development and by capping the maximum technical assistance grant an MDO can receive at $100,000, rather than 25 percent of the MDO's total balance of microloans.

Response: The Agency disagrees that the proposed rule was in direct contradiction to the law, because it provided for loans and for grants for both technical assistance to microentrepreneurs (referred to as technical assistance grants) and training of MDOs staff to enhance their capabilities in providing technical assistance to their clients (referred to as enhancement grants). Nevertheless, the Agency, as noted later in this preamble, has added in § 4280.301 that technical assistance grants may be made available to MDOs that are not otherwise participating in RMAP. The Agency believes that this change provides for an improved program and satisfies the concerns expressed by these commenters.

Finally, the Agency understands that those seeking technical assistance funding would prefer no funding cap. The Agency believes that, in order to fund more MDOs in rural areas nationwide, a cap is necessary. However, as later discussed, the maximum amount of technical assistance grants has been increased.

Inflexibility

Comment: Several commenters stated that the proposed rule is inflexible and will unnecessarily increase expenses for microenterprise service providers. To illustrate their concern, one commenter states that programs must identify prospective borrowers before they can receive loan funds from USDA. The result is that more time must be spent completing paperwork, leaving less time to serve microentrepreneurs. These rules ignore the flexibility needed to help microentrepreneurs be successful.

One commenter believes that the proposed rule does not reflect the reality of how lending to microentrepreneurs actually works.

Another commenter believes that the approach is far too elaborate and unnecessarily complex, particularly in the way RMAP loans are structured and reamortized and in the scoring system. The commenter stated there is the maximum need for flexibility and latitude for the program to succeed.

Three of the commenters stated that the rule, as proposed, will add to the administrative burdens on MDOs and decrease the portion of staff time that can be devoted where it should be devoted—servicing loans, providing technical assistance and conducting outreach that brings more microentrepreneurs in the door for services.

Response: It is not the intent of the Agency to require microlenders to identify prospective borrowers before they can receive loan funds from the USDA. There is no such requirement in the proposed rule. Similarly, the restrictions placed on the relationship between the microlender and the microborrowers are minimal and stem from statutory requirements, such as the maximum loan amount, the maximum term of a microloan, and the provision of technical assistance and training for microborrowers. The proposed rule did, however, require that the microlender make a microloan within 30 days of receipt of funds from the Agency. To the extent that the commenter may be referring to this policy, the interim rule instead adopts a 60 day requirement to provide microlenders more flexibility.

Notice of Funding Availability

Comment: Two commenters proposed that the Agency set a timeline for a NOFA that both reflects the Congressional funding process and allows for greater accountability to RMAP participants. The commenter recommended that a NOFA be made either no later than 45 days after the enactment of the appropriate spending bill or no later than 30 days after the disbursement of funds and/or budget authority to USDA.

Response: The Agency disagrees that it is necessary to set a timeline for issuing a NOFA, in part because there is no relationship between when the

Agency will accept applications and when it issues a NOFA. It is the Agency's intent, however, to publish RMAP NOFAs as early as possible each fiscal year. This comment is associated with the administration of RMAP and not with the proposed rule itself. Thus, no changes have been made to the rule as a result of this comment.

MDO Administrative Costs

Comment: One commenter believes that the Agency's expectation, noted under its Regulatory Flexibility Act discussion, that participating MDOs will be able to cover most of their administrative costs by "the interest rate spread between the one percent loan from Rural Development and the interest rate on loans made to the microentrepreneurs by the MDO" seems to be in conflict with subsequent sections of the proposed rule that severely limit MDO uses of interest income and must be clarified.

Response: The Agency agrees with the commenter that the statement in the preamble to the proposed rule was in error. The Agency has not repeated this statement in this preamble.

Intermediary Relending Program

Comment: One commenter recommended that the program be delivered under the published IRP regulations with the exception that the term must be 20 years and that microborrowers comply with the criteria in the proposed rule (*i.e.,* proposed §§ 4280.322 and 4280.323). The commenter further suggested that RMAP grant funds be administered under the published Rural Business Enterprise Grants regulations with the exception that the RMAP grants would be awarded in the proportional amounts indicated in the proposed rule (25 percent of the RMAP loan) and accompany RMAP loan awards. According to the commenter, adopting existing, well-understood, functional program regulations will allow rapid deployment and operation of the important RMAP initiative.

Response: The Agency disagrees with the commenter's recommendation to administer RMAP under the IRP and RBEG regulations because of the many statutory differences between the programs.

Purpose and Scope—(§ 4280.301)

Comment: In referring to proposed § 4280.301(b), one commenter expressed concern that the sentence "Technical assistance grants will be awarded to microlenders to provide technical assistance to microentrepreneurs who have received one or more microloans from the MDO under this program" would mean that entrepreneurs that have not received a microloan from an MDO under this program would not be able to receive technical assistance.

Response: The Agency agrees that it is in the best interest of the program not to limit technical assistance only to those microborrowers who actually receive a microloan under RMAP. Therefore, the Agency has revised the sentence for clarity to indicate that a microentrepreneur seeking a microloan would also be eligible to receive technical assistance.

Definitions and Abbreviations—(§ 4280.302)

Administrative Expenses

Comment: One commenter recommended removing the limitation on the percent of TA grant funding that may be used to fund expenses because it has nothing to do with the definition.

Response: While the Agency does not disagree with the commenter's observation, the Agency believes that it is helpful here to explain the limitations to the public and Agency staff. For these reasons, and because it does "no harm," the Agency has not revised the definition as suggested by the commenter.

Agency Personnel

Comment: Two commenters asked why there was a distinction made in the definition for personnel who are more than 6 months from separating from the Agency. One of the commenters also asked how someone would know that they are more than 6 months from separating from the Agency. One of the commenters believes that it is inappropriate, if not illegal, for the Agency to ask its staff when they plan to separate and the other commenter suggested deleting this phrase.

Response: As proposed, the Agency intended to allow Agency personnel who knew that they would be leaving the Agency within 6 months to apply for and receive RMAP funds. This distinction was intended to parallel the provisions for military personnel elsewhere in the proposed rule. After considering this and other similar comments, the Agency has determined that a "blanket" prohibition for all Agency employees while they are still with the Agency is easier to implement and consistent with other program regulations. The Agency, therefore, has removed the language from the rule.

Application

Comment: One commenter suggested adding "required to be" after the word "documentation" in the definition, so that it would read: "The forms and documentation required to be submitted by an MDO for acceptance into the program."

Response: The Agency disagrees with the commenter's suggestion. The application is what is submitted, not what is required. Section 4280.315 makes clear what items are required for a complete application. Therefore, the Agency has not revised this definition.

Business Incubator

Comment: One commenter stated that a business incubator is not an organization, but is generally a "thing", such as a building.

Response: The Agency disagrees with the commenter. As used in this interim rule, a business incubator is an organization that can perform such tasks as renting space, using equipment, etc. A building cannot do such tasks. The Agency, however, is adding to the definition the condition that, to be considered a business incubator, the organization provides temporary premises "at below market rates." This is a condition that the Agency overlooked when proposing the rule and believes is an important aspect of a business incubator.

Default

Comment: One commenter asked why a definition of default was included in the proposed rule.

Response: The Agency is including a definition of default for clarity because its history in the administration of other loan programs has shown that defaults other than the more common monetary default (*e.g.,* nonperformance is a form of default) can and do occur.

Comment: One commenter stated the definition of monetary default (found in paragraph (i) of the proposed definition of default) is extremely and unnecessarily complex. Further, according to the commenter, it is inconsistent with current Agency practice of annual installments for principal and interest or semi-annual installments for interest.

Response: The Agency agrees that a simpler definition is sufficient and has revised the definition accordingly. The Agency notes that it will collect payments on a monthly basis via an automated system.

Fiscal Year

Comment: One commenter stated that "fiscal year" should be clarified as "Federal fiscal year" because most organizations work off of either the calendar year or their individual fiscal year.

Response: The Agency agrees with the commenter and has revised the rule to

more clearly identify the fiscal year as being the Federal fiscal year.

MDO

Comment: One commenter suggested adding quasi-public entities that are formed by State or other governmental statutes whose purposes for operation are consistent with the program as eligible MDOs. According to the commenter, many quasi-public state agencies operate business and micro-business programs and, therefore, they need to be included as eligible entities.

Another commenter believes the term "non-profit" is used rather ambiguously in the proposed rule and recommended that the Agency provide a clarification to ensure that public non-profit entities, such as Councils of Governments, Regional Planning Commissions and Economic Development Districts, are eligible to apply for program assistance as MDOs. The commenter stated that many of these entities are experienced lenders as they currently operate USDA IRP, a program similar to RMAP, which also provides valuable assistance for financing business and economic development activity in rural regions of this country.

A third commenter requested that local governments be included as eligible applicants for program funds. The commenter asked why their local government organization is not considered the equivalent of an MDO, or at least eligible to apply for the funding as USDA has considered them capable of providing these services in the past when they awarded funding. The commenter suggests the language of the RMAP be changed to refer to MDOs and other entities that provide assistance to microentrepreneurs.

Response: Section 379E of the Consolidated Farm and Rural Development Act provides the definition for MDO. The Agency cannot change the definition and, thus, for example, quasi-governmental organizations cannot be included unless they otherwise meet the definition. Consistent with the eligibility requirements provided in other loan programs under the Consolidated Farm and Rural Development Act, the reference to non-profits is understood to mean only private non-profits. If Congress had intended to include other entities, they would have done so as they have done for other provisions in the Consolidated Farm and Rural Development Act. For this reason, the Agency has not revised the definition of MDO as suggested by the commenters.

Comment: A number of commenters requested that the rule clarify the ability of multiple groups to collaborate on an application (example: statewide microenterprise associations, statewide community action agency/programs). According to the commenters, such collaboratives could prove valuable in unserved and underserved rural areas, and bring together efficient and effective microenterprise development services among multiple MDOs. Potential collaborations are likely to be non-profit entities as contained in the definition of MDO in the proposed rule. The commenters suggest that the final rule be clarified to allow applications by such collaborations where other eligibility requirements are met. Scoring of such collaborative applications should consider the combined strengths and experiences of the collaborators.

Three of the commenters further stated that the Agency should apportion 20 percent of available funds to enhancement grants and allow collaborations and associations that have proven track records in providing capacity building services to MDOs to apply for these grants. Enhancement programs are an opportunity to build the capacity of MDOs to reach more clients with stronger and more effective services. This involves training trainers; curriculum development; increasing access to markets; quality assessment and evaluation; and much more. One of the purposes of this legislation is to create a strong network of MDOs. Collaborations and associations serve to build the strength of the entire industry.

Response: The Agency is not opposed to collaborative MDO efforts. MDOs selected to participate in the program are encouraged to develop community-based partnerships. However, such partnerships and collaboratives will be developed outside of the relationship between the Agency and the participating MDOs.

The Agency disagrees with the commenters' suggestion to specify a percent of available funds to be apportioned to any single aspect of the program. In order to facilitate equitable distribution between loans and grants and provide for flexibility to meet program needs, the Agency will announce anticipated distributions in an annual **Federal Register** notice.

Microentrepreneur

Comment: Two commenters pointed out that the proposed definition states that "All microentrepreneurs assisted under this regulation must be located in rural areas." The commenters recommended changing this to read "All microenterprises assisted under this regulation must be located in rural areas". The commenters stated that, while some entrepreneurs do work from home, they are concerned that an entrepreneur that provides a service or operates a microenterprise in a rural area may be disqualified from participation under this definition.

Response: The Agency disagrees with the commenters' recommendation. It is the Agency's intent that both the microenterprise and microentrepreneur be located in a rural area, so both definitions have been revised to clearly state this. The Agency has not revised this definition as suggested by the commenter.

Military Personnel

Comment: One commenter was concerned that the proposed rule was purposefully eliminating National Guard employees that are not deployed. The commenter pointed out that there was an administrative notice issued for the IRP that addressed IRP loans to certain military personnel. The commenter, therefore, recommended that RMAP be as inclusive as it can to service members.

Response: Although it was not the intent of the Agency, the Agency agrees with the commenter that National Guard employees that are not deployed would have been excluded from the program. The Agency has revised the definition to remove the reference to "enlisted" and added other provisions (*see* § 4280.322(g)) that would make such personnel eligible under this program.

Nonprofit Entity

Comment: One commenter recommended removing "that has applied for or received such designation from the U.S. Internal Revenue Service" as a criterion for defining a non-profit entity. According to the commenter, this criterion is inconsistent with all other Rural Development programs. The commenter suggested that instead the criterion should be "registered as a non-profit in the State, Commonwealth, Territory, etc. in which the entity is located."

Response: The Agency agrees with the commenter that the proposed rule would have been too restrictive. Therefore, the Agency removed the IRS requirement from the definition and has revised it to read: "A private entity chartered as a nonprofit entity under State law."

Rural or Rural Area

Comment: One commenter stated that, for the purposes of this program, the terms "rural" and "rural area" are defined as any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the

United States; and the contiguous and adjacent urbanized area. The commenter then pointed out that the Freely Associated States (Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia) are not under the jurisdiction of the U.S. Census Bureau and do their own internal Census. The commenter, therefore, recommended adding after "according to the latest decennial census of the United States" the following: "or of any of the Freely Associated States, as appropriate."

Response: The Agency agrees with the commenter's concern. However, rather than revising the text as suggested by the commenter, the Agency has added a definition of "State" to include reference to each of the Freely Associated States identified by the commenter. By doing so, it is unnecessary to make the change suggested by the commenter.

Significant Outmigration

Comment: Four commenters stated that this definition was more restrictive than it should be and that the definition rejects the definitions of the term that already exist in law or proposed in legislation. The commenters provided, as examples, the American Jobs Creation Act of 2004 (Pub. L. 108–357) and the proposed "New Homestead Act of 2007" (S. 1093). These use a net out-migration of at least 10 percent during a 20-year period. The commenters suggested defining "significant outmigration" as outmigration of 7.5 percent over two Census periods and/or 5 percent outmigration over one Census period in order to recognize the current state of rural demographics and to enable the program to be widespread throughout the nation.

Another commenter suggested that the population outmigration criteria be lowered from 15 percent over thirty years to 10 percent over thirty years. In Iowa, this change would provide a threefold increase in the number of targeted outmigration counties compared to the 12 counties under the currently proposed criteria.

One commenter stated that the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) uses the following definition of "significant outmigration:" "In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or (5) in counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent." The commenter urged USDA to adopt this definition.

Response: The Agency agrees that the definition of outmigration should take other current definitions into consideration. However, because outmigration issues apply to enhancement grants only, the Agency will address this issue when it publishes the final rule.

Comment: One commenter pointed out that the Freely Associated States (Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia) are not under the jurisdiction of the U.S. Census Bureau and do their own internal Census. The commenter, therefore, recommended revising the definition of significant outmigration to reflect this.

Response: The Agency agrees with the commenter's concern regarding the Freely Associated States. The Agency has revised the text in this definition (as noted in the response to the previous comment) and, in doing so, has removed reference to the U.S. Census Bureau.

Socially Disadvantaged

Comment: One commenter requested that the Agency define racially and ethnically diverse populations by using the same definition as found in the Small, Socially Disadvantaged Producer Program. Socially-Disadvantaged Individuals are those who have been subjected to racial, ethnic or gender prejudice because of their identity as members of a group, without regard for their individual qualities.

Another commenter recommended either including a definition for "socially disadvantaged" under proposed § 4280.302 that includes women and other disadvantaged groups or expanding proposed § 4280.316(b)(1)(v) to include an explanation of the term "socially disadvantaged." The commenter pointed out that the scoring rules concerning provision of technical assistance to microentrepreneurs (proposed § 4280.316(b)(3)(iii)) contain a reference to an undefined group of "socially disadvantaged" microentrepreneurs. It is not stated whether "socially disadvantaged" includes gender (presumably female microentrepreneurs). This is inconsistent with proposed § 4280.316(b)(1)(v) where gender is a specifically-mentioned demographic group. The commenter stated that any provision under the Program's rules should ensure that female microentrepreneurs should be considered "socially disadvantaged."

Response: The Agency agrees with the commenters that, as proposed, the rule did not adequately address whether gender was included in "socially disadvantaged." The Agency, however, has determined that "socially disadvantaged" is too broad a phrase and has changed the scoring criteria to include racial and ethnic minorities, the disabled, and gender. The Agency made this determination in consultation with Agency Civil Rights staff, consideration of other agencies, and Civil Rights reporting requirements. The latter is based on demographic data and "socially disadvantaged" is not specified.

Non-Discrimination and Other Federal Laws—(§ 4280.305)

Comment: One commenter expressed concern with the use of the word "applicants" in the beginning of proposed § 4280.305(a) that states "All applicants must comply with other applicable Federal laws." The commenter asked: What about ultimate recipients? The commenter suggested that there needs to be consistency with this proposed rule and the IRP.

Response: The Agency agrees with the commenter that the provisions of this paragraph need to apply to both the microlender participating in this program and to the microborrower receiving RMAP funds from the participating microlender. Therefore, the Agency has revised the text in this paragraph to state clearly that any entity receiving funds under this program is covered by this paragraph.

MDO Requirements—(§ 4280.310)

General

Comment: One commenter recommended that the rule minimize duplication, and the unintended development of underutilized surplus reserves in local RMRF loan capacity, by discouraging MDOs from providing services in overlapping service areas unless the MDO first approved in a designated area provides a letter of endorsement for the second MDO. According to the commenter, differing MDOs may target different market segments, which can be a rationale for overlapping service areas. However, the application approach should encourage collaboration when appropriate and discourage duplication when inappropriate.

Response: The Agency acknowledges that different MDOs may target different market segments, but disagrees with suggestion to discourage MDOs from providing services in overlapping areas. The Agency has determined that

encouraging competition generally provides the greatest potential for benefits for intended end users. The Agency encourages collaboration among MDOs regarding client referrals across different market segments. No changes have been made in response to this general comment.

Eligibility (Proposed § 4280.310(a))

Comment: One commenter suggested replacing "under RMAP" with "per § 4280.302(a)".

Response: While not inaccurate, the Agency believes that "under this program" should reference the subpart instead and has rephrased the text to read, in part, "To be eligible for a loan or grant award under this subpart, an applicant". The Agency believes the broader designation is more appropriate than the commenter's suggested cross-reference to § 4280.302(a) by itself.

Citizenship (Proposed § 4280.310(a)(2))

Comment: One commenter believes the requirement in § 4280.310(a)(2) for MDO "citizenship" is unworkable because nonprofits, tribes, and institutions of higher learning are entities with no "owners". Therefore, establishing their citizenship is not possible. Instead, the commenter suggests requiring that the nonprofit/tribe/institution of higher learning be legally established within the U.S.

Response: The Agency agrees with commenter that the citizenship requirements would not be "workable" as applied to tribes and institutions of higher learning. However, for nonprofit entities, the Agency has determined that the citizenship requirements are applicable. Therefore, the Agency has revised the citizenship requirements in the rule to apply only to applicants that are non-profit entities, as is consistent with other Rural Development programs.

Legal Authority/Responsibility (Proposed § 4280.310(a)(3))

Comment: One commenter asked whether the Rural Development State Office will determine whether the applicant has the legal authority to carry out the purpose of the award or, as in the case with Rural Business Opportunity Grants (RBOG), will concurrence from the Office of General Counsel (OGC) be required. The commenter stated that having the applicant provide a current (not more than 6 months old) Certificate of Good Standing in addition to articles and by-laws would allow the Agency (National or State Office official) to make a preliminary determination. The commenter then recommended that OGC concurrence be obtained for entities with an initial application and subsequent applicants that have experienced a material change to their articles or bylaws since their last OGC eligibility concurrence.

Response: The Agency will make an eligibility determination, including whether the applicant has the legal authority necessary to carry out the purpose of the award, based on the information provided in the application. Consultation with OGC is an internal operating procedure which is beyond the scope of this regulation. The rule now requires an attorney's opinion regarding the microlender's legal status to make loans specifically to allow the Agency to make such determination. The Agency may seek OGC advice as needed.

Direct Loans (Proposed § 4280.310(a)(4))

Comment: One commenter would like the Agency to consider easing the requirement for receiving education and training from a qualified microenterprise training entity (proposed § 4280.310(a)(4)(ii)). Being a relatively new lending concept, such education, according to the commenter, is not common to a majority of professionals involved in agriculture in the U.S. nor is such training readily available. If not, the commenter states the Agency should define what is considered "adequate experience."

Response: The microenterprise development industry has been active in the United States for more than two decades. It is important that the minimum standards of quality that have been generally recognized over time be maintained so that the industry can continue to grow. The Agency has determined that experience (as determined in the scoring), or training/education, or participation in the similar Small Business Administration (SBA) Microloan Program will help to ensure a baseline of capacity. No changes have been made in response to this comment.

Comment: In commenting on proposed § 4280.310(a)(4)(iii), one commenter suggested easing the requirement that MDOs be "actively and successfully participating as an intermediary lender." According to the commenter, this requirement will exclude many small producer groups with clientele that would benefit greatly from a microenterprise lending program. According to the commenter, most microlending institutions in the U.S. are located in major urban areas serving urban clients, not rural ones.

Response: The Agency notes that § 4280.310(a)(4)(i) indicates that only one of the three provisions found in §§ 4280.310(a)(4)(i)(A), 4(i)(B), or 4(i)(C), is required to be met, not all three. Thus, an applicant is eligible if it meets any one of the following:

- Has demonstrated experience in the management of a revolving loan fund, or
- Certifies that it, or its employees, have received education and training as described, or
- Is actively and successfully participating as an intermediary lender in good standing under the SBA Microloan Program or other similar Federal loan program.

Thus, no single organization will be required to meet all three of these requirements and newer organizations will be accommodated via the second option.

Enhancement Grants (Proposed § 4280.310(a)(5))

Comment: Several commenters believe that the proposed rule fails to properly implement section 379E(b)(4)(A) of the Consolidated Farm and Rural Development Act as added by the 2008 Farm Bill, which addresses grants to support rural microenterprise development, and as expressed in the report accompanying the 2008 Farm Bill.

One commenter noted that the proposed rule limits enhancement grants to organizations that already operate a program for training and other enhancement services, which would ultimately result in strengthening these organizations internally. According to the commenter, the overall purpose of section 379E(b)(4)(A) was to develop the technical infrastructure necessary to increase the success of microentrepreneurs by offering them training in critical business skills. This could be accomplished by building the capacity of local nonprofit organizations to provide training and technical assistance to microentrepreneurs. The proposed rule does not contemplate this approach and should be changed to accommodate the capacity building, training, and technical assistance clearly authorized under the law. By eliminating the training funds and capping technical assistance funds, the proposed rule will make it difficult for organizations to provide the services microentrepreneurs need to succeed.

One commenter stated that the proposed rule leaves out rural microenterprise development grants. The commenter stated that the final rule should be amended to include the missing statutory subprogram. According to the commenter, there are two appropriate ways to accomplish this. First, retain the enhancement grant

category, which is overall a very helpful idea, and to create a rural microenterprise development grant category and purpose statement. Second, incorporate the enhancement grant idea into the rural microenterprise development grant category and purpose as a noteworthy addition to the statutory requirements. One of these two approaches is required in order for the rule to conform to the statute.

Another commenter also believes that the Agency misinterpreted the statutory provision as well as the accompanying report language in creating "enhancement grants." According to this commenter, the statute shows the primary intent to be the provision of operating grants to MDOs, so they may better serve rural microentrepreneurs, and the commenter believes that the proposed "enhancement grant" method is not an accurate regulatory representation of statute. In support of this position, the commenter referred to the report language accompanying the statute (H. Rept. 110–256 Sec.367(b)(3)), which states that "The Secretary may make a grant under the program to a qualified organization (i) to provide training, operational support, or a rural capacity building service to a qualified organization to assist the qualified organization in developing microenterprise training, technical assistance * * * and other related services." According to the commenter, the proposed "enhancement grants" fail to meet stated Congressional intent as expressed in the law's report language, primarily by awarding grants to MDO trainees rather than MDO trainers as mandated.

This commenter claimed that the result of these misinterpretations are that the proposed "enhancement grants" result in neither technical assistance to rural microentrepreneurs, as intended by the law, nor as a tool for broader field-wide capacity building. While capacity building can involve the staff development purposes expressed in the "enhancement grants" provision, capacity building of the rural microenterprise development field as a whole provides a broader scope by which to build the field's infrastructure capacity. As a general rule, rural MDOs have few resources for technical assistance for their clients, and RMAP should be designed and implemented to help to fill the gaps in service that exist in many rural areas.

This commenter, therefore, (and as similarly expressed by several other commenters) recommended deleting "enhancement grants" and replacing them with "Rural Microenterprise Field Technical Assistance Grants" that adheres to both statute and report language. The commenter suggested several approaches including funding for State Microenterprise Associations and for MDOs. The commenter also recommended a 4:1 ratio towards providing MDOs with core funding.

Response: In consideration of these comments, the Agency considered a number of options for implementing a technical assistance and network enhancement category. As noted, the comments differed on appropriate approaches. Due to the broad range of suggestions, and the considerable interest in an enhancement grant program, this interim rule is published without reference to an enhancement grant category. Instead, comments and concepts regarding the best delivery approaches are requested (*see* Section V of this preamble). Submitted comments and concepts will be fully considered prior to publication of an RMAP final rule.

However, the interim rule does make technical assistance grants available to MDOs that are not participating in the program as microlenders (*see* § 4280.313(c)). By broadening the eligibility for technical assistance grants, the Agency is addressing the concerns of the commenters indicating the need for more technical assistance funding. No specific provision was made for State Associations.

Technical Assistance Grants (Proposed § 4280.310(a)(6))

Comment: One commenter suggested that the text "with the exception that up to 10 percent of the grant funds may be used to cover administrative expenses" be revised by replacing "to cover" with "for MDO".

Response: The Agency revised the text (*see* § 4280.313(b)(3)) identified by the commenter by inserting "the microlender's" as follows: "may be used to cover the microlender's administrative expenses." The Agency believes this adequately addresses the commenter's suggestion.

Delinquencies (Proposed § 4280.310(a)(8))

Comment: One commenter suggested that proposed § 4280.310(a)(8) be made part of § 4280.310(a)(7), Ineligible applicants.

Response: The Agency understands the commenter's suggestion, but has elected to keep the subject paragraph as a stand-alone paragraph to ensure its visibility to the public (*see* § 4280.310(d)).

Business Incubators (Proposed § 4280.310(c))

Comment: One commenter was unclear as to what the "business incubator" paragraph was saying.

Response: The paragraph referred to by the commenter (now § 4280.310(f)) states that a microlender who owns or operates a small business incubator is eligible to participate in RMAP. The paragraph also states that such a microlender may use RMAP funding to make a loan to an eligible microentrepreneur who is a tenant in that microlender's facility. This language is clear and was not further clarified. However, regulatory instructions will be published after promulgation of the interim rule that may assist with this commenter's concern.

Loan Provisions for Agency Loans to Microlenders (§ 4280.311)

Complicated Process

Comment: Eleven commenters stated that the proposed rule outlines an unnecessarily complicated process for the disbursement of loan funds to lenders participating in RMAP, with one commenter referencing in particular proposed § 4280.311(d)(10), (11), and (12). The commenters expressed concern that if these rules are not revised, the cumbersome methods outlined for loan disbursement will keep many qualified rural MDOs from participating in RMAP.

Response: Of particular concern to the commenters was that the Agency would require a list of probable microentrepreneurs prior to disbursement of loan funds. This is not the case and language has been added to § 4280.311(e)(11) to address this concern. Specifically, descriptions of anticipated need provided with a request for disbursement will indicate the anticipated amount and number of microloans to be made with the funds but need not identify each loan. These requirements are needed to adequately monitor use of program funds.

Co-financing

Comment: One commenter recommended that co-financing with local lenders and revolving loan funds for projects with total loan requests up to $150,000 be allowed with the $50,000 microloan maximum and subordinated position of the RMRF. According to the commenter, this would multiply the benefits of the program, encourage collaboration rather than duplication with commercial lenders and other loan funds, and encourage the transition of microloan clients back to commercial

lenders. The commenter also noted that this would be consistent with the flexibility for MDOs that is allowed under the SBA Microloan program.

Response: The Agency understands the recommendation that microlenders be allowed more flexibility in lending to microborrowers. In addition, small businesses that can receive loans from commercial lenders should not be able to receive microloans, because microborrowers must meet the credit elsewhere test; that is, microborrowers must be able to show that, but for the microloan, they would not have access to business capital. At this time, lines of credit and subordinated liens will not be authorized. However, the Agency will continue to accept comments during the interim rule phase.

Purpose of Loan (Proposed § 4280.311(a))

Comment: One commenter was unclear as to what "interest earnings" were being referred to in the introductory text to proposed § 4280.311(a). The commenter stated that this could be referring to either bank account accrued interest or to loan payment interest and that this needed to be clarified.

Response: The intent of this paragraph is to refer to any type of interest earnings, including the two types referenced by the commenter. While the Agency has removed the referenced text from § 4280.311(a), the Agency has revised the text in § 4280.311(e)(2) to more clearly address the issue raised by the commenter.

Comment: Two commenters recommended that the Agency clarify that proposed § 4280.311(a) applies only to interest earnings on the underlying USDA loan to the MDO.

Response: The Agency disagrees. The commenters are most likely referring to the sentence in the proposed rule that states: "Interest earnings accrued by the RMRF will become part of the RMRF and may be used only for the purposes stated above." The rule requires microlenders to retain the interest earned in the RMRF and LLRF accounts so that earnings may be reloaned or used to recapitalize the LLRF.

Comment: One commenter referred to the sentence: "However, with advance written approval by the Agency, the microlender may increase the funding in its LLRF with interest earnings from the RMRF." According to the commenter, this is going to be very hard to monitor and will ultimately result in OIG findings because the Agency has failed to provide advance approval to increase the account via interest earnings.

Response: The Agency disagrees that monitoring the movement of interest earnings will be difficult because the movement of those earnings between the RMRF and the LLRF will be evident in bank statements and quarterly reports. Because it will be able to monitor such movement, the Agency further disagrees with the commenter's assertion that this provision will lead to OIG concerns or investigations. Finally, the Agency will emphasize during training that microlenders need Agency written permission to move money out of the RMRF unless it is to make a payment on their Agency loan.

Comment: One commenter stated that Community Development Financial Institutions (CDFIs) often reinvest interest earnings into capital available for lending. However, interest earnings are also a source of operations revenue that help support technical assistance, allow CDFIs to lower the interest rate to borrowers, and otherwise provide products and services to their markets. Especially if the Agency maintains the scoring criteria related to use of administrative funds, it should allow flexibility in the use of interest earned from the RMRF and LLRF. USDA should, in addition, explicitly state that income earned from RMAP loans to microborrowers belongs to the lender and can be used flexibly.

Two other commenters stated that USDA should codify that interest income from microloans: (a) Need not be deposited into the RMRF, and/or (b) may be deposited and withdrawn from the RMRF without restriction. The commenters stated that failure to clearly allow MDOs to keep and use microloan interest income would likely render RMAP unusable for MDOs.

Twelve commenters noted that the proposed rule does not explicitly state that income earned from RMAP loans to microborrowers belongs to the lender. They stated that they believe that microlenders should be allowed to keep earnings on microloans, and that this needs to be explicitly stated in the appropriate section of the RMAP final rule.

Three other commenters stated that limiting MDO use of accrued interest that comes about as a result of an agreement between the MDO and a borrower is an overreach by USDA, limits the ability of an MDO to realize program income from its activities, and ultimately will limit the ability of MDOs to fund their programs and services. The commenters suggested the Final Rule remove all limits on use of interest accrued by RMRFs. In particular, The commenters suggested that, because the law and the proposed rule limit the amount funding for administrative expenses to an MDO, administrative expenses should be an allowed use of interest earnings on the RMRF in proposed § 4280.311(d)(2).

Two commenters recommended allowing accrued interest to be used by MDOs for purposes consistent with the mission of the organization and the purposes of the RMAP statute. One commenter noted that this would be consistent with current practices with other USDA loan funds including IRP. As proposed, such interest must be deposited in the LLRF.

One other commenter stated that, as written, the proposed rule would not allow the MDO to use any revenues from the operation of the microloan funds to cover its administrative expenses. All repayments on microloans must be deposited in the loan fund and used for either new microloans or payments to USDA. Thus, there is no provision for paying the MDO's loan officer, etc. and the presumption is that all these costs will be covered by other funding sources. According to the commenter, this is unfair to the MDO, which should be able to use the revenues from their operations for the operation of the microloan program.

Response: While the Agency acknowledges the points raised, the Agency has not revised RMAP as recommended by the commenters. It is the Agency's position that, because the interest is earned on monies owed back to the Agency, the Agency is within its purview to dictate the use of interest earned on that money. Further, requiring interest earned to be used to recapitalize the RMRF and LLRF will help ensure that those two funds are maintained at adequate levels over time and that earnings that remain in the LLRF account will help to mitigate the cost of reimbursing the RMRF from the LLRF in the event of a loss. Such earnings may also be used to help fund the non-Federal share.

Finally, the Agency notes that the rule allows MDOs that receive technical grants to use up to 10 percent of the funds to cover MDO administrative expenses for administering the technical assistance grants.

Term of Loan (Proposed § 4280.311(d)(3))

Comment: One commenter recommended that the Agency eliminate the uncertainty about the term "20 years and may be less" and simply follow the loan structure used by the IRP program—a 1 percent fixed rate loan with a 20-year term with 3 years of interest-only payments and with annual payments. The commenter stated that

this will allow for a predictable payment level for the MDO which is very helpful in running a microlending program.

Response: The Agency disagrees that RMAP needs to set the same term requirements as found in the IRP. While the Agency acknowledges that setting a standard term length would simplify the loan structure, the Agency wants to provide flexibility to accommodate lesser term lengths as permitted by statute. The Agency has revised the rule to allow a term of less than 20 years if requested by the microlender and as agreed upon between the microlender and the Agency.

Loan Repayments (Proposed § 4280.311(d)(4))

Comment: One commenter stated that the reference to the 24th month of the life of the loan is confusing at this point in the rule because not until later in the rule is the 2-year deferral referred to.

Response: The Agency has rearranged and revised proposed paragraphs (d)(4), (d)(5), and (d)(8), as discussed in response to a later comment. This rearrangement addresses the commenter's concern by placing this provision after reference to the two-year deferral period.

Comment: One commenter recommended that proposed § 4280.311(d)(4) be revised to state the payments would begin on the 1st day of the 25th month instead of making payments beginning on the last day of the 24th month. The commenter noted that traditionally the Agency has avoided making payments due on the 29th, 30th, or 31st of the month due to the fluctuating number of days in the month and the fact that the payments are not credited to the account for several days after the beginning of the next month. Thus, all end-of-the-month reports will show the payment not made when, in fact, the funds may already be in the Finance Office.

Response: The Agency disagrees with the commenter and has kept the provision to read "on the last day of the 24th month" to be consistent with RULSS system requirements.

Comment: One commenter stated that monthly installments are not practical and that annual payments would be far less burdensome and labor intensive for both the MDO and USDA. According to the commenter, this approach works well with the IRP program and there is no real advantage to using monthly payments. Many microentrepreneur borrowers, especially farm borrowers, will not have year-round, monthly revenues and so will not be able to make monthly payments to the MDO. The commenter asked how, in such cases, the MDO can be expected to make monthly payments to USDA.

Response: The Agency disagrees with the commenter that monthly installments are not practical. It is the Agency's experience that by requiring monthly payments, lenders are better able to manage and match their portfolio cash flow and that the Agency is better able to monitor the repayment behavior of the microlender. Therefore, the Agency has not revised the rule as suggested by the commenter.

Prepayment (Proposed § 4280.311(d)(5))

Comment: One commenter recommended that proposed § 4280.311(d)(5) simply state that there is no pre-payment penalty.

Response: The Agency is satisfied that this paragraph clearly states a no pre-payment penalty provision, but has clarified that this also applies to pre-payments during the deferral period (*see* § 4280.311(e)(5)).

Deferral Period (Proposed § 4280.311(d)(8))

Comment: One commenter asked why the proposed rule was making the 2-year deferral automatic and what if the MDO does not want a deferral.

Response: Section 379E of the Act allows the Agency to defer payments for 2 years. The Agency has provided a commensurate default provision wherein no payments are required until this 2-year period is completed. However, if a microlender wishes to make payments prior to the end of the 2-year period, the microlender can do so and without any prepayment penalties being assessed. The Agency has revised and rearranged proposed paragraphs (d)(4), (d)(5), and (d)(8) to make this more clear.

Loan Closing (Proposed § 4280.311(d)(9))

Comment: Five commenters were concerned about the 60 day time limit imposed by this paragraph. According to one of the commenters, it is often difficult to get loan closing instructions from OGC and get title set up and the loan closed in 60 days. This commenter was also concerned that there may be unusual and unavoidable issues that prevent a loan being closed within 60 days of loan approval. To address these concerns, the commenter recommended adding at the end of the paragraph: "Unless otherwise negotiated and agreed to by the Agency."

Two of the other commenters recommended a longer deadline of 90 or 120 days. Finally, one commenter recommended that the period be extended to at least 180 days, and further suggested that the timeframe be left to the judgment of the USDA State Office.

Response: In considering all of the commenters' suggestions, the Agency has revised the proposed timeframe for closing loans from 60 days to 90 days (*see* § 4280.311(e)(8)). This longer timeframe is sufficient to close loans under RMAP. The Agency has not accepted the suggestion to include "unless otherwise negotiated and agreed to by the Agency." The Agency is concerned that such an open-ended deadline would result in unnecessary delays. Lastly, if loans are not closed within 90 days, the funds will be forfeited.

Loan Disbursement (§ 4280.311(e)(10))

Comment: Several commenters noted that the rule, as proposed, allows microlenders to receive a disbursement of up to 25 percent of the total loan amount at the time of the loan closing. In general, the commenters stated that it is not clear why this limit is necessary and that it appears arbitrary. According to the commenters, this draw down limitation has the potential to limit the number of loans an MDO can make and limit the funds an MDO can loan. The commenters suggested modifying the rule to allow MDOs to draw down their entire loan if needed.

Another commenter recommended that, once a loan has been closed between the Agency and a microlender, the MDO be able to draw down at least half of the total loan amount. The commenter stated, in addition, that requests for draw downs should not require an iteration of specific pending loans for specific amounts, but should be based on the organization's lending history schedule. The commenter noted that successful microlending is more time consuming than conventional lending and that onerous paperwork requirements subtract from the time MDO staff can spend conducting outreach, providing technical assistance, and servicing loans. If an MDO has the track record, credibility and financial controls in place to warrant a loan from the Agency that MDO should be trusted to do their work and not be hamstrung by unnecessarily rigid requirements.

Response: The Agency included the provision (*see* § 4280.311(e)(9)) to limit full disbursement of the loan to the microlender in order to ensure that microloans are made in an expedient fashion and that disbursed funds are not accruing interest on the Agency loan before they begin to earn interest on microloans. The Agency, therefore, has

not revised the rule as suggested by the commenters.

30-Day Disbursement Provision (Proposed § 4280.311(d)(11))

Comment: A number of commenters noted that the requirement for an MDO to make one or more microloans within 30 days of any disbursement it receives from USDA seems to be an unnecessary rule. The commenters stated that, if an MDO is drawing down funds, they are clearly planning on placing loans in the near future and that if a loan to a client would not happen at the last minute, programs could easily violate this 30 day rule. One of the commenters stated that it seems arbitrary to insist that at least one loan be made within 30 days of disbursement and not particularly realistic given the realities of microlending in the field. The commenters, therefore, recommended omitting this from the rule.

Another commenter stated that the limitations that a microlender can only request funds once a quarter based on their pipeline and then must relend the drawn funds within 30 days is unnecessarily burdensome. The commenter acknowledged that there is certainly an expectation that the drawn funds will be promptly reloaned, but recommended that mitigating circumstances be allowed for.

Response: As noted by the commenters, the proposed rule required that the microlender make a microloan within 30 days of receipt of funds from the Agency. The Agency agrees that this may be too short under certain circumstances, but disagrees with the suggestion to have no timeframe. For example, some microlenders will already have a list of potential microborrowers for RMAP funds. For these microlenders, some amount of time may be required to evaluate and verify the eligibility of the microborrower for participation in the program. Some microlenders will not begin aggressively marketing the availability of RMAP loan funds until such funds have been drawn. Some amount of time, therefore, will be required to attract microentrepreneurs to the program. Thus, the Agency believes that a 30-day period may be insufficient. The Agency has, therefore, revised the rule to reflect a 60-day requirement (*see* § 4280.311(e)(10)).

Comment: One commenter asked what the ramifications would be if loans are not made within the specified timeframe.

Response: If a microlender fails to make a loan within 60 days of disbursement, the Agency may not provide the microlender with any additional funds and the Agency may demand return of any funds already disbursed to the microlender (*see* § 4280.311(e)(10)).

Quarterly Disbursement of Funds (Proposed § 4280.311(d)(12) and § 4280.320)

Comment: Several commenters were concerned over the proposed disbursement of loans and grants on a quarterly basis as found in proposed §§ 4280.311(d)(12) and 4280.320(b).

One commenter asked why grant payments would not be made more often than quarterly. According to the commenter, monthly payments for loans or grants can be acceptable if they are accompanied by a brief narrative of activity that justifies the requested funds. The commenter also asked why the Agency should not allow monthly draw downs for loans.

Another commenter stated that the requirement for quarterly disbursements seems overtly regulatory rather than necessary. According to this commenter, an active MDO may need funds prior to the end of the 90 waiting period. The commenter stated that the IRP currently allows disbursements every 30 days.

Another commenter stated that the quarterly disbursement of loan dollars is cumbersome and unnecessary. The commenter stated that, if the Agency's goal in restricting loan disbursements is to ultimately prevent the misuse of the loan dollars as well as the technical assistance grant dollars that accompany those loan dollars, a better way to do this would be to allow the MDO to draw down as needed and receive annual or quarterly technical assistance grants. As currently designed, an MDO with four loans from the Agency would need to keep track of four RMRF accounts, and submit various reports per year. According to the commenter, these regulations are unnecessarily burdensome, and could deter many small, rural MDOs from participating in RMAP. The commenter, thus, recommended allowing MDOs to draw down as needed and receive annual or quarterly technical assistance grants based on statutory allowances, program performance, and demonstrated needs.

Another commenter noted that, with the tools of electronic funds transfer, the approach should simply be that an MDO may request RMAP draws as microloans are ready to close; they should not be limited to once a quarter.

Response: The Agency is requiring quarterly draws rather than monthly draws for several reasons. The Agency has determined that quarterly payments enable both the Agency and the MDO to more efficiently utilize staff resources in part because quarterly payments match the quarterly reporting requirements. Further, monthly draws would require undue Agency resources. Second, matching fund payments with reporting requirements allows the Agency and the microlender to keep like calendars, which will facilitate reconciliations. Thus, the Agency has not incorporated the commenter's suggestion into the rule.

Comment: Two commenters stated that proposed § 4280.311(d)(12) requires that requests by MDOs for loan disbursement must be accompanied by a description of the incoming microloan pipeline. The commenters stated that it is questionable whether any MDO has a "microloan pipeline" that can be described to a funder. Generally, MDOs do not line up loans and then make a drawdown. The incoming pipeline is totally unpredictable. MDOs typically base their drawdowns on previous history and draw down as needed. The commenters recommended that the Agency remove this requirement from the rule and replace it with a provision that draw downs be allowed as needed by the MDO. According to the commenters, keeping this requirement will add to the administrative burdens on MDOs and decrease the portion of staff time that can be devoted where it should be devoted—servicing loans, providing technical assistance and conducting outreach that brings more microentrepreneurs in the door for services.

Another commenter stated that, regarding the "microloan pipeline," the rule has two very serious flaws: (a) It conflates borrower interest in pursuing a microloan with the certainty of that borrower qualifying for a microloan, and (b) it fails to consider the impact of unpredictable economic factors and outside forces. This commenter stated that a "microloan pipeline," as the term is used in the microenterprise field, is not a predictor of future borrowers, but rather an expression of loans in the process of closing. While an MDO may work to forecast demand for microloans, the incoming pipeline is ultimately unpredictable and does not provide a reliable proxy by which to judge the intent of MDOs requesting a loan disbursement. The commenter recommended that the "microloan pipeline" be utilized as an indicator of microloan demand.

Response: Agency experience indicates that lenders are able to anticipate what they will lend over the next 3 to 6 months. Generally, a microloan pipeline can be anticipated by assessing those clients that are in the pre-loan technical assistance and

planning stages. A well managed microlending institution will recognize those clients that are ready for loan approval and those clients that are not. They will also recognize those clients that intend to borrow and those clients that do not. Therefore, it should not be difficult for a microlender to anticipate the need for microlending funds. The "microloan pipeline" language, therefore, has been removed to state that the request for disbursement will be accompanied by a description of the microlender's anticipated need (*i.e.,* the amount and number of microloans anticipated to be made with the funding) (*see* § 4280.311(e)(11)).

Interest Rate Adjustment (Proposed § 4280.311(d)(13))

Comment: Many commenters expressed concern over the interest rate provisions in the rule at proposed §§ 4280.311(d)(13) and (d)(17). One of the commenters noted that the statute established a minimum interest rate of at least 1 percent for USDA loans (section 379E(b)(3)(B)(ii)) and claimed that the proposed rule does not implement the interest rate as set out under the law. This commenter then referred to the proposed formulations in proposed § 4280.311(d)(17) and stated that they may have merit, but are not clearly explained in the rule and have the potential to raise interest rate charges to microenterprises. In the interest of time, clarity, and ease, the commenter believes that the Agency should follow the law and implement the loan rate set out by the statute.

The other commenters recommended adopting fixed rate loans at a 1 percent interest rate.

Response: The Agency agrees that the interest rate provisions found in proposed § 4280.311(d)(13) and (d)(17) should be revised to reflect a simpler structure. However, the Agency disagrees that the rate should be less than 1 percent. The statute does not anticipate a 1 percent rate at all times on every loan. It only states that the interest rate must be at least 1 percent. To address the commenters' concerns regarding the rate structure, and Agency concerns regarding the cost and broad distribution of loan funds, the Agency has revised the rule at § 4280.311(e)(12) to set a fixed interest rate of 2 percent on all loans to any MDO that are made in the first 5 years of an MDO's participation in RMAP. After 5 years of successful and continuous participation in RMAP, each new loan to an MDO will be at a fixed 1 percent interest rate. Depending on future Treasury bill rates, these revised interest rate provisions may be more expensive to the Government, but comply with the law and will eventually provide the lower 1 percent rate to the best MDO performers. In addition, these revised interest rate provisions should encourage microlenders to continue successful participation in the program.

Interest Rate Adjustments (Proposed § 4280.311(d)(14) and (d)(15))

Comment: One commenter asked how the Agency's Financial Office would deal with the provisions of proposed § 4280.311(d)(14) and (d)(15).

Response: The RMAP will utilize the RULSS technology platform, which includes the calculation of capitalized interest.

Amortization (Proposed § 4280.311(d)(15)(i))

Comment: One commenter suggested replacing "subject itself to negative amortization" with "subject itself to a balloon payment" as being clearer.

Response: The Agency has revised the rule to remove reference to negative amortization. Because the Agency's Finance Office will always adjust payments so that negative amortization will not occur, there is no need to address this issue in the rule.

Comment: One commenter asked why amortization calculations are performed at month 22 for the end of the deferral period and to start payments, but then turning around and automatically reamortizing their loan at month 34.

Response: The Agency has removed the paragraph concerning reamortizing loans at month 34, because it is no longer necessary for the implementation of this program. The Agency notes that amortization calculations are to be performed during the 24th month of the deferral period, rather than on the first day of the 22nd month as had been proposed. Section 4280.311(e)(13) has been revised accordingly.

Loan Deobligation and Evaluation (Proposed § 4280.311(d)(16) and (d)(17))

Comment: One commenter asked how the Agency's Financial Office would deal with the provisions of these paragraphs.

Response: The RMAP will utilize the RULSS technology platform, which can facilitate the calculations.

Interest Rate Adjustments (Proposed § 4280.11(d)(17))

Comment: Two commenters were concerned over how the Agency was proposing to adjust the interest rates on loans made to microlenders. One of the commenters requested clarification of when interest rates will change for MDO's that have used all their funds (proposed § 4280.311(d)(17)(i)) by the 24th month and expressed concern regarding proposed § 4280.311(d)(17)(ii).

The other commenter stated that different incentives to reward microlenders who relend their funds quickly can be developed instead of the interest rate adjustment. The commenter also suggested that incentives be built into the use of the TA grant funds.

Response: For the reasons discussed earlier in response to comments on proposed § 4280.311(d)(13), the Agency has revised the interest rate structure and has removed proposed § 4280.311(d)(17). Thus, it is unnecessary to adopt the commenters' suggestions.

Minimum and Maximum Loan Amounts (Proposed § 4280.311(e)(1))

Comment: A number of commenters were concerned about the maximum loan amounts being proposed. Most recommended raising both the single year maximum and the aggregate maximum to $1 million and $5 million, respectively. Other amounts suggested were $750,000 for single year maximum and $4 million aggregate maximum. Points made by the commenters included:

- While most rural MDOs will not borrow the maximum amount, large lenders that can demonstrate success in making and managing a large volume of loans should have the opportunity to do so;
- The low limit may constrain MDOs with robust pipelines of potential borrowers; and
- The low limit creates additional administrative expenses for both the Agency and the MDO.

Response: In order to fund as many qualified microlenders as possible, it is important to have a maximum loan amount that is both large enough for larger lenders and small enough to allow equitable distribution of loan funds. Additionally, the current maximums and minimums provide the Agency with the opportunity to spread risk across a higher number of local economies than would a more condensed distribution. Therefore, the Agency has not revised these limits in response to the comments.

The Agency notes that it has retained the proposed minimum loan amount of $50,000 in the interim rule. The Agency considered whether to lower this minimum amount, but decided against doing so for two primary reasons. First, the Agency is concerned that an MDO seeking to borrow, for example, only $10,000 or $20,000 is unlikely to be a well established MDO with a sufficient

"critical mass" and would therefore present a higher risk to the Agency for repayment. Second, even if the MDO seeking such a small amount was well-established, the Agency believes that a $10,000 or $20,000 loan to the MDO under this Program would represent a small portion of the MDO's overall portfolio of loans and would not be the type of MDO the Agency is most interested in for the Program.

Use of Funds (Proposed § 4280.311(e)(2))

Comment: One commenter asked what an MDO would do concerning establishing an RMRF if the MDO wants to apply in a subsequent year to recapitalize the loan fund.

Response: The Agency has rewritten the beginning part of § 4280.311(f)(2) to state: "Loans must be used only to establish or recapitalize an RMRF out of which microloans will be made." By including "or recapitalize", the Agency is allowing MDOs to apply in subsequent years for loan funds to recapitalize an existing loan fund. In addition, other changes have been made to this paragraph.

Comment: One commenter suggested revising the sentence "Interest earned by the microlender on these funds may, with advance written authorization from the Agency, be used to help fund the LLRF" to read "Repayments plus Interest earned on these funds may be used to help fund the LLRF." The commenter believes that requiring advance written authorization is another opportunity for Agency non-compliance.

Response: The Agency has not revised the provision requiring advanced written notification for using the interest earned on the RMRF for increasing funding to the LLRF (*see* § 4280.311(e)(2)). The Agency disagrees with the commenter's assertion that this is an opportunity for Agency non-compliance. This requirement is a sound oversight provision.

Loan Loss Reserve Fund (LLRF) (Proposed § 4280.311(f))

Comment: One commenter asked why the LLRF would be set up to cover delinquent payments.

Response: The statute requires the establishment of at least a 5 percent LLRF (*see* section 379E(b)(3)(C)). The purpose of the LLRF is to cover microloans that have gone into default. This provides a cushion to protect the microlender from becoming delinquent to the Federal government.

Comment: One commenter stated the "105 percent rule" that requires the MDO at all times to maintain a microloan fund and loss reserve equal to 105 percent of the RMAP loan balance, or be in default, is unworkable and unnecessary. What this means is that if an MDO suffers any loss whatsoever (which is realistically likely), it either must immediately refund the entire loss up to the 105 percent level, or be liquidated by USDA. This is required even if the MDO is otherwise current on their RMAP loan and performing as agreed. If an MDO suffers a loss but continues to stay current on its payments, it should be monitored closely by USDA, but it may yet recover its losses through operations or other means. There is no benefit or reason to liquidate an MDO that is making payments as agreed and operating its microloan fund in accordance with the mission of the RMAP program. Again, the IRP program's approach to default is perfectly workable as a quick substitute.

Another commenter recommended that USDA provide further guidance on the available grace period for an MDO to replenish the LLRF in case of microloan default.

Response: The statute requires that each microlender establish and maintain a loan loss reserve fund of at least 5 percent of the outstanding balance of debt owed to the Agency under the program by the microlender. It is not the intent of the Agency to declare a microlender in default based on the loss by a microborrower. The Agency is also aware that it takes time to replenish the reserves. Therefore, the Agency has added a 30-day grace period for such replenishment. Regarding the reference to the IRP program, it is not the Agency's intent to operate the RMAP as if it were an extension of the IRP.

Capitalization and Maintenance (Proposed § 4280.311(f)(2))

Comment: A number of commenters were concerned with the proposed provision that would require the 5 percent funding level for the loan loss reserve fund to be met using "non-Federal funding" (*e.g.,* RMAP funds cannot be used to establish the loan loss reserve) (proposed § 4280.311(f)(2)(iii)). The commenters noted that this provision would require the LLRF to be funded by the borrower. The commenters stated that this is contrary to Congressional intent that the 5 percent level be met using the USDA/RMAP loan. Most of the commenters recommended that the rule reflect this Congressional intent.

In supporting this position, several of the commenters stated that requiring the use of non-Federal funds would limit the ability of smaller rural MDOs to participate in the program. According to the commenters, many rural MDOs depend on federal funds to operate, as state, local and private funds for microenterprise development are limited and decreasing. According to one commenter, even in the best of times, securing non-Federal funding is a challenge. These funds provide critical resources for achieving the MDOs mission of serving rural microenterprises. Making them nearly inaccessible for 20 years will pose significant challenges for all MDOs. The commenters believe that, if forced to use non-Federal funds for the LLRF, the program will be unattractive to many MDOs and many rural MDOs will not be able to participate in RMAP because they have no (or limited) non-federal funds to capitalize the required loan loss reserve.

Two of the commenters indicated that they understood the Agency's reluctance to allow use of RMAP funds to capitalize the loan loss reserve. These commenters stated that some flexibility should be provided to allow the use of other federal funds and suggested that, as an alternative, this provision be modified to allow federal funds other than RMAP (Rural Business Enterprise Grant (RBEG) or Community Development Block Grants (CDBG) funds, for example) to capitalize the required loan loss reserve.

Finally, one commenter suggested that the requirement for the LLRF as proposed be eliminated in its entirety and be replaced with the IRP's approach of requiring that a 6 percent loss reserve be built up by the third year of operations and maintained thereafter, with the understanding that losses will cut into the reserve and that therefore time is allowed in rebuilding the loss reserve.

Response: While the Agency understands the issues raised by the commenters, especially as it regards MDOs with less history, the Agency has not revised the requirement to use non-Federal funds. Based on the lending program history of Rural Development, it has greatest level of long-term success awarding projects with program participants who have their own capital in the project rather than having the government fully finance the project. In addition, there is a statutory requirement in section 379E to provide a 25 percent non-Federal share against funds received from the Federal Government for the cost of the project. The MDO's non-federal investment in the LLRF can be considered a part of the non-Federal share.

LLRF Funded in Advance (Proposed § 4280.311(f)(4))

Comment: One commenter in reference to "The LLRF account must be established and partially funded" asked: If they do not initially establish at 5 percent, what is the period of time the microlender has to fully capitalize the account? The commenter pointed out that proposed § 4280.311(h), Loan closing, requires at least 5 percent of initial disbursement be deposited. One commenter also asked: Why would the LLRF need to be funded with 5 percent of the initial disbursement when the account is required to have 5 percent of each loan made. If no loans have been made, the commenter believes that such a requirement would be an undue financial burden on the applicant to tie up funds for this.

Response: The initial amount of capitalization will be 5 percent of the initial disbursal amount requested from the Agency by the MDO. The remaining loan loss reserve funds can be front loaded into the account, or built over time as microloans are made. The MDO will maintain a minimum cash balance of 5 percent of the amount owed to the Agency under this program in the LLRF at all times, including at the time of the initial and all subsequent draws, with the exception that if the LLRF falls below the required amount, the microlender will have 30 days to replenish the LLRF. The paragraph has been clarified accordingly.

Approval/Obligation (Proposed § 4280.311(g))

Comment: One commenter pointed to the part of proposed § 4280.311(g) that states that the Request for Obligation of Funds form "may be executed by the loan approving official provided the microlender has the legal authority to contract for a loan, and to enter into required agreements." The commenter then asked if OGC will be making the determination that the MDO has the legal authority to contract for a loan.

Response: As indicated previously in this preamble, the interim rule now requires the MDO to submit an attorney's opinion regarding the MDO's legal status to make loans, which the Agency will use in making the determination but may consult with OGC as necessary.

Comment: One commenter suggested replacing "loan approving official" with "Agency" for consistency within the rule.

Response: The Agency agrees with the suggestion to replace "loan approving official" with "Agency" and has revised the paragraph accordingly.

Loan Closing (Proposed § 4280.311(h))

Comment: One commenter suggested that the proposed rule needs to address the applicant signing a promissory note, security agreement, financing statement, etc., at loan closing.

Response: The Agency agrees that the rule needs to identify the promissory note and security agreement and has added them accordingly.

Comment: One commenter asked: Wouldn't the RMRF account have to be set up prior to "loan closing" because the Agency would have had to establish the electronic funds transfer (EFT)?

Response: The Agency agrees with the commenter that the RMRF account would have to be set up prior to loan closing. Section 4280.312(c)(1) provides, in part: "Prior to loan closing, microlenders must provide evidence that the RMRF and LLRF bank accounts have been set up." No change has been made in response to this comment.

Comment: One commenter suggested using the term "Agency Personnel" in proposed § 4280.311(h)(2)(ii) in order to allow seamless movement of the program from the national level to the state level at a future date if necessary.

Response: The commenter is referring to an earlier version of the proposed rule. The Agency is using the term "Agency" and that is sufficient to address the commenter's concern.

Comment: One commenter suggested replacing "processing officer" with "Agency Official" in proposed § 4280.311(h)(4) for consistency.

Response: The Agency agrees with the suggestion to replace "processing officer" with "Agency" and has made the change accordingly.

Comment: One commenter asked why tax considerations were included in proposed § 4280.311(h)(4) as a reason for not approving changes ("Changes in legal entities or where tax considerations are the reason for the change will not be approved").

Response: The Agency does not believe it is necessary to refer to "tax considerations" as questioned by the commenter. The Agency has recast the sentence to state: "Changes in legal entities prior to loan closing will not be approved." (*See* § 4280.312(b).) Such a change would be considered a material change since the issuance of the letter of conditions, so the loan would not be closed.

Comment: One commenter referred to the phrase "provide sufficient evidence" in proposed § 4280.311(h)(5) and asked what this meant. According to the commenter, this is inconsistent with other Rural Development programs.

Response: The Agency agrees that the phrase "provide sufficient evidence" needs clarification and has revised the rule accordingly (*see* § 4280.312(c)(3)). The Agency has determined that sufficient evidence is best demonstrated through the provision of mechanics' lien waivers. In some cases, the Agency recognizes that such waivers may not be available or applicable. In such instance, the provision of receipts of payment would suffice.

Comment: One commenter recommended that the program require a standard closing opinion, as required under the Intermediary Relending Program via OGC standard format in order to be consistent with existing programs.

Response: The Agency has determined that an attorney's opinion regarding the entity's legal status and its ability to enter into program transactions at the time of initial entry into the program will be required (*see* § 4280.310(a)(4)(ii)). Subsequent to an entity's acceptance into the program, an attorney's opinion will not be required unless the Agency determines significant changes to the entity have occurred. The rule has been revised accordingly.

Report/Records/Oversight (Proposed § 4280.311(i))

Comment: One commenter stated that the program appears to be heavily bureaucratic in terms of data collection and reporting requirements compared to the SBA Microloan program. The reporting requirements need to be streamlined and reduced so administrative costs of the MDOs can be kept lower with more focus on serving the microloan clients.

Response: The Agency makes every attempt to streamline requirements. The portfolio reporting system for this program will be fully electronic. The grant reporting requirements are in line with Standard Federal reports. Therefore, no changes have been made in response to the comment.

Reporting Frequency

Comment: One commenter requested that reporting be semi-annual, and not quarterly, for both loans and grants. According to the commenter, only qualified and experienced MDOs will be selected, via the scoring criteria, as lenders in the program and that, in the "spirit of non-micromanagement", reporting should start out as semi-annual. The commenter also suggested quarterly reports until loan funds are spent by MDO and then convert to semi-annual reporting unless there are servicing or delinquency issues and then they may be reverted to quarterly reports until operations are found to be

satisfactory. Lastly, the commenter recommended that, for grants, reports be required quarterly during drawdown of the grant, and then semi-annually thereafter.

Response: The Agency does not disagree that selected applicants will be qualified and experienced MDOs will be selected to participate. However, the level of experience may vary widely. The Agency proposed that reporting be quarterly because microloans will be short- to intermediate-term loans. With short- and intermediate-term lending, more frequent reporting (quarterly versus semi-annual) should help the microlender better manage the loan.

Comment: One commenter was concerned with the phrase "such information as the Agency may require" (proposed § 4280.311(i)(1)(i)) and suggested that the rule needs to be specific in what information will be asked for in order to ensure consistency across the States.

Response: The list of required reporting forms is provided in § 4280.311(h)(1) and any other requirements will be determined by the Agency as necessary based on the activities of the particular MDO.

Comment: In reference to proposed § 4280.311(i)(4), one commenter stated that there is no "RD Form 1951–4, Report of RMAP/RMRF Lending Activity" but that there is a "Form 1951–04, Report of IRP/RDLF Lending Activity". The commenter then asked if there is a plan to make a new form or use the existing form.

Response: The Agency has determined that Form RD 1951–4 is no longer needed because the relevant part of that form will be moved into the Guaranteed Loan System (GLS). Thus, reference to the form has been removed from the rule and the Agency will use the GLS.

Grant Provisions (§ 4280.313)

Grant Amounts (Proposed § 4280.312(a)(1))

Comment: Many commenters expressed concern that the proposed rule would limit technical assistance grants to $100,000 despite "clear legislative language allowing such grants up to 25 percent of outstanding loans." Three of the commenters referred to Section 6022(b)(4)(B), stating that this section clearly states that the maximum amount of grant is "an amount equal to not more than 25 percent of the total balance of microloans made by the MDO * * * as of the date the grant is awarded." One commenter stated that the statute does not place any limit on the amount of the grants to support rural microenterprise development. According to this commenter, the purpose statement in the law could be read to suggest that these grants should generally represent 50 percent of the program, with technical assistance and financial assistance the other 50 percent. This commenter, therefore, recommended that, at a minimum, rural microenterprise development grants to an individual MDO be capped no lower than $250,000 annually.

These commenters believe that such a cap will make it difficult for organizations to fund the staff needed to work with borrowers and other clients, noting that good business planning, skills in marketing, management, and accounting are essential to business success. Several stated that the rule should be "revised to reflect the language of the law."

Two commenters believe that by capping technical assistance funds, the proposed rule will make it difficult for organizations to provide the services microenterprises need to succeed. Often, borrowers from this program have been deemed not creditworthy by commercial lenders. Microenterprise programs work exclusively with such borrowers and help microenterprises succeed by committing significant staff resources to training and technical assistance. A cap in technical assistance will likely result in more defaults.

Another commenter stated that this limitation ignores the possibility of high performing, successful organizations that may not be able to meet market demand for loans simply because of the limitation on technical assistance funds available. In the commenter's view, the reason for this provision was to ensure that micro-lenders had adequate financial capacity to support their loan volume. The $100,000 cap undermines this provision.

In sum, commenters requested (1) no cap, (2) using the 25 percent cap across the board, or (3) raising the limit from $100,000 to $250,000 (to be consistent with the $1 million annual RMRF limit for the MDO).

Finally, some commenters requested clarification as to whether the maximum amount of the TA grant accompany every borrowed loan; that is, if there is a separate TA grant of up to $100,000 for every loan to a microlender (in proposed § 4280.311(e)), and the proposed rule provides a maximum loan of $500,000, with an aggregate debt owed the program by any single microlender of $2,500,000, the implication is a possibility of up to five separate loans to a single microlender and the potential of up to an aggregate of $500,000 in TA grants to a single microlender). The commenters suggested that the final rule be clarified to allow the TA grant accompanying the loan to an MDO to be the maximum amount allowed by law.

Response: The Agency has determined that the $100,000 proposed maximum could be more limiting than intended in order to provide sufficient technical assistance to microenterprises and microentrepreneurs. However, the Agency has also determined that, considering the economies of scale, funding technical assistance grants at 25 percent for all outstanding loans up to the $2.5 million maximum is unnecessary and could divert too much of the program's funds away from loan purposes. Therefore, the Agency has revised the rule to allow technical assistance grants at a rate of 25 percent for the first $400,000 of aggregate outstanding microloans owed to the microlender under this program and then 5 percent on all additional outstanding microloans owed to the microlender under this program above $400,000 up to the $2.5 million total debt cap (*see* § 4280.313(a)(1)(i)). As a result, the maximum TA grant to any one MDO in any given year would now be $205,000. The Agency has also clarified that the TA grant amount is an annual amount, as specified in the statutory language.

Cost Share (Proposed § 4280.312(a)(2))

Comment: One commenter was concerned with the cost share provision limiting the "Federal share" to 75 percent as it would be applied to the Freely Associated States (Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia). The commenter pointed out that the Freely Associated States get much of their financial support from the Compact of Free Association with the United States, which is funneled through the Department of Interior, Office of Insular Affairs. This Compact funding could be a potential source of match for the RMAP program and the commenter would hate to see it excluded. The commenter, therefore, suggested this provision be revised to reflect "Rural Development" funding.

The commenter suggested combining proposed § 4280.312(a)(2) and (a)(3) to simply say that the Agency portion cannot exceed 75 percent of the grant amount.

Lastly, one commenter stated that the math in proposed § 4280.312(a)(2) and (a)(3) does not "add up". The commenter provided the following example: Paragraph (a)(2) states the maximum TA or enhancement grant cannot exceed 75

percent and paragraph (a)(3) states that the total matching requirement is 25 percent of the grant. If the cost of the grant project is $10,000 and the grant portion is 75 percent or ($7,500) and the match is 25 percent of the grant amount ($1,875), there is a shortage of $625 of complete funding for the project.

Response: Federal funding may not be used as the non-Federal share or match for the RMAP program unless specifically permitted by laws other than the statute authorizing RMAP. Instead, language has been provided that clarifies the statutory language regarding cost share (*see* § 4280.311(d)) and matching funds (*see* § 4280.313(a)(2)). The Agency has revised the cost share and matching requirements, which address the commenters' concerns (*see* §§ 4280.311(d) and 4280.313(a)(2)).

Matching Requirements (Proposed § 4280.312(a)(3))

Comment: One commenter suggested recasting the text to refer to the "non-Agency cash".

Response: With regard to the suggested text edit, the Agency has retained "non-Federal" because, with the exception of certain laws that allow the use of specific funding, other Federal funding may not be used.

Comment: Two commenters expressed concern about an apparent inconsistency between the law and the proposed rule with respect to matching funds for the grant provisions in the RMAP.

One of the commenters referred to section 379E(c)(1)(B) of the 2008 Farm Bill, which indicates that an MDO must provide a match of 15 percent the grant amount in the form of matching funds, indirect costs, or in-kind goods or services. For both enhancement grants and for technical assistance grants, proposed § 4280.312(a)(3) states that microlenders must provide a 10 percent match against any grant and a 15 percent cash or in-kind contribution against any grant for a total matching requirement of 25 percent. The proposed rule indicates that the loan loss reserve fund does not count for this requirement. The law, however, only requires either a cash match or an in-kind contribution. According to this commenter, there seems to be an inconsistency between the law and the proposed rule. For an MDO, the difference could have serious ramifications. Rural MDOs are challenged by the relative lack of local foundations, the fact that fewer corporations are headquartered in rural areas, and continually strained state budgets. The commenter, therefore, recommended that the Agency clarify the matching requirement, which the commenter understands—based on the law—to be a 15 percent match in the form of cash or in-kind funds.

The other commenter also noted that for both enhancement grants and for TA grants, the proposed rule states that microlenders must provide a 10 percent match against any grant and a 15 percent cash or in-kind contribution against any grant for a total matching requirement of 25 percent. The LLRF does not count for this requirement (proposed § 4280.312(a)(3)). The law, however, only requires either a cash match or an in-kind contribution; not both (section 379E(c)(1)(C)).

Lastly, one commenter noted that the law authorizes the use of CDBGs for use as a non-federal match. The commenter thus recommended that the Agency should include this in the final rule.

Response: The Agency has revised the non-Federal share and matching requirements, which address the commenters' concerns.

With regard to the CDBG comment, when permitted by laws other than the statute authorizing RMAP, Federal funding may be used as the non-Federal share or match for the RMAP program.

Oversight (Proposed § 4280.312(a)(4))

Comment: One commenter noted that the proposed rule already has provisions for oversight at proposed § 4280.311(i) and suggested combining the two provisions.

Response: The oversight provisions the commenter is referring to in proposed § 4280.311(i) apply to loans. The oversight provisions in proposed § 4280.312(a)(4) apply to grants. Because the provisions are different and apply to two different types of financial assistance, the Agency has not combined the two paragraphs as suggested by the commenter. However, the Agency has determined that there is no need for two grant oversight paragraphs found in proposed §§ 4280.312(a)(4) and 4280.320(a). Therefore, the Agency has deleted the first occurrence so that all grant oversight provisions are found in § 4280.320(a).

Comment: In reference to proposed § 4280.312(a)(4)(i), one commenter asked if the reporting will be with SF–269, "Financial Status Report," (Long Form) or (Short Form). The commenter also asked if this was in addition to the narrative and to Form RD 1951–4.

Response: The SF–269 has been replaced with SF–PPR, "Performance Progress Report." The new form will be submitted in conjunction with the narrative. As noted in a previous response, the Agency has determined that Form 1951–4 is no longer needed because the relevant part of that form will be moved into GLS.

Comment: In reference to proposed § 4280.312(a)(4)(iii), one commenter suggested adding "as revised" after the reference to "OMB Circulars A–102 and A–110."

Response: The Agency has replaced reference to these specific circulars with a more general reference to OMB circulars and regulations, eliminating the need to add the language suggested by the commenter.

Comment: One commenter suggested that all reporting requirements should be listed in one section and not spread out.

Response: While the Agency agrees with the commenter, the Agency will address this in regulatory instructions.

Administrative Expenses (Proposed § 4280.312(a)(5))

Comment: One commenter stated that there is a need for additional clarity about what the technical assistance grant may be used for. According to the commenter, the limitation at proposed § 4280.312(a)(5) that not more than 10 percent of the technical assistance grant be used for administrative costs is confusing and problematic. The commenter stated that an MDO should be able to use its technical assistance grant to pay for all of the costs associated with providing a functional staff to provide technical assistance to microentrepreneurs. Such costs should be expressly allowed and not be governed by the 10 percent figure.

Response: The Agency acknowledges that intensive technical assistance is widely recognized in the microlending community as a critical component to the success of potential and existing microborrowers. The 10 percent limitation is statutory (section 379E(b)(4)(C)). With regard to the commenter's request for additional clarity, the Agency disagrees that the rule is not sufficiently clear as to what the technical assistance grant may be used for and no changes have been made to the rule in response to this comment.

Enhancement Grants (Proposed § 4280.312(b))

Comment: One commenter stated that the enhancement grant is an unnecessary diversion of scarce RMAP funds. Enhancement grants as proposed are small ($25,000) and limited to the purpose of building MDO capacity. There are other USDA Rural Development programs available to do this—RBEG, RBOG, Rural Community

Development Initiative (RCDI)—as well as other sources from other funders and federal programs. There is no expressed requirement in the statute to create an Enhancement Grant program, and it would be a much better approach to direct all of the scarce RMAP grants to supporting the MDO's who are actually making microloans instead.

One commenter suggested an optional approach to provide enhancement grants, recommending that the rule allow the Agency to make larger enhancement grants to microlenders that, on a competitive basis, will select a group of rural microlenders to provide a platform for group, individual, and peer-to-peer enhancement services. The commenter referred to the U.S. Small Business Administration's Program for Investment in Microentrepreneurs (PRIME) as an example of such an approach.

Response: The Agency disagrees with the commenter concerning the statutory basis for the "enhancement grant" program. The statute states at section 379E(b)(4)(A)(i)(II): "Carry out such other projects and activities as the Secretary determines appropriate to further the purpose of the program." However, because opinions differ widely on how best to approach an enhancement grant category to this program, the Agency is requesting comments on this subject (*see* Section V of this preamble). Comments will be considered prior to publication of the final rule.

Technical Assistance Grants (Proposed § 4280.312(c))

Comment: One commenter noted that this section states that TA grants will be based on the loan amount made to an MDO "in accordance with the statute." The statute does not at any time state that TA grants should be calculated in this manner; however, the report language does allow for this mechanism.

Response: The statute states at section 379E(b)(4)(B)(ii): "Maximum amount of grant. A microenterprise development organization shall be eligible to receive an annual grant under this subparagraph in an amount equal to not more than 25 percent of the total outstanding balance of microloans made by the microenterprise development organization under paragraph (3), as of the date the grant is awarded." While the text in the preamble to which the commenter is referring may not reflect this statutory provision clearly, this is the statutory language on which the statement in question was made. The Agency will ensure clarity in the interim rule.

Comment: Several commenters noted that this section does not address borrowers who are "seeking a loan from an MDO"; that it addresses only people who have received one or more microloans and that this is in contradiction to the statute authorizing the program. As one of the commenters stated: This section of the proposed rule states that TA grants can only be used for people that have "received one or more microloans" from the MDO. However, the law also allows these TA grant funds to be used for services to microentrepreneurs that "are seeking a loan from the" MDO (Section 6022(b)(4)(B)(i)(II)). The law clearly intends to support microentrepreneurs who are owners and operators of rural businesses or prospective owners and operators of rural businesses. The definition of "microentrepreneur" in both the law and Proposed Rule include both types of microentrepreneurs. This section would ignore the need for technical assistance for prospective microborrowers as contemplated by the law. The commenters suggested that the final rule be modified to conform to the law.

One commenter also stated that, in practical terms, most microentrepreneurs seeking a loan need technical assistance to complete the loan process, and it is often difficult for MDO lenders to determine in advance whether an applicant will successfully complete the borrowing process. In fact, in some cases, well-crafted pre-loan assistance will enable a microentrepreneur to determine a means to grow or stabilize their business without taking on the risk of a loan, and as a result they will choose not to borrow.

Response: The Agency agrees with the commenters that the rule should include these entities and has so modified the rule (*see* § 4280.313(b)(1)).

Disbursement of TA Grant (Proposed § 4280.312(c)(2))

Comment: Several commenters discussed the manner proposed for disbursing TA grants. Four suggested that the TA grant be a full year grant and not based on the microloans made for the first year. Another similarly recommended that, during the first year of an intermediary's participation in RMAP, the TA grant should be a full year grant based on the amount of the loan to the intermediary.

Commenters noted that this section of the proposed rule states that during the first year of operation the disbursement of TA grants to MDOs shall be a percentage based on the amount of the loan to the microlender, but will be disbursed on a quarterly basis based on the amount of microloans made. This limitation of TA grant disbursement will limit the amount of technical assistance an MDO can offer to borrowers or potential borrowers. In the long-run it could affect the pipeline of microloan borrowers, something about which the proposed rule is concerned in other sections.

One commenter stated that the manner for disbursement of funds needs to be clearer. This commenter states that it appears that the proposed rule envisions awarding TA grants only in conjunction with the award of RMAP loan funds. Initially this certainly makes sense, but in years after an RMAP fund is established, it is still desirable to provide TA grant support. In fact, it would be ideal if an RMAP MDO, once funded, could depend upon rather than compete for TA grants. A possible structure might be to award a TA grant equal to 25 percent of the RMAP loan award in Year 1, with a commitment that provided the MDO makes satisfactory progress, it will be noncompetitively awarded a subsequent TA grant in Years 2, 3, and 4 equal to 20 percent, 15 percent, and 10 percent respectively of their RMAP microloan portfolio. This will have the effect of creating incentives for the MDO to get their RMAP funds loaned out quickly (since the size of subsequent TA grants will be pegged to their portfolio size) and will provide a reliable funding stream with the understanding that the RMAP MDO will need to get established internally and gradually come to rely less on RMAP TA grant. (It should be noted that there is a precedent for Rural Development awarding grants for multi-year terms—*e.g.,* the Section 523 Self-Help TA program. A similar approach would make sense for the RMAP TA grant.)

A sixth commenter recommended that the TA grant structure allow for the training and technical assistance of prospective microentrepreneurs as well as existing microentrepreneurs by awarding TA grants quarterly or annually, based on statutory allowances, program performance, and demonstrated need.

Response: With regard to the initial (first year) grant, the amount will be calculated against the initial loan amount. With regard to the manner of disbursement, these will coincide with loan disbursements to ensure that funds are available for microlending for loan ready clients, that these clients can receive post loan technical assistance, and that incoming clients can also receive technical assistance. This will allow the initial disbursement of grant

dollars in advance with the remaining quarters to be funded in reimbursement. The Agency notes that quarterly disbursements do not imply that one-quarter of the grant will be disbursed each quarter. If an MDO needs, for example, 50 percent of the grant in the first quarter, the rule allows the Agency to provide that amount in the first quarter.

Overall, the Agency is satisfied that the proposed distribution of money is sufficient for participating MDOs to implement technical assistance associated with loans made under this program. As the program matures, the Agency will evaluate this method of disbursement.

MDO Application and Submission Information (§ 4280.315)

Comment: One commenter noted that the application content specified in USDA Rural Development's IRP regulation (7 CFR 4274.338, including the use of the IRP application—Form RD 4274–1) provides a detailed, well-understood, and complete set of all of the information needed for a revolving loan fund loan application. The commenter recommended using this form in lieu of the SF–424 as specified in § 4280.315.

Response: The Agency disagrees with the commenter's recommendation because this program is not meant to replicate the IRP program. The program information requested by the Agency will provide the data necessary to appropriately evaluate applicants for this program.

Submission Requirements (Proposed § 4280.315(c))

Comment: One commenter was concerned that the submission requirements did not include mention of a narrative, detailed budget, and submission of lending and servicing policies.

Response: As proposed, there were several places within § 4280.316 that asked for a narrative. In addition, financial information was requested in proposed § 4280.316(a)(5) and loan policies and procedures were requested in proposed § 4280.316(a)(2). These provisions have been retained and appropriate reference to § 4280.316 has been added to § 4280.315 for clarity.

Comment: One commenter asked why the proposed rule did not ask for organizational documents and suggested that it be added to the list of documents to be submitted. According to the commenter, organization documents should be submitted to Agency personnel for analysis and eligibility determination. Another commenter suggested adding organizational documents as an additional documentation requirement.

Response: As proposed, the rule requested organizational documents in § 4280.316(a)(1) as part of the application. This has been retained and an appropriate reference has been added to § 4280.315(d)(1).

Comment: One commenter suggested using the certification under 1940–Q instead of Form SF LLL. According to the commenter, 1940–Q is used more frequently than SF LLL.

Response: While the commenter is correct in that either the certification under 1940–Q or Form SF LLL can be used, the Agency prefers to use SF LLL because it is shorter, meets the needs of the Agency, and is consistent with the Agency's other grant programs. Therefore, the reference to SF LLL has been retained in the interim rule.

Additional Documentation (Proposed § 4280.315(d))

Comment: One commenter recommended adding the following requirement for additional documentation: "Applicants are strongly encouraged to review the scoring criteria and provide documentation that will support the score." According to the commenter, this needs to be brought to the applicant's attention or they will look only at the application submission requirements and not provide sufficient information for scoring or a successful application. There is a disconnect in many of our programs between "scope of work requirements" and "scoring criteria". We need to do a better job of having applicants address burdensome scoring data—particularly with a program that is going to be administered at the National level initially.

Response: The Agency agrees with the commenter that the proposed text would be useful to help ensure receipt of better applications and has modified the rule accordingly with reference to the additional application requirements in § 4280.316.

Comment: In reference to proposed § 4280.315(d)(1)(i), one commenter expressed concern that the requirement for copies of an applicant's IRS designation as a non-profit would effectively block all non-profits in the Freely Associated States from being eligible. The commenter asked: Why not just get an OGC opinion similar to the Community Facilities program?

Response: The Agency agrees with the commenter's concern. As noted previously in a response to a comment on the definition of "nonprofit entity," the Agency has revised this requirement (found in § 4280.315(c)(8)(ii)) to, in part, remove reference to the IRS.

Comment: In reference to proposed § 4280.315(d)(1)(iv), one commenter suggested adding the words "not more than 6 months old" after "A Certificate of Good Standing."

Response: The Agency agrees with the commenter's suggestion that the certificate of good standing not be more than 6 months old and has revised the rule accordingly.

Comment: Another commenter expressed concern with the requirement that the Certificate of Good Standing come from the applicant's home state's Office of the Secretary of State. According to the commenter, the commenter's State does not provide these certificates to institutions of higher education and doubted that other States would do so for an Indian tribe within their borders.

Response: The Agency understands the commenter's concern. As a result, the language has been altered to exclude the need of a Certificate of Good Standing for institutions of higher education and for Indian tribes.

Application Scoring (§ 4280.316)

Comment: One commenter stated that a new application scoring process will be needed if the Agency includes in the rule grants to MDOs solely for the purpose of the provision of training, technical assistance, and other business development services to microentrepreneurs.

Response: As noted in a response to previous comments, the Agency is including such grants in the rule and has provided a new application scoring system for these grants (*see* § 4280.316(d)).

Past Experience Requirement

Comment: Many commenters expressed concern over the proposed rule's emphasis on an MDO's past experience, especially in rural areas, when scoring applications.

Commenters, in general, were concerned with the proposed scoring that would enable MDOs with past experience and those currently operating in rural areas to be awarded more points (and thus be able to score higher) than to those MDOs that do not. According to the commenters, such scoring would not only put urban MDOs at a disadvantage, but would also discourage their expansion into rural areas.

Several commenters also stated that the proposed rule does not adequately account for MDOs creating and proposing an effective plan for providing services to rural areas. By

awarding points to MDOs with past experience, the proposed rule puts rural MDOs who want to add microenterprise services at a disadvantage. As one commenter stated, an MDO with a proven microenterprise track record that has a viable plan to now provide lending services may be prohibited from doing so by the scoring rules, thus potentially denying microlending services to an unserved or underserved rural area.

In sum, these commenters stated that, if RMAP is to succeed, it must prompt both the development of new services by existing providers of a single service and the expansion of existing urban programs into rural areas. The commenters believe that the rule as proposed would discourage both and thereby undermine the success of RMAP in achieving the purposes for which it was created.

On the other hand, another commenter urged the Agency to maintain a strong commitment to supporting microlenders who are located in and predominantly serve rural communities. While understanding the interests of some to incentivize urban-based microlenders to expand their lending territories into rural communities, this commenter believes that the best service providers are locally based, have strong ties to their rural communities, and are intimately connected with the rural economies they serve. The commenter further believes that the greatest benefit to rural entrepreneurs will be felt through building the capacity of rural-based microlenders, not through additional outreach from urban markets and asks that the Agency preserve priority for microlending organizations having a strong history with, and a clear commitment to, rural communities.

Response: The Agency understands and recognizes the commenter's concern as it regards MDOs with more than 3 years experience, but without rural area experience. However, it is specifically the intent of RMAP to leverage as much as possible the existing rural development experience of MDOs and to serve, exclusively, rural areas.

Further, if the MDO has 3 years or less experience, the scoring does not take into account past experience in making loans to rural areas or to rural microentrepreneurs. Thus, RMAP does not discourage the development of new providers as suggested by the commenter.

Finally, each of the categories of prospective participants adds up to a total score of 100 points so that no category of applicants will have any advantage over another category of applicants.

Too Complex/Replace Scoring System

Comment: One commenter stated that the proposed scoring system is overly elaborate and complex, and it will not really single out projects with the greatest merit. This commenter recommended replacing the proposed scoring system with a much simpler system that is based on only three factors: Leverage of USDA funds (Matching Funds); Prospect for Success (Experience and Track Record); and Targeted Groups (Outmigration/Minority Focus).

Response: The commenter's suggested three factors are included in the scoring criteria. The Agency believes that some level of detail, in addition to those three factors, regarding applicant capabilities, legal status, historical performance, and other details are important in determining the applicant's abilities to make and service microloans, provide technical assistance, and facilitate access to capital. Therefore, the scoring criteria have been designed to provide the Agency with in-depth information regarding each applicant and help ensure the success of the program and its end user clients.

Subjective Scoring Criteria

Comment: Two commenters stated that numerous criteria are subjective and may lead to inconsistent or unreliable scoring, particularly if reviewers were to lack familiarity with rural microlending management best practices. One of the commenters specifically stated that the criteria found in proposed § 4280.316(c)(1), (3), (5), (6), and (7) are highly subjective and scoring may vary greatly from individual reviewer to individual reviewer.

Response: The Agency disagrees that these provisions are unduly subjective and will result in inconsistent scoring. Because the same staff within the National Office will score all applications as the program is implemented, the Agency can ensure consistent and reliable scoring. As the program matures, the Agency may have State office personnel score RMAP applications. At the time of publication of the final rule, the Agency will publish detailed regulatory instructions with guidance on scoring to help ensure consistency across the State offices.

Points for Partnering

Comment: Two commenters suggested awarding points for partnering. The commenters noted that under proposed § 4280.316(a) no points will be awarded based on the capacity of the applicant to partner with key local, regional, and statewide stakeholders that can help MDOs succeed in their mission. Most successful economic development efforts are due to key local, regional and statewide partnerships that bring together community stakeholders engaged in economic development efforts. These partnerships provide MDOs with additional sources of financing, technical assistance and buy-in from economic development agencies that are critical to program success. They also help to ensure that MDOs are not working in a vacuum or duplicating services that are already available to microentrepreneurs. The commenters recommended that USDA add an additional scoring component that requires MDOs to demonstrate their ability to partner with these key stakeholders. One of the commenters suggested up to 15 points be awarded and that this new criterion should also be included in enhancement grant scoring criteria (proposed § 4280.316(d) and (e)).

Response: The critical and essential scoring criteria have been included at this time. While we agree there is value in partnering, our primary need is to establish an understanding of the capacity of each applicant to provide microloans and technical assistance. As noted previously in this preamble, MDOs selected to participate in the program are encouraged to develop community-based partnerships. However, such partnerships and collaboratives will be developed outside of the relationship between the Agency and the participating MDOs. Thus, no further points are needed.

Fixed Versus Ranges in Scoring

Comment: One commenter was concerned with scoring criteria that relied on ranges. According to the commenter, awarding points through the use of ranges is not objective; most states will award the applicant the full score just to be competitive. To be objective, the criteria must be based on whether the applicant has either addressed the criteria or not. In the commenter's experience with the RBOG program, the commenter has issues with the subjectivity of a range of score versus the objectivity of a set score. The commenter believes that the rule should be kept simple; that is, no ranges, just points. Either the applicant has documented the criteria or not with points being awarded if they have and no points if they have not.

The commenter was also concerned that there is insufficient direction on how to score the criteria when scoring is shown as 0 to 5 points, for example.

To illustrate, the commenter referred to proposed § 4280.316(a)(1), which states "an organizational chart [must be submitted] clearly showing the positions and naming the individuals in those positions. Of particular interest to the Agency are the management positions and those positions essential to the operation of microlending and TA programming; award 0–5 points." The commenter asked how the Agency would make a decision of 0 to 5 points, because there is no requirement for experience, until you get to paragraph (a)(4), which is another scoring criterion. The commenter was also concerned that the lack of direction would result in inconsistency in scoring across the states.

Lastly, this commenter expressed several concerns with the proposed scoring found in proposed § 4280.316(a). The commenter stated that there needs to be thresholds for scoring different categories; that is, the rule should clearly identify what information will result in a score of 1 point or 3 points or 5 points. In other words, there needs to be more detail on how to distinguish between, for example, scoring 10 out of 10 on financial statements versus scoring 3 out of 10.

Response: The Agency believes that ranges are appropriately identified for the scoring criteria identified by the commenter. For each criterion, it will be up to the applicant as to how much material to provide in addressing the criterion and the quality of that material. To help ensure consistency in scoring these criteria among National Office Agency staff, the Agency will be providing regulatory instructions on how to score each of these criteria.

Points for Smaller Loans

Comment: One commenter stated that, to become an effective national program, the benefits must be spread across the widest range of rural entrepreneurs and rural communities. To accomplish this goal, consideration should be given to providing some application points for MDOs that will target the provision of smaller loans and provide complementary nanoloan programs (loans of less than $5,000) designed for helping to repair credit scores. In today's economic environment it is very easy for rural clients to see their credit scores plummet due to loss of a job, unplanned medical bills, housing crisis, or credit crisis. Small credit builder loan programs require more administration and technical assistance per dollar value of loan balances and the commenter suggested that they be given extra consideration weight in the application scoring system, since they are an increasingly necessary component in providing a comprehensive program and would provide greater marginal impacts.

Response: Nanoloans fit well within program requirements and can be easily accommodated. The Agency also sees value in spreading risk via numerous loans at smaller amounts. Because these loans will fit well within program requirements, no additional scoring for that level of lending will be given. At this point in time, lending history information called for in the scoring criteria will provide the Agency with sufficient data to make appropriate decisions.

Narrative Length

Comment: One commenter recommended setting a page limit (or number of words) whenever the proposed rule requests the applicant to provide a narrative. The commenter noted two spots where there are page limits (5 and 7) and suggested in both cases that is still too many pages for a narrative.

Response: The Agency agrees and has set a uniform length (5 pages) for all narratives.

Fairness of <3 Years vs. >3 Years Experience

Comment: One commenter stated that setting up different standards for inexperienced MDO's ("<3 years" experience) and established MDO's ("3+ years" experience), is not fair, nor is it good policy because it has the effect of slightly favoring inexperienced applicants for a high risk undertaking.

Response: The statute requires that MDOs have "a demonstrated record of delivering services to rural microentrepreneurs, or an effective plan to develop a program to deliver services to rural microentrepreneurs, as determined by the Secretary." As a result, it is necessary to consider experienced as well as new entities. The scoring system has been created so that all categories of applicants can score up to 100 points. Thus, no category of applicants will have an advantage.

Relative Points Awarded

Comment: A number of commenters expressed concern with the relative weighting of points among the scoring criteria in proposed § 4280.316(a) and (b). Concerns expressed were:

(1) Proposed § 4280.316(a)(4) requires that resumes of all staff on the MDO's organizational chart be provided in the application, and up to 5 points are awarded for both the "quality" of staff resumes and for inclusion of the organizational chart. Meanwhile, the same number of points is awarded for the MDOs understanding of microlending. The allocation of points for the basic scoring of all applicants fails to recognize what is important for MDOs to properly serve rural microentrepreneurs. The ability of staff to administer the program can be determined through other required application items and through MDO history, and the points awarded for resumes and an organizational chart could be focused elsewhere.

(2) It seems superfluous to award up to 5 points for an organizational chart and another 5 points for adequate resumes for a combined 10 points. These two categories can be combined for fewer points and demonstrating an understanding of microlending with equal emphasis on loan making and providing technical assistance should earn more than the current up to 5 points.

(3) Under proposed § 4280.316(b)(1), History of Provision of microloans, paragraphs (b)(ii) through (b)(iv), award up to 8 points for the percentage of the number and amount of loans made in rural areas, but only up to 4 points for the number and amount of microloans made in rural areas. The commenter recommended that, if the goal of RMAP is to maximize the number and value of loans made to rural microenterprises, the scoring system should provide relatively more points to lenders with a history of making larger numbers (and a larger dollar value) of microloans in rural areas, regardless of the percentage of their total microloan portfolio those loans represent. In other words, a lender that has made 40 microloans in rural areas that represent 10 percent of its total portfolio should receive a relatively higher score than a lender that has made 4 loans in rural areas that represent 100 percent of its total portfolio.

(4) Proposed § 4280.316(b)(3)(v) provides seven points for providing loan and TA services to 75 percent or more socially-disadvantaged microentrepreneurs, but cuts the points nearly in half (to four points) for 50 to 74 percent. According to the commenters, it could be very hard in many places, like the Great Plains, to reach 75 percent, particularly with other rules requiring services to match the service area demographics. The commenters suggested increasing the points awarded in this section to six points for loans and technical assistance to at least 67 percent but less than 75 socially-disadvantaged microentrepreneurs, and four points for at least 50 percent but not more than 67 percent. That way MDOs in less racially

diverse rural areas like the Great Plains will not have to sacrifice points while still having a diverse portfolio.

(5) The scoring structure for microlenders with more than three years of experience should be changed to value that experience by awarding lenders that have made larger numbers (and lent more dollars) to microentrepreneurs.

(6) More points should be awarded for an MDOs successful training history because successful MDOs train many more microentrepreneurs than they provide loans. According to the commenter, if the MDOs are good at the work, some of the microentrepreneurs find they do not need credit or gain the knowledge to allow them to receive loans in the commercial credit market. The proposed scoring metric awards too many points for having made loans and disadvantages organizations whose emphasis is on training. The long-term positive effect of the program will depend on how successful it is at building community economic capacity, which depends at least as much on effective training as on lending.

(7) Require an organizational chart and staff resumes together and awarding a maximum of less than 5 points combined for the two items, and reallocating the remaining points (5 plus whatever is remaining from the organizational chart/resume combination) to other items, such as location in an outmigration area and information regarding understanding of technical assistance to microentrepreneurs. The commenters also recommended that staff information and resumes, if required, be required only for organizational employees dealing directly with microentrepreneurs, microlending, and/or the providing of technical assistance services.

(8) Amend these criteria in the final rule to emphasize that applicants will be judged on the governance structure of the MDO. In particular, the board of directors or governing body of the MDO should include a diverse representation of various sectors of the community including local elected officials. In supporting this recommendation, the commenter states that USDA emphasizes the management positions as a critical component of the scoring for this section and notes that this is an important factor in a MDO applicant's success. However, the most critical organizational component that should be evaluated for an MDO is the composition of its governing body or board. This body will be responsible for compliance with the funding award regardless of staff changes and its composition demonstrates the diversity of local stakeholders that are involved in the governance of the MDO.

Response: The Agency accepts that the proposed scoring system was complicated and sometimes unclear. As a result, categories have been clarified and reorganized, specific items have been moved to specific loan and grant type categories, subjective and objective items have been assigned points more appropriate to their actual value, and other such changes have been applied. The new scoring criteria are located in § 4280.316.

The Agency disagrees that the quality of resumes and organizational structure are not important. Without such quality and structure, the MDO may not have the right level of management and understanding to make microloans. Lastly, as indicated in § 4280.316(a)(2), resumes are requested for the individuals shown on the organizational chart which would be, as indicated in § 4280.316(a)(1), management positions and those positions essential to the operation of the subject program.

Understanding of Microlending (Proposed § 4280.316(a)(2))

Comment: One commenter recommended that an MDO's understanding of technical assistance play a stronger role in the scoring of applications because, according to the commenter, the TA portions of RMAP are essential and the consensus view is that technical assistance is crucial for the success of rural microentrepreneurs. The commenter pointed out that up to 5 points would be awarded for the applicant's understanding of microlending. Included in proposed § 4280.316(a)(2) also is the term "provision of technical assistance." This seems to indicate that applicant MDOs must also provide evidence of their understanding of technical assistance.

Response: The Agency agrees with the commenter that this provision needs to address the MDO's experience with providing technical assistance and has revised the rule accordingly (*see* § 4280.316(a)(4)) to request provision of the MDO's policy and procedures manual addressing technical assistance.

Resumes (Proposed § 4280.316(a)(4))

Comment: One commenter noted that proposed § 4280.316(a)(4) requires that resumes of all staff on the MDO's organizational chart be provided in the application, and up to 5 points are awarded for both the "quality" of staff resumes and for inclusion of the organizational chart. Meanwhile, the same number of points is awarded for the MDOs understanding of microlending. The allocation of points for the basic scoring of all applicants fails to recognize what is important for MDOs to properly serve rural microentrepreneurs. The ability of staff to administer the program can be determined through other required application items and through MDO history, and the points awarded for resumes and an organizational chart could be focused elsewhere.

Response: The organizational chart is requested of all applicant entities (*see* § 4280.316(a)(1)) for several reasons. It is important to know which personnel are in program-pertinent position on the chart. It is also important to know whether or not there is a larger organization beyond the microenterprise specific offices. This provides the Agency with a sense of whether applicants are stand-alone entities or have a greater support structure behind them. When used in concert with the resumes, the Agency will have a more complete picture of the capacity and capability of the applicant. The organizational structure and resumes of key people provide insight into the understanding of microlending and the ability of the applicant entity to serve rural microentrepreneurs that is in addition to information found in the policies and procedures manuals as requested in § 4280.316(a)(4). No change has been made in response to this comment.

Organization Mission Statement (Proposed § 4280.316(a)(6))

Comment: Two commenters stated that proposed § 4280.316(a)(6) awards up to 5 points for the applicant's organizational mission statement. The commenters recommended that this scoring component be clarified to emphasize the importance of an applicant's connection to broader local and regional economic development plans and efforts. One of the commenters referenced the development strategies as outlined in the U.S. Economic Development Administration's Comprehensive Economic Development Strategy (CEDS) or other federally recognized plans. The other commenter recommended that this section provide up to 15 points and should also be included in proposed § 4280.316(d) and (e).

One commenter suggested that the scoring criteria in proposed § 4280.316(a)(1) through (a)(7) be enhanced to ensure that applicants are representative of their communities, working in partnership with other local and regional development entities and are linked to a broader local or regional economic development planning effort.

If the applicant does not currently possess these additional criteria, they should still be encouraged to develop a plan to enhance these connections in their application and be scored favorably for developing these plans.

Response: As indicated previously, we agree that connections to broader local and regional CEDS are valuable. However, the focus at this time is to include entities that best deliver microloans and technical assistance.

Geographic Service Area (Proposed § 4280.316(a)(7))

Comment: Many commenters expressed concern on the outmigration provisions proposed. These comments fell into the following two main concerns:

(1) Do not include outmigration criterion in the loan provisions because the statute is silent on this as it regards loans. These commenters noted that the only mention of outmigration is in connection with the proposed "enhancement grants" and not with loans or with technical assistance grants.

(2) Reduce the emphasis on outmigration in scoring and rating of proposals. Three commenters stated that population dynamics look quite different throughout rural America, and outmigration, as the main criteria for assessing need, is not a good indicator. Each commenter referred to California, noting that California and other states that are not experiencing net outmigration are prejudiced by the emphasis on this as criteria for qualification for these RMAP funds. Poverty and economic decline exist in rural California despite the fact that population levels have stabilized or even increased. A fourth commenter suggested the Agency consider lowering the rating system for "outmigration". By rewarding extremely high outmigration, associated infrastructure may not be available to support microentrepreneurs.

One commenter stated that the law does not define outmigration as is done in the proposed rule and that the definition will significantly curtail the ability of MDOs to serve rural areas. The commenter stated that residents of distressed rural communities are more dependent on microenterprises for their livelihoods and often are unable to move to areas with more employment opportunities. The commenter recommended that the Agency align the proposed rule with the structure of the law by not including areas of outmigration as part of the loan program requirements.

Response: With regard to the consideration of outmigration for making loans and TA grants, the commenters are correct in that the criterion does not apply to loan applications as written in the statute. The outmigration scoring criterion should have been applied to enhancement grants, which, as noted elsewhere in this preamble, are not included in the interim rule.

MDOs With More Than 3 Years Experience (Proposed § 4280.316(b)(1))

Comment: One commenter stated that the application scoring rules provide substantial points for MDOs with demonstrated track records of providing lending services to rural microentrepreneurs, but fail to provide points for effective plans to deliver such services. In the definition of MDO, the statute states an MDO is an organization that "has a demonstrated record of delivering services to rural microentrepreneurs, or an effective plan to develop a program to deliver services to rural microentrepreneurs" (section 379E(a)(3)(D)). In the final rule, provision should be made to provide significant points to an MDO with a proven microenterprise track record that has a viable plan to now provide lending services. This change will be critical to reaching micro-businesses in underserved areas or among underserved populations.

Response: The Agency agrees that there is value in having a proven track record as well as a plan. The initial information required of all applicants will provide the Agency with sufficient information to determine basic capacity. In addition, there is a scoring section for MDOs that have a demonstrated record (§ 4280.316(b)). There is a separate section (§ 4280.316(c)) for MDOs that have 3 years or less of experience; this section calls for written plans.

Comment: Two commenters were concerned over the amount of recordkeeping that would be required to comply with proposed § 4280.316(b)(1)(v) and in scoring in general. These commenters stated that some application requirements are overly burdensome for the borrower compared to the dollars requested. Recordkeeping required for scoring criteria, such as those found in proposed § 4280.316(b)(1)(v), involves notable efforts of recordkeeping that does not have anything to do with the fundamental business of the MDOs and involves information that MDOs cannot require borrowers to provide.

Response: The Agency disagrees. Keeping appropriate records is essential to the understanding, assessment, and evaluation of the MDO. However, to respond to the demographic questions, the Agency has named three demographic groups by which MDOs should be able to illustrate their activities. These are women, minorities, and the disabled.

Diversity (Proposed § 4280.316(b)(1)(v))

Comment: A number of commenters were concerned about how the scoring would affect MDOs that specialize in serving specific populations. Most submitted similar comments as captured by the following comment:

Proposed § 4280.316(b)(1)(v) provides points for how closely an MDOs microloan portfolio matches the demographics of the MDO's service area. Some MDOs will naturally serve certain segments of the service area (*e.g.,* female or low-income entrepreneurs), generally for reasons that such demographic segments are historically underserved or unserved. For that reason, their portfolio may not match the demographics of the service area, thus potentially penalizing those MDOs in the scoring pursuant to this section. This paragraph also provides points when at least one loan made to each demographic group is within specified percentage points of the demographic makeup of the service area. This paragraph is confusing, as it is not clear what "each demographic group" means (does it mean, for example, every racial or ethnic or socio-economic group that has at least one resident in the service area?); also MDOs that focus on certain segments of the population (female or low-income entrepreneurs, for instance) may be penalized. While we support using RMAP to support diverse clientele, we would suggest that the final rule recognize and not penalize MDOs that serve historically underserved or unserved populations in their rural service areas. We also suggest that language on "each demographic group" as outlined above be clarified in the final rule.

One commenter recommended deleting this criterion or reducing the number of points associated with it. According to the commenter, many of the most successful MDOs concentrate on training, technical assistance, and lending to one or several disadvantaged demographic groups. They have the knowledge and credibility to serve these underserved populations best and should not be disadvantaged for concentrating their work. In order to ensure the program is reaching diverse groups, the commenter recommended that the Agency charge application reviewers to ensure proper lending coverage to all groups in a geographic

area when they consider which MDOs to fund.

Response: The Agency disagrees that the proposed scoring criteria would penalize entities that serve certain segments of the population. The Agency offers no penalties regarding scoring on the provision of services. Organizations that have historically served a specific group of prospective microborrowers will be required, by Fair Credit Lending rules, to open their doors to all, whether or not they fit the particular demographics of the historic customers or the geographical area. Following the pattern of fairness, the Agency would anticipate that TA grant recipients will provide services to all groups as well.

Comment: One commenter suggested that the scoring structure be altered so that the applications of MDOs that have stated missions to provide services to underserved populations are scored appropriately.

Response: The Agency agrees with the commenter and does require mission statements as a part of the application process. As the mission statements are reviewed, they will be scored in accordance with how well the applicant's mission statement matches program requirements. The capacity to serve underserved populations is considered as a part of § 4280.316.

Comment: One commenter noted that proposed § 4280.316(b)(1) requests data regarding the history of the MDO's provision of microloans for the three years prior to its application. Most of these data are readily available; however, some of the data points requested appear to reflect the more narrowly targeted goals of the Enhancement Grant program as opposed to the loan program. For example, proposed § 4280.316(b)(1)(v) requests information on the diversity of the MDO's microloan portfolio. The proposed rule's scoring criteria appear to disadvantage MDOs whose rural markets have less diversity than others. For example, the racial diversity in the cities of Portland and Lewiston, Maine is much higher than the rural areas of Maine that the commenter also serves. Data on the diversity of the commenter's entire service area does not accurately reflect the diversity of its rural areas.

Response: The Agency disagrees that the scoring criteria provide for rural markets with less diversity than others. The statute requires that training and technical assistance be provided via organizations of varying sizes and that serve racially and ethnically diverse populations. Therefore, these data are requested to ensure that the Agency meets this intent.

Comment: One commenter recommended that the rule further define or list demographic groups being targeted.

Response: The Agency has identified the specific demographic groups in response to the comment. Demographic groups shall include gender, racial or ethnic minority status, and disability as defined by The Americans with Disabilities Act. (*See* § 4280.316(b)(1)(v))

Portfolio Management (Proposed § 4280.316(b)(2))

Comment: Two commenters expressed several similar concerns with this criterion. The issues cited by these commenters are:

(1) This criterion proposes to use a set of measures of portfolio performance that are not commonly used in the microenterprise and community development field, and that would not provide full or sufficient information on the level of risk in the applicant's loan portfolio. Specifically, proposed § 4280.316(b)(2)(i) requests that applicants "enter the total number of your microloans paying on time for the three previous fiscal years." The term "paying on time for the three previous fiscal years" is not defined, and could be interpreted numerous ways, including: The number of outstanding loans that never experienced a late payment over the course of the year, the number of loans that were current at year-end, or the number of loans that paid off as scheduled during the course of the year. However, this term might be defined by the applicant, none of the above is a widely-accepted measure of portfolio quality in the microenterprise or community development finance industry.

(2) Proposed § 4280.316(b)(2)(ii) requires applicants to "enter the total number of microloans 30 to 90 days in arrears or that have been written off at year end." There are several issues with this approach. First, it conflates delinquent loans with loan losses, which are typically reported and assessed separately (in part because the commonly accepted definitions of these measures require different denominators when calculating a percentage value). Second, the measures required in the Proposed Rule involve the number of late or written off loans, not the dollar value of those loans. In assessing the level of risk in a portfolio, it is the value of loans at risk rather than the number that is most significant—as a delinquent or bad loan of $40,000 will necessarily pose more risk to a portfolio than a delinquent or bad loan of $4,000.

(3) The approach in the proposed rule does not request information on loans that are greater than 90 days in arrears, but have not yet been written off. These are the delinquent loans that generally pose the greatest risk to the lender, particularly if the lender does not have or adhere to a strict policy and time frame for writing off loans that have become significantly delinquent.

The commenters recommended that, in assessing portfolio quality, the rule require applicants provide information for the past three fiscal years on the following three measures:

(a) Portfolio at risk: Defined as the outstanding principal balance of loans with payments greater than 30 days past due, divided by the total dollar amount of outstanding loans, as of the last day of the fiscal year.

(b) Loan loss rate: Defined as the total dollar value of loans declared as written off or nonrecoverable, net of recoveries, divided by the average outstanding value of the portfolio over the course of the fiscal year.

(c) Restructured loan rate: The dollar amount of all loans that have been restructured, divided by the total dollar amount of outstanding loans as of the last day of the fiscal year.

Lastly, the commenters noted that they believe it is important to examine loans that have been restructured, as well as those that are delinquent and/or written off, because those loans do indicate risk to the portfolio.

Response: The Agency understands that microlenders nationwide may differ in their portfolio management definitions. In response, the Agency attempted to provide scoring criteria that could be best addressed by all entities as opposed to numerous criteria that would meet regionally-specific benchmarks.

Technical Assistance History (Proposed § 4280.316(b)(3))

Comment: One commenter was concerned about the burden imposed by the scoring criteria in proposed § 4280.316(b)(3)(i) through (iv). This commenter stated that the requirements to provide data on the total numbers and percentages of rural microentrepreneurs—including for minority, socially-disadvantaged, or disabled microentrepreneurs, and those in areas of outmigration—that received both microloans and technical assistance services for each of the previous three fiscal years are unduly burdensome. These requirements suggest that one of the primary measures of success for an MDO is the number of the microenterprises it serves that receives both technical assistance

and loans. The commenter believes that this assumption could be detrimental to the very microentrepreneurs that MDOs are serving.

The commenter's technical assistance programs are functionally independent of their lending programs so that the commenter can maintain the confidentiality of clients and because each program provides distinct services that meet the needs of their clients. In practice, many TA clients pursue loan funding from the commenter; however, microentrepreneurs seek technical assistance from the commenter for a variety of reasons, and many may not ultimately apply for a loan. Both services are critical to the success of rural microentrepreneurs. As a result of this programmatic structure, technical assistance and lending data are tracked in separate databases.

The commenter, therefore, recommended that the requirements of proposed § 4280.316(b)(3)(i) through (iv) be minimized because of the burdensome nature of collecting these data, at least in the currently proposed combinations.

Response: The Agency disagrees that the collection and maintenance of the proposed data is unduly burdensome and considers it to be an appropriate part of a soundly managed program. However, the criterion regarding data types were of concern to a number of commenters and have been revised in this document to clarify, and ease confusion, regarding what data to collect. The suggested data chart and scoring criteria have been revised as a part of the overall clarification of data and other application requirements. The revised requirements are located in § 4280.316.

Technical Assistance to Rural Microentrepreneurs (Proposed § 4280.316(b)(3)(i) and (ii))

Comment: Two commenters were concerned that the scoring criteria in proposed § 4280.316(b)(1)(i) and (ii) demonstrate the bias expressed in the proposed rule toward MDOs that engage only in lending and against MDOs that provide both lending and technical assistance or training technical assistance only. According to the commenters, this proposed scoring section will significantly penalize MDOs that provide both technical assistance and lending and will virtually exclude programs that in the past provided TA services only or even training to nonborrowers. Full service MDOs typically train far more microentrepreneurs than the number that receive loans, because the demand is greatest for training. Such MDOs would be penalized by the criteria for not providing loans to most of their trainees, because most trainees do not need loans or in other cases, use the training to develop skills to gain access to commercial credit.

According to the commenters, this "backward looking" scoring system fails to recognize the law's emphasis on MDOs having an "effective plan to develop a program to deliver services to rural microentrepreneurs." By failing to recognize this portion of the law, these sections will result in curtailing microenterprise development services in unserved and underserved rural areas by new rural MDOs, by rural MDOs which seek to expand their services, and by MDOs which may seek to expand their services into rural areas. The commenters recommended that the final rule develop a mechanism to recognize the eligibility of each of those types of MDOs by conforming to the law's prescription of allowing MDOs to develop an "effective plan" to deliver services to rural microentrepreneurs.

Response: The Agency disagrees that there is a bias toward entities that deliver microlending programs over entities that provide only technical assistance. However, to ensure like recognition of each applicant type, each set of scoring criterion allows for a maximum of 100 points so that each type of applicant is able to equitably compete against each other. In balance, the Agency has revised the rule to address all types of MDOs and provide for funds to MDOs that wish to participate through loans and/or grants. The changes are included in the rule, thus, address the concerns expressed by these commenters.

Socially-Disadvantaged (Proposed § 4280.316(b)(3)(iii))

Comment: Several commenters were concerned about the reference to "socially disadvantaged" in proposed § 4280.316(b)(3)(iii), stating that "socially disadvantaged" was not defined or not defined well enough. For example, one commenter noted that it is not stated whether "socially disadvantaged" includes gender (presumably female microentrepreneurs). According to the commenter, this appears inconsistent from proposed § 4280.316(b)(v), where gender is a specifically mentioned demographic group. The commenter, therefore, suggested that these provisions be made consistent and that the final rule clarify that female microentrepreneurs are specifically included in any definition of "socially disadvantaged."

Another commenter recommended either including a definition for "socially disadvantaged" under § 4280.302 that includes women and other disadvantaged groups, or expanding § 4280.316(b)(1)(v) to include an explanation of the term "socially disadvantaged." Ultimately, the commenter believes that female microentrepreneurs should be considered "socially disadvantaged" for the purposes of any provision under the proposed rule.

Response: As noted in response to a comment on the definition of "socially disadvantaged," the Agency agrees with the commenters that, as proposed, the rule did not adequately address whether gender was included in "socially disadvantaged." The Agency, however, has determined that it is unnecessary to include socially disadvantaged in the scoring criteria cited by the commenters and has removed that term from the rule. The Agency made this determination in consideration of Civil Rights reporting, which is based on demographic data and "socially disadvantaged" is not one of those data.

Administrative Expenses (Proposed § 4280.316(b)(5))

Comment: A number of commenters recommended removing this scoring criterion, all expressing similar reasons including:

- The Proposed Rule arbitrarily provides points on an application according to how much below 10 percent an MDO proposes using for administrative expenses, providing 0 points for 8 to 10 percent of the TA grant used for administrative expenses. An MDO could be penalized for doing precisely what the law allows. This section of the rule also has the potential to penalize non-profits (a focused eligible organization throughout the proposed rule) that may have no other access to funds for administrative expenses.
- This is a punitive measure for rural MDOs who have few resources for administration and operations. Corporate and foundation grants that contribute to administrative operations are largely unavailable to support nonprofit, community based MDOs in rural areas. This criterion would put such agencies at disadvantage, despite their track record of producing positive economic outcomes.
- It is punitive measure for rural MDOs who have few resources for administration and operations. Small, nonprofit community-based MDOs have few sources of discretionary funds for overhead. These criteria would put such

agencies at disadvantage to larger institutions.

• Depending on the definition of administration expenses, it could be that this provision would penalize organizations that are seeking to build the organizational capacity to expand their lending and training activities in accordance with and support of the intent of this program.

• The law states in section 379E(b)(4)(C) that not more than 10 percent of a grant received by an MDO can be used to pay administrative expenses. The proposed rule proposes a tiered scoring system that favors MDOs who use fewer grant funds for administrative expenses. The commenter understands the Agency's desire to maximize the use of RMAP funds for the benefit of rural microentrepreneurs; however, the commenter believes the proposed scoring system will disproportionately favor MDOs with the ability to fund administrative expenses with other funding streams so that they can benefit from these criteria. Administrative funds are critical to the success of any microenterprise program and 10 percent is a very reasonable, even modest, amount to budget for these purposes. The commenter recommended that the Agency align the proposed rule with the law and remove the tiered system proposed in the rule.

• Scrimping on administration is not a good way to run an effective program. MDOs should not receive points for reporting administrative costs that are either artificial or so low that the organization will be badly run. The statute provides for up to 10 percent for administrative costs.

Four commenters suggested replacing this criterion with a statement on administrative expenses that conforms to the law. One commenter also noted that these comments apply equally to proposed § 4280.316(c)(8).

Response: It is not the Agency's intent to force entities into scrimping. Rather, the intent is to score in favor of an applicant's ability to provide services in a cost effective and efficient manner.

MDOs With 3 Years or Less Experience (Proposed § 4280.316(c))

Comment: Two commenters were concerned that the scoring system did not request any historic information on the organization's microenterprise activities beyond the date on which it opened its doors for business as an MDO or similar entity. While it is understandable that the proposed rule would not request or substantially weigh historic data for an organization that is less than a year old, for an organization between 1 and 3 years old, certainly information on the organization's loan volume, diversity, history of TA provision, and portfolio management and quality is relevant, and in fact, essential to the application and scoring process. According to the commenters, if such data are not submitted and evaluated, the Agency runs the risk of selecting organizations for funding that may have developed strong plans, but failed to execute them well during their initial years of operation.

The commenters, therefore, recommended that all applicants with more than one year of operations as an MDO be required to submit information on their loan volume, diversity, history of TA provision and portfolio quality, and that this information be evaluated in the scoring process.

Response: The Agency disagrees. The Agency chose to examine new entities as those entities with 3 years of experience or less and based on their ability to meet certain criteria designed for this specific group of applicants. It was determined that such new entities, including those with 3 years of experience or less, will have little or unreliable data by which to compare or score historical activity and borrower success. Rather, the Agency anticipated looking more prospectively for this group.

Scoring Range (Proposed § 4280.316(c)(3) and (c)(4))

Comment: One commenter suggested that the scoring of the criteria in proposed § 4280.316(c)(3) and (c)(4) not be based on a range, but instead be a scoring scheme in which the applicant receives a certain amount of points or not depending on whether they have provided the appropriate documentation. The commenter believes that allowing for ranges is not objective and raises issues with subjectivity. The commenter believes that providing for specific points to be awarded will be simpler than using ranges.

Response: As noted in a response to another comment concerning the provision of a range for scoring, the Agency believes that ranges are appropriately identified for these scoring criteria identified by the commenter. For this and the other criteria in which scoring ranges are provided, it will be up to the applicant as to how much material to provide in addressing each criterion and the quality of that material. To help ensure consistency in scoring these criteria among Agency staff, the Agency will be providing guidelines to Agency staff on how to score each of these criteria. Finally, for those criteria that require a standard set of points per item, a specific number of points will be awarded for a specific set of benchmarks. Thus, the scoring system provides for a combination of objective and more subjective scoring.

Enhancement Grants (Proposed § 4280.316(d))

Comment: Two commenters pointed out the statutory provisions related to significant outward migration were not proposed for scoring enhancement grants, as required in section 379E(b)(4)(A)(ii) of the statute, which states that an emphasis will be placed on MDOs that are located in areas that have suffered "significant outward migration." The commenters noted that in the proposed rule scoring description nothing is said about MDOs located in such areas, only the "number of counties or other jurisdictions of the service area" that suffer from significant outmigration (as defined). The scoring matrix in the proposed rule allows only up to 10 points (of the 45 basic points for all applicants) for service to outmigration areas, an issue of emphasis in the law. The commenters suggested that the final rule place an emphasis on MDOs located in areas of "significant outward migration" as stated in the law, and that greater emphasis through the point system be placed on MDO service to an outmigration area for those MDOs seeking grants. The commenters believe it is important to focus on location of MDOs because it is crucial to provide incentives and funding to create more MDOs in rural areas suffering from significant outmigration and because, if MDOs are located in such areas, they will be more attuned to the services necessary for the entrepreneurs in that area.

Response: The Agency agrees that the proposed rule did not appropriately address outmigration as a scoring criterion for enhancement grants, as required by the statute. While the Agency appreciates the commenter's suggestion, opinions differ widely on how best to approach and enhancement grant category to this program. Therefore, the Agency is requesting comments on this subject (*see* Section V of this preamble). Comments will be considered prior to publication of the final rule.

MDOs With More Than 5 Years Experience Under This Program (Proposed § 4280.316(e))

Comment: One commenter recommended revising the application requirements in proposed § 4280.316(e)

to ensure that applicants are representative of their communities, working in partnership with other local and regional development entities and are linked to a broader local or regional economic development planning effort. If the applicant does not currently possess these additional criteria, then they should still be encouraged to develop a plan to enhance these connections in their application and be scored favorably for developing these plans.

Response: The Agency disagrees that applicants should be required to work in partnership with other entities. The goal of the program is to enhance the network of MDOs and increase services in that sector. While we do not discourage partnerships and participation in regional planning, the Agency will not require partnering.

Selection of Applications for Funding (§ 4280.317)

Comment: In reference to proposed § 4280.317(d), one commenter suggested removing the wording "If your application is unsuccessful" and change the end of this sentence to read "non-selected applications."

Response: As noted earlier in this preamble, this proposed paragraph was removed from the rule because it is considered internal procedures and does not need to be in the rule.

Loans From Microlenders to Microentrepreneurs and Microenterprises (§ 4280.322)

Comment: Three commenters expressed concern with the requirements specified in proposed § 4280.322(b)(1), (b)(3), and (d), noting that these requirements are not in the authorizing statute. According to one of the commenters, these loan terms may have merit, but could also constrain the ability of MDOs to provide credit to microentrepreneurs in rural areas. The other commenter stated that, taken as a whole, these requirements limit the ability of local organizations to craft a lending program that can address the specific needs of its local market. One of the commenters, therefore, recommended that these requirements be removed.

One of the commenters noted that the MDO is responsible for operating a successful microloan program in the context of the communities they serve and, therefore, it is not appropriate for RMAP at proposed § 4280.322(b)(1) to place a cap (*i.e.,* the 7.5 percent spread) on the interest rate charged to the microborrower. According to the commenter, the MDO should have the flexibility to price their microloans as they see fit for the sustainability of their fund and based on the risk and the cost of its operation.

One of the commenters recommended that § 4280.322(b)(3) be revised to limit the microloan term to no longer than the term of the loan with the Agency rather than the proposed limit of no more than 10 years. A third commenter also stated that the MDO should have the expressed permission to establish terms of repayment (fees, late fees and penalties, amortizations and deferrals, etc.) as they deem appropriate and workable.

One of the commenters noted that proposed § 4280.322(d) includes a statement that borrowers will be subject to a "credit elsewhere" test, but indicates that bank rejection letters will not be required. The commenter was unclear as to the purpose of this requirement and how an MDO should meet it. The commenter, therefore, recommended that this requirement be dropped.

Response: The Agency agrees with the commenters that microlenders know their market and should be able to design programs to meet those markets. Section 4280.322(b) recognizes this in allowing the terms and conditions for microloans to be negotiated by the microborrower and the microlender. The Agency agrees that the rule does not need to implement a maximum margin that a lender can charge the microborrower, but is still concerned that the rate must be "reasonable." The Agency has removed the specified margin requirement and in its place added the provision (*see* § 4280.322(b)(3)) that the microlender may establish its margin of earnings, but may not adjust the margin so as to violate Fair Credit Lending laws. Further, margins must be reasonable so as to ensure that microloans are affordable to the microborrowers.

With regard to the suggestion concerning adjusting the term of loan from "no more than 10 years" to "no longer than the term of the loan with the Agency," the Agency has not revised the rule because such a revision would put the microlender and the agency at increased risk in the latter years of the term and would diminish the capacity of the microlender to revolve its funds into and out of the RMRF.

Finally, with regard to the credit elsewhere test, the Agency is including this provision to ensure that only those in the most need of program resources receive assistance under this program. Thus, the Agency has not revised this provision.

Credit Elsewhere (Proposed § 4280.322(d))

Comment: One commenter suggested that the last two sentences of proposed § 4280.322(d) be removed.

Response: The Agency disagrees with the suggestion to delete the last two sentences of this paragraph. The Agency specifically does not want to require denial letters from other lenders to be part of this documentation because the Agency does not want such denial letters to negatively affect the microborrower's credit report as it works to build credit.

Comment: One commenter suggested that the rule should allow the microborrower to determine what goes in his file to document credit elsewhere.

Response: The Agency disagrees with the commenter's suggestion to allow the microborrower to determine what goes into the file to document credit elsewhere. The microlender determines whether or not this test is met and as such it is the microlender's responsibility to clearly identify what it needs to make this determination. Furthermore, this will provide consistency in the microlender's determination across microborrowers. The Agency reserves the right to examine microlender files to ensure that program requirements are met (§ 4280.311(h)(6)).

Eligible Purposes (Proposed § 4280.322(f))

Comment: One commenter suggested that the list of authorized microloan purposes be prefaced with a statement that the MDO is "not limited to" these uses.

Response: While the use of "including" means that the list is not exhaustive, the Agency has included the text suggested by the commenter to ensure clarity.

Comment: One commenter stated that the prohibition at proposed § 4280.322(f) on any construction or demolition was too inflexible; the remodeling of a suitable business space often requires this.

Response: The Agency included construction and demolition as an ineligible loan purpose in order to expedite loan processing by mitigating the need to conduct environmental evaluations. The Agency notes that other Rural Development programs can provide construction financing. Thus, the Agency has not revised the rule as suggested by the commenter.

Ineligible Loan Purposes (§ 4280.323)

Comment: One commenter asked if lines of credit would be an eligible or

ineligible purpose. The commenter pointed out that lines of credit are not listed under either eligible purposes or ineligible purposes and recommended that the rule needs to be clear whether lines of credit are eligible or not because, in part, the IRP allows lines of credit under certain circumstances.

Response: Lines of credit are not an eligible loan purpose for microloans under RMAP. The Agency agrees with the commenter that this was not indicated in the proposed rule and, therefore, has added a provision to § 4280.323 that specifically identifies lines of credit as an ineligible loan purpose for RMAP loans.

Comment: One commenter suggested that tenant improvements, debt refinancing, and business acquisition should be expressly permitted.

Response: The Agency has determined that indication of eligible and ineligible activities is sufficient, but has added debt refinancing and business acquisition to the list of eligible activities for clarity. Tenant improvements are already sufficiently covered by § 4280.322(f)(2) and (f)(3). Any legal business purpose not identified as ineligible in § 4280.323 is acceptable.

Comment: One commenter stated that the ineligible purposes at proposed § 4280.323(c) should simply disallow relending to Agency or MDO personnel. Such lending simply has the appearance of a conflict of interest and should never be allowed. On the other hand, there is no conflict of interest in lending to military, National Guard members, or government employees aside from Rural Development employees, and this should simply be permitted.

Response: Microloans to Agency personnel and MDO personnel are prohibited. Regarding military personnel, based on Agency experience, a pattern of difficulty in obtaining financial assistance has begun to emerge. The language proposed regarding this issue was initially confusing as it was posted in the ineligibility section as an exception. As a result, the language has been moved to § 4280.322(g) as an eligible purpose. In clarifying the language, the Agency hopes to encourage a greater level of lending to military personnel. Regarding Tribal government employees, language regarding loans to Tribal employees has been eliminated to ensure that Tribal microlenders are treated as all other microlenders in regards to conflicts of interest.

Comment: In reference to proposed § 4280.323(d), one commenter recommended that a definition for "Agency employee family member" be included. The commenter also raised questions concerning how the definition would be crafted. For example, how would domestic partners and same-sex married parties be treated? The commenter then asked, how would this be monitored? How would an Agency employee possibly know all Agency employee family members?

Response: The Agency agrees with the commenter that a definition for "family member" is needed. The Agency has replaced "family member" with "close relative." Close relative is being defined as: 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.

Comment: One commenter asked why RMAP discriminated against military personnel and Tribal members under proposed § 4280.323(i) and (j).

Response: The Agency disagrees with the commenter's characterization of the proposed rule as discriminating against active military personnel and Tribal employees. Language specific to military personnel is included to ensure specific attention to the needs of veterans. Language regarding loans to Tribal employees has been eliminated to ensure that Tribal microlenders are treated as all other microlenders in regards to conflicts of interest.

V. Request for Comments

The Agency is interested in receiving comments on all aspects of the interim rule. Areas in which the Agency is seeking specific comments are identified below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble.

1. *Enhancement grants.* The Agency is seeking comments regarding how to incorporate a network enhancement grant program for microenterprise development organizations in their support of rural microentrepreneurs in accordance with Section 379E(b)(4)(A)(i)(I) of the 2008 Farm Bill. Please be sure to include your rationale for your suggestions.

2. The Agency is seeking comment on whether the 2-year deferral period allowing microlenders not to make any payments on a loan to the Agency (*see* § 4280.311(e)(4)) under this program should be automatic (*i.e.,* the default) or whether the Agency should establish specific criteria for determining whether or not payments would be deferred. Please be sure to include your rationale for your suggestions.

List of Subjects in 7 CFR 4280

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

■ For the reasons set forth in the preamble, chapter XLII of title 7 of the Code of Federal Regulations is amended as follows:

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

■ 1. Part 4280 is amended by adding a subpart D to read as follows:

PART 4280—LOANS AND GRANTS

Subpart D—Rural Microentrepreneur Assistance Program

Sec.

4280.301 Purpose and scope.
4280.302 Definitions and abbreviations.
4280.303 Exception authority.
4280.304 Review or appeal rights and administrative concerns.
4280.305 Nondiscrimination and compliance with other Federal laws.
4280.306 Forms, regulations, and instructions.
4280.307 4280.309 [Reserved]
4280.310 Program requirements for MDOs.
4280.311 Loan provisions for Agency loans to microlenders.
4280.312 Loan approval and closing.
4280.313 Grant provisions.
4280.314 [Reserved]
4280.315 MDO application and submission information.
4280.316 Application scoring.
4280.317 Selection of applications for funding.
4280.318 4280.319 [Reserved]
4280.320 Grant administration.
4280.321 Grant and loan servicing.
4280.322 Loans from the microlenders to the microentrepreneurs.
4280.323 Ineligible microloan purposes and uses.
4280.324 4280.399 [Reserved]
4280.400 OMB control number.

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

Subpart D—Rural Microentrepreneur Assistance Program

§ 4280.301 Purpose and scope.

(a) This subpart contains the provisions and procedures by which the Agency will administer the Rural Microenterprise Assistance Program (RMAP). The purpose of the program is to support the development and ongoing success of rural microentrepreneurs and microenterprises. To accomplish this purpose, the program will make direct loans, and provide grants to selected Microenterprise Development

Organizations (MDOs). Selected MDOs 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; and

(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, as defined in § 4280.302, for the purpose of providing fixed interest rate microloans to rural microentrepreneurs for startup and growing microenterprises. Eligible microlenders will also be automatically eligible to receive microlender technical assistance grants to provide technical assistance and training to microentrepreneurs that have received or are seeking a microloan under this program.

(c) To allow for extended opportunities for technical assistance and training, the Agency will make technical assistance-only grants to MDOs 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 an MDO for the operation of services under this program. Not more than 10 percent of TA grant funding may be used for such expenses.

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

Agency personnel. Individuals employed by the Agency.

Applicant. The legal entity, also referred to as a microenterprise development organization or MDO, submitting an application to participate in the program.

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

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

Business incubator. An organization that provides temporary premises at below market rates, technical assistance, advice, use of equipment, and may provide access to capital, or other facilities or services to rural microentrepreneurs and microenterprises starting or growing a business.

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

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.

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

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 technical assistance client of the TA-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. As defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Loan loss reserve fund (LLRF). An interest-bearing deposit account 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 to pay any shortage in the RMRF caused by delinquencies or losses on microloans.

Microborrower. A microentrepreneur or microenterprise that has received 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; or

(ii) A business entity, located in a rural area, with not more than 10 full-time-equivalent employees. Rural microenterprises are businesses employing 10 people or fewer that are in need of $50,000 or less in business capital and/or in need of business based technical assistance and training. Such businesses may include any type of legal business that meets local standards of decency. Business types may also include agricultural producers provided they meet the stipulations in this definition.

(iii) All microenterprises assisted under this regulation must be located in rural areas.

Microenterprise development organization (MDO). An organization that is a non-profit entity; an Indian tribe (the government of which tribe certifies that no MDO serves the tribe and no RMAP exists under the jurisdiction of the Indian tribe); or a public institution of higher education; and that, for the benefit of rural microentrepreneurs and microenterprises:

(i) Provides training and technical assistance and/or;

(ii) Makes microloans or facilitates access to capital or another related service; and/or

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

Microentrepreneur. An owner and operator, or prospective owner and operator, of a microenterprise who is unable to obtain sufficient training, technical assistance, or credit other than under this section, as determined by the Secretary. 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 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. A private entity chartered as a nonprofit entity under State Law.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural microloan revolving fund (RMRF). An exclusive interest-bearing account on which the Agency will hold a first lien and from which microloans will be made; into which payments from microborrowers and reimbursements from the LLRF will be deposited; and from which payments will be made by the microlender to the Agency.

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

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

(ii) Notwithstanding any other provision of this paragraph, within the areas of the County of Honolulu, Hawaii, and the Commonwealth of Puerto Rico, the Secretary may designate any part of the areas as a rural area if the Secretary determines that the part is not urban in character, other than any area included in the Honolulu census designated place (CDP) or the San Juan CDP.

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 and training. The provision of education, guidance, or instruction to one or more rural microentrepreneurs to prepare them for self-employment; to improve the state of their existing rural microenterprises; to increase their capacity in a specific technical aspect of the subject business; and, to assist the rural microentrepreneurs in achieving a degree of business preparedness and/or functioning that will allow them to obtain, or have the ability to obtain, one or more business loans of $50,000 or less, whether or not from program funds.

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

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

FTE—Full-time employee
LLRF—Loan loss reserve fund.
MDO—Microenterprise development organization.
RMAP—Rural microentrepreneur assistance program.
RMRF—Rural microloan revolving fund.
TA—Technical assistance.

§ 4280.303 Exception authority.

The Administrator may make limited exceptions to the requirements or provisions of this subpart. Such exceptions must be in the best financial interest of the Federal government 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 or scoring criteria; or

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

§ 4280.304 Review or appeal rights and administrative concerns.

(a) *Review or appeal rights.* An applicant MDO, 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 addressed to: USDA Rural Development, Rural Business-Cooperative Service, Specialty Programs Division 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, S.W., 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 Form RD 400–8, "Compliance Review". Post-award compliance reviews will take place once every three years after the beginning of participation in the program and until such time as a microlender leaves the program.

§ 4280.306 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office, the Agency's Web site at *http://www.rurdev.usda.gov/regs/,* and for grants on the Internet at *http://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 under this program.

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

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

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

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

(4) *Other eligibility requirements.* For potential microlenders only,

(i) The applicant must also provide evidence that it:

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

(B) 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; or

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

(ii) An attorney's opinion regarding the potential microlender's legal status and its ability to enter into program transactions is required 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) *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 seventy points (70 points) in order to be considered to receive an award under this subpart.

(c) *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; and

(3) Has an outstanding judgment against it, obtained by the United States in a Federal Court (other than U.S. Tax Court).

(d) *Delinquencies.* No applicant will be eligible to receive a loan if it is delinquent on a Federal debt.

(e) *Application eligibility and qualification.* An application will 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 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.

(f) *Business incubators.* Because the purpose of a business incubator is to provide business-based technical assistance and an environment in which micro-level, very small, and small businesses may thrive, a microlender that 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 funding 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 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 cost of the microborrower's project 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 microborrower's project may be provided in cash (including through fees, grants (including community development block 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.* 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 interest-bearing account that will be the RMRF account.

(2) The RMRF account, including any interest earned on the account and the microloans made from the account, will be used to make fixed-rate microloans, to accept repayments from microborrowers and reimbursements from the LLRF, to repay the Agency and, with the advance written approval of the Agency, to supplement the LLRF with interest earnings (from payments received or from account earnings) from the RMRF.

(3) The term of a loan made to a microlender will not exceed 20 years. If requested by the applicant MDO, a shorter term may be agreed upon by the microlender and the Agency.

(4) Each loan made to a microlender will automatically receive a 2-year deferral during which time no repayment to the Agency will be required. Voluntary payments will be accepted.

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

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

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

(5) Partial or full repayment of debt to the Agency under this program may be made at any time, including during the deferral period, without any pre-payment penalties being assessed.

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

(7) The Agency may call the entire loan due and payable prior to the end of the full term, due to any non-performance, delinquency, or default on the loan.

(8) Loan closing between the microlender and the Agency must take place within 90 days of loan approval or funds will be forfeited and the loan will be deobligated.

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

(10) A microlender must make one or more microloans within 60 days of any disbursement it receives from the Agency. Failure to make a microloan within this time period may result in the microlender not receiving any additional funds from the Agency and may result in the Agency demanding return of any funds already disbursed to the microlender.

(11) Microlenders may request in writing, and receive additional disbursements not more than quarterly, until the full amount of the loan to the microlender is disbursed, or until the end of the 36th month of the loan, whichever occurs first. Letters of request for disbursement 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 funding.

(12) Each loan made to a microlender during its first five years of participation in this program will bear an interest rate of 2 percent. After the fifth year of an MDO's continuous and satisfactory participation in this program, each new loan made to the microlender will bear an interest rate of 1 percent. Satisfactory participation requires a default rate of 5 percent or less and a pattern of delinquencies of 10 percent or less. Except in the case of liquidation or early repayment, loans to microlenders must fully amortize over the life of the loan.

(13) During the initial deferral period, each loan to a microlender will accrue interest at a rate of 1 or 2 percent based on the ultimate interest rate on the loan. Interest accrued during the 2-year deferral period will be capitalized so that, during the 24th month of the initial deferral period, the microlender's debt to the Agency will be calculated and amortized over the remaining 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.

(14) Funds not disbursed to the microlender by the end of the 36th month of the loan from the Agency will be de-obligated.

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

(16) 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 restrict further access to withdrawals from the account by the microlender.

(17) In the event a microlender fails to meet its 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 this program) deemed acceptable to the Agency.

(f) *Loan funding limitations.*

(1) *Minimum and maximum loan amounts.* The minimum loan amount a microlender may borrow under this program will be $50,000. The maximum any microlender may borrow on a single loan under this program, or in any given Federal fiscal year, 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.* Loans must be used only to establish or recapitalize an existing Agency funded RMRF out of which microloans will be made, into which microloan payments will be deposited, and from which repayments to the Agency will be made. In some instances, as described in § 4280.311(e)(2), interest earned by these funds may be used to fund and recapitalize both RMRF and the LLRF.

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

(1) *Purpose.* The purpose of the LLRF is to protect the microlender and the Agency against losses that may occur as the result of the failure of one or more 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 this 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 an interest-bearing, 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:

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

(B) The LLRF is used to assist with full repayment or prepayment of the microlender's program debt.

(v) Earnings on the LLRF account must remain a part of the account except as stipulated in § 4280.311(e)(2).

(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; that is, when a loss has been paid to the RMRF, from the LLRF, the microlender must, within 30 days, replenish the LLRF, with non-federal funds, to the required level;

(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 this program;

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

(iv) Prepay or repay the Agency 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 so that as microloans are made, the amount in the LLRF can be built over time to an amount greater than or equal to 5 percent of the amount owed to the Agency by the microlender under this 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 will require the LLRF to be funded in an amount equal to 5 percent of the anticipated initial drawdown of funds for the RMRF. Federal funds, except where specifically permitted by other laws, may not be used to fund LLRF.

(5) *Additional LLRF funding.* In the event of exhibited weaknesses, such as losses that are greater than 5 percent of the microloan portfolio, on the part of a microlender, the Agency may require additional funding be put into the LLRF; however, the Agency may never require an LLRF of more than 10 percent of the total amount owed 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, grantee, or Agency do not have the capability to submit or accept same electronically.

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

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

(ii) SF–PPR, "Performance Progress Report" cover sheet, performance measures (SF–PPR–A), and activity based expenditures (SF–PPR–E); and

(iii) SF–270, "Request for Advance or Reimbursement".

(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 except when RMRF accounts have been combined. A microlender may combine RMRF accounts only when:

(i) The underlying loans have the same rates, terms and conditions;

(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 reports had been prepared; and

(iii) The accompanying LLRF fund reports also provide the same level of transparency and information for each loan as if separate LLRF reports had been prepared.

(iv) The Agency must approve the combining of accounts and reports in writing before such accounts are combined and reports are submitted.

(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 delinquencies.

(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 reporting information.

(6) *Site visits.* The Agency may, at any time, choose to visit the microlender and inspect its files to ensure that program requirements are being met.

(7) *Access to microlender's records.* Upon request by the Agency, the microlender will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any records pertaining to operation and administration of this 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.

(8) *Changes in key personnel.* Before any additions are made to key personnel, the microlender must notify and the Agency must approve such changes.

§ 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 signed by the Agency. Form RD 1940–1 authorizes funds to be obligated and may be executed by the Agency provided the microlender has the legal authority to contract for a loan, and to enter into required agreements, including an Agency-approved loan agreement, and meets all program loan requirements and has signed Form RD 1940–1.

(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. The Agency may approve only minor changes that do not materially affect the microlender. 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 must be executed at loan closing; and

(v) An appropriate security agreement on the LLRF and RMRF accounts.

(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 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, which may include but is not limited to, mechanics' lien waivers or in their absence receipts of

payment, that no lawsuits are pending or threatened that would adversely affect the security of the microlender when Agency security instruments are filed.

§ 4280.313 Grant provisions.

(a) *General.* The following provisions apply to each type of grant offered under this program unless otherwise specified annually in a **Federal Register** notice. Competition for these funds will occur as a part of the application and qualification process of becoming a microlender. Failure to meet scoring benchmarks will preclude an applicant from receiving loan and/or grant dollars. Once an MDO is participating as a microlender, grant funds will be made available automatically based on lending and the availability of funds.

(1) *Grant amounts.*

(i) The maximum TA grant amount for a microlender is 25 percent of the first $400,000 of outstanding microloans owed to the microlender under this program, plus an additional 5 percent of the outstanding loan amount owed by the microborrowers to the lender under this program over $400,000 up to and including $2.5 million. This calculation leads to a maximum grant of $205,000 annually for any microlender to provide technical assistance to its clients. These grants will be awarded annually.

(ii) The maximum amount of a TA-only grant under this program will not exceed 10 percent of the amount of funding available for TA-only grants. The amount of funding available for TA funding will be announced annually and will be based on the availability of funds. In no case will funding for the TA-only grants exceed 10 percent of the amount appropriated for the program each Federal fiscal year.

(2) *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 funding.

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

(4) *Ineligible grant purposes.* Grant funds, matching funds, indirect costs, and in-kind goods and services may not be used for:

(i) Grant application preparation costs;

(ii) Costs incurred prior to the obligation date of the grant;

(iii) Capital improvements;

(iv) Political or lobbying activities;

(v) Assistance to any ineligible entity;

(vi) Payment of any judgment or debt owed; and

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

(5) *Changes in key personnel.* Before any additions are made to key personnel, the microlender must notify and the Agency must approve such changes.

(b) *Grants to assist microentrepreneurs (Microlender Technical Assistance (TA) Grants).* The capacity of a microlender to provide an integrated program of microlending and technical assistance will be evaluated during the scoring process. 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.

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

(2) *Grant amounts.* Microlender TA grants will be limited to an amount equal to not more than 25 percent of the total outstanding balance of microloans made under this program and active by the microlender as of the date the grant is awarded for the first $400,000 plus an additional 5 percent of the loan amount owed by the microborrowers to the lender under this program over $400,000 up to and including $2.5 million. Funds cannot be used to pay off the loans. During the first year of operation, the percentage will be determined based on the amount of the loan to the microlender, but will be disbursed on a quarterly basis based on the amount of microloans made. Any grant dollars obligated, but not spent, from the initial grant, will be subtracted from the subsequent year grant to ensure that obligations cover only microloans made and active.

(3) *TA grant fund uses and limitations.* The microlender will agree to use TA grant funding exclusively for providing technical 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, except as may be reduced as provided under § 4280.313(a)(4). The following limitations will apply to TA grant funding:

(i) Administrative expenses should be kept to a minimum. As such, the applicant MDO is required, in the application materials, to provide an administrative budget plan indicating the amount of funding it will need for administrative purposes. Applicants will be scored accordingly, with those using less than 10 percent of the funding for administrative purposes being scored higher than those using 10 percent of the funding for administrative purposes.

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

(iii) At no time will it be appropriate for the microlender to expend more than 10 percent of its grant funding on administrative expenses. Microlenders that go over 10 percent will be considered in performance default and may be subject to forfeiting funding.

(iv) Budget adjustments will be considered within the 10 percent limitation and approved or denied on a case-by-case basis.

(c) *TA-only grants.* Grants will be competitively made to MDOs for the purpose of providing technical assistance and training to prospective microborrowers. Technical assistance-only grants will be provided to eligible MDOs that seek to provide business-based technical assistance and training to eligible microentrepreneurs and microenterprises, but do not seek funding for an RMRF. Entities receiving microlending TA grants will not be eligible to apply for TA-only grants.

(1) *Grant term.* TA-only grants will have a grant term not to exceed 12 months from the date the grant agreement is signed.

(2) *Funding level.* The maximum amount of a TA-only grant under this program will not exceed 10 percent of the amount of funding available for TA-only grants. In no case will funding for the TA-only grants exceed 10 percent of the amount appropriated for the program each Federal fiscal year.

(3) *Loan referencing.* TA-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. TA-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 technical assistance.

(4) *Facilitation of access to capital.* Technical assistance-only grantees will be expected to provide training and technical assistance 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.

(5) *Microlender funding.* No entity will receive grant funding as both a microlender and a TA-only provider; that is, RMAP microlenders are not eligible for TA-only funding and an MDO receiving TA-only funding are not eligible for microlender funding.

(d) *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 Department 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** Notice for Solicitation of Applications (NOSA) or a Notice of Funding Availability (NOFA), depending on the availability of funds at the time of publication.

(1) The information required in this section is necessary for an application to be considered complete.

(2) When preparing applications, applicants are strongly encouraged to review the scoring criteria in § 4280.316 and provide documentation that will support a competitive score.

(3) 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.

(b) *Content and form of submission.* The content and form requirements will differ based on the nature of the application. 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."

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

(3) Standard Form-424B, "Assurances—Non-construction Programs."

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

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

(6) For entities applying for program loan funds to become an RMAP microlender only, Form RD 1910–11, "Certification of No Federal Debt."

(7) Form RD 400–8, "Compliance Review."

(8) Demonstration that the applicant is eligible to apply to participate in this program. To demonstrate eligibility, applicants must submit documentation that the applicant is an MDO as defined in § 4280.302, as follows:

(i) If a nonprofit entity, evidence that the applicant organization meets the citizenship requirements;

(ii) If a nonprofit entity, a copy of the applicant's bylaws and articles of incorporation, which include evidence that the applicant is legally considered a non-profit organization;

(iii) If an Indian tribe, evidence that the applicant is a Federally-recognized Indian tribe, and that the tribe neither operates nor is served by an existing MDO;

(iv) If a public institution of higher education, evidence that the applicant is a public institution of higher education; and

(v) For nonprofit applicants only, a Certificate of Good Standing, not more than 6 months old, from the Office of the Secretary of State in the State 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.

(9) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under this program with similar rates and terms.

(10) Form RD 400–4, "Assurance Agreement."

(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) The information specified in § 4280.316(a).

(2) An applicant for status as a microlender with more than 3 years of experience as an MDO seeking to participate as a microlender must provide the additional information specified in § 4280.316(b). Such an applicant will be applying for a loan to capitalize an RMRF, which, unless otherwise requested by the applicant, will be accompanied by a microlending TA grant.

(3) An applicant for status as a microlender with 3 years or less experience as an MDO seeking to participate as a microlender must provide the additional information specified in § 4280.316(c). Such an applicant will be applying for a loan to capitalize an RMRF, which, unless otherwise requested by the applicant, will be accompanied by a microlending TA grant.

(4) All applicants seeking status as a microlender must identify in their 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.

(5) An applicant seeking TA-only grant funding must provide the additional information specified in § 4280.316(e).

(e) *Application limits.* Paragraph (d) of this section sets out three types of funding under which applications may be submitted. MDOs may only submit and have pending for consideration, at any given time, one application, regardless of funding category.

(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. Points will be awarded as shown in paragraphs (a) through (e) of this section. Awards will be based on the ranking, with the highest ranking applications being funded first, subject to available funding.

(a) *Application requirements for all applicants.* All applicants must submit the eligibility information described in § 4280.315. Only those applicants deemed eligible will be scored for qualification. Qualification information provides the complete forms and information necessary to determine a baseline of capacity. Additional information is specified depending on the level of experience or type of funding being applied for. 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.

(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 this 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 (based on the resumes) 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 technical assistance. Up to 5 points will be awarded.

(5) Copies of the applicant's most recent, and two years previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its bottom line fund balance, its ability to manage one or more federal programs, and its capacity to manage multiple funding sources, restricted and non-restricted funding sources, income, earnings, and expenditures. Up to 10 points will be awarded.

(6) A copy of the applicant's organizational mission statement. The mission statement will be rated based on its relative connectivity to microenterprise development and general economic development. The mission statement may or may not be a part of a larger statement. For example, if the mission statement is included in the by-laws or other organizational documents, please so note, direct the reviewer to the proper document, and do not submit these documents twice. Up to 5 points will be awarded.

(7) Information regarding the geographic service area to be served. Describe the service area, which must be rural as defined. State the number of counties or other jurisdictions to be served. Describe the demographics of the service area and whether or not the population is a diverse population. 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 3 years of experience as a microlender also must provide the information specified in paragraphs (b)(1) through (5) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) *History of provision of microloans.* 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 (vi) of this section. This information should be provided clearly and concisely in numerical format as the data will be used to calculate points as noted. Figure 1 presents an example of the format and data required. The maximum number of points under this criterion is 20.

Figure 1. Example of Format and Data Requirements

Data item	Federal FY			
	Last fiscal year	Year before last fiscal year	2nd year before last fiscal year	Total
Total # of Microloans Made				
Total $ Amount of Microloans Made				
# of Microloans Made in Rural Areas				
Total $ Amount of Microloans Made in Rural Areas				
# of Microloans Made to Racial and Ethnic Minorities				
# of Microloans Made to women				
# of Microloans Made to the Disabled				

(i) Number and amount of microloans made during each of the three previous Federal FYs. Do not include current year information. A narrative may be included as a separate attachment, not in the body of the suggested table.

(ii) Number and amount of microloans made in rural areas 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:

(A) More than the three consecutive years immediately prior to this 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) Percentage of number of loans made in rural areas. 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 Federal FYs. 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 but less than 50 percent, 1 point will be awarded.

(iv) The percentage of dollar amount of loans made in rural areas. 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 Federal FYs. If 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 demographic group and if the percentage of loans made to each demographic group is each within 5 or less percent of the 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 within 10 or less percent 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 or if no loans have been made to one of the demographic groups and if the percentage of loans made to each of the other demographic groups is each within 10 or less 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.* Each applicant's ability to manage its portfolio will be determined based on the data provided in response to paragraphs (b)(2)(i) and (ii) of this section and scored accordingly. The maximum number of points under this criterion is 10.

(i) Enter the total number of your microloans paying on time for the three previous Federal FYs. If the total number of microloans paying on time at the end of each year over the prior three Federal FYs 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 30 to 90 days in arrears or that have been written off at year end for the three previous Federal FYs. 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.* Each applicant's history of provision of technical assistance to microentrepreneurs and microenterprises, and their ability to reach diverse communities, will be scored based on the data specified in paragraphs (b)(3)(i) through (iv) of this section. Applicants may use a chart such as that suggested in Figure 1 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 Federal FYs.

(ii) Provide the percentage of the total number of only rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three Federal FYs (calculate this as the total number of rural microloans made each year divided by the total number of loans made during the past three Federal FYs). If provision of both microloans and technical assistance 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.

(iii) 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 Federal FYs. If the demonstrated provision of microloans and technical assistance 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.

(iv) Provide the ratio of TA clients that also received microloans during each of the previous three Federal FYs. If the ratio of clients receiving technical assistance 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.

(4) *Ability to provide technical assistance.* In addition to providing a statistical history of their provision of technical assistance 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 technical assistance and discussing the outcomes of their endeavors. Technical assistance is defined in § 4280.302. The narrative will be scored as specified in paragraphs (b)(4)(i) through (iv) of this section. The maximum number of points under this criterion is 5.

(i) Applicants that have used more than one method of training and technical assistance (*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 technical assistance on their clients will be awarded 1 point.

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

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

(5) *Proposed administrative expenses to be spent from TA grant funds.* The maximum 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 funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 point 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 up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) The applicant must provide a narrative work plan that clearly indicates its intention for the use of loan and grant funding. Provide goals and milestones for planned microlending and technical assistance 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 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, in good standing with the Secretary of State in which it is registered to do business, and 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 experience as specified in § 4280.315.)

(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 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 funding will be used to assist with TA program delivery and how loan funding will affect the portfolio. Up to 5 points will be awarded.

(5) 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 plan provided. If the recommendations received from references are:

(i) Generally excellent, 5 points will be awarded;

(ii) Generally above average, 3 points will be awarded;

(iii) Generally average, 1 point will be awarded;

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

(6) Describe any plans for continuing training relationship(s), including ongoing or future training plans and goals, and the timeline for same. Up to 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 5 percent of the TA grant funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

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

(d) *Application requirements for MDOs seeking technical assistance-only grants.* TA-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 technical assistance.* Each applicant's history of provision of technical assistance to microentrepreneurs and microenterprises, and their ability to reach diverse communities, will be scored based on the data specified in paragraphs (d)(1)(i) through (iv) of this section. Applicants may use a chart such as that suggested in Figure 1 as they deem appropriate. 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 microloans and TA services for each of the previous three Federal FYs.

(ii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three Federal FYs (calculate this as the total number of rural microloans made each year divided by the total number of rural and non-rural microloans made during the past three Federal FYs). If provision of both technical assistance 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.

(iii) 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 Federal FYs. If the demonstrated provision of technical assistance 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 point will be awarded.

(iv) Provide the ratio of TA clients that also received microloans during each of the last three years. If the ratio of clients receiving technical assistance 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 technical assistance.* In addition to providing a statistical history of their provision of technical assistance 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 technical assistance 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 technical assistance (*e.g.,* classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 5 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance 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 technical assistance, 5 points will be awarded.

(B) Internal stories that highlight businesses made successful as a result of technical assistance, 3 points.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the evaluation scores are generally:

(A) Excellent, 5 points will be awarded.

(B) Good, 3 points will be awarded.

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

(iv) Applicants that present well-written narrative information that is clearly and concisely written and is five pages or less will be awarded 5 points.

(3) *Technical assistance plan.* Submit a plan for the provision of technical assistance explaining how the funding 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 5 percent of the TA grant funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 1 point will be awarded.

(e) *Re-application requirements for participating microlenders with more than 5 years 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 SF 424 and any pertinent attachments;

(iii) An indication of the number and percent of program microentrepreneurs and microenterprises remaining in business for two years or more after microloan disbursement; and

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

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

(i) A 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 will be scored 0.

§ 4280.317 Selection of applications for funding.

All applications received will be scored using the scoring criteria specified in § 4280.316. Because each set of applicants is scored on a 100 point scale, applications will be ranked together. Shortened applications can only receive 90 points. Within funding limitations, applications will be funded in descending order, from the highest ranking application down. If two or more applications score the same, 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. Packages must be bound in a three ring binder and evidence must be organized in the order of appearance in § 4280.315 of this document. Applications that are unbound, disorganized, or otherwise not ready for evaluation will be returned.

(2) Applications will be accepted on a quarterly basis using Federal fiscal quarters. Deadlines and specific application instructions will be published annually in the **Federal Register**.

(3) Applications received will be reviewed, scored, and ranked quarterly. Unless withdrawn by the applicant, the Agency will retain unsuccessful applications that score 70 points or more, for consideration in subsequent reviews, through a total of four quarterly reviews. Applications unsuccessful after 4 quarters will be returned.

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

(c) *Applicant notification.* The Agency will notify applicants regarding their selection or non-selection, provide appeal rights of unsuccessful applicants, and closing procedures for the loans and/or grants to awardees.

(d) *Closing.* Awardees unable to complete closing for obligation within 90 days will forfeit their funding. Such funding will revert back to the Agency for later use.

§§ 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) SF–PPR, "Performance Progress Report," including narrative reporting information as required by Office of Management and Budget (OMB) circulars and successor regulations. This report will include information on the microlender's technical assistance, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information;

(ii) As appropriate, SF–270; and

(iii) If requesting grant funding at the time of reporting, SF–PPR–E, "Activity Based Expenditures."

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

(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 on a quarterly basis. The first payment may be made in advance and will equal no more than one fourth of the grant award. Payment requests must be submitted on Standard Form 270 and will only be paid if reports are up to date and approved.

§ 4280.321 Grant and loan servicing.

In addition to the ongoing oversight of the participating MDOs:

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

(1) Department of Agriculture regulations including, but not limited to 7 CFR part 1951, subparts E and O, parts 3015, 3016, 3017, 3018, 3019, and 3052; and

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

(b) *Loans.* Loans to microlenders will be serviced in accordance with the following:

(1) Department of Agriculture regulations 7 CFR part 1951, subparts E, O, and R;

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

(3) OMB Circular A–129.

§ 4280.322 Loans from the microlenders to microentrepreneurs.

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

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

(b) *Microloan terms and conditions.* The terms and conditions for microloans made by microlenders will be negotiated 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 closing of the microloan; and

(3) The microlender may establish its margin of earnings but may not adjust the margin so as to violate Fair Credit Lending laws. Margins must be reasonable so as to ensure that microloans are affordable to the microborrowers.

(c) *Microloan insurance requirements.* The requirement of reasonable hazard, key person, and other insurance will be at the discretion of the microlender.

(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 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, etc. for other funding sources to those forth offered by the microlender). 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 laws as discussed 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 funding. 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 technical assistance 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 this program for any of purposes and uses identified as ineligible in paragraphs (a) through (p) of this section.

(a) Construction costs.

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

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

(1) Financial assistance to principals, directors, officers, or employees of the microlender, or their close relatives as defined; and

(2) Financial assistance to any entity the result of 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 the purpose for which it was intended.

(e) Distribution or payment to a charitable institution not gaining revenue from sales or fees 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 this program.

(h) Assistance to USDA Rural Development (Agency) employees, or their close relatives, as defined.

(i) 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) Microloans to lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

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

(n) Lines of credit.

(o) Subordinated liens.

(p) Use of an Agency funded loan to pay debt service on a previous Agency loan.

§§ 4280.324–4280.399 [Reserved]

§ 4280.400 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 0570–XXXX. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Dated: May 13, 2010.

Curtis A. Wiley,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–11931 Filed 5–27–10; 8:45 am]

BILLING CODE 3410–XY–P