Part 4280 – LOANS AND GRANTS

Subpart E – Rural Business Development Grants

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§ 4280.401 Purpose.

This subpart implements the RBDG program administered by the Agency. Grants made under this subpart will be made to eligible entities for use in funding various business opportunity and business enterprise Projects that serve Rural Areas.

§ 4280.402 – [Reserved]

§ 4280.403 Definitions.

Administrator. The Administrator of RBS or designees or successors.

Agency. Rural Business-Cooperative Service (RBS) or successor.

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

Arm's-length Transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the grantee or transferor at the time of the transaction.

Business Support Centers. Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a Rural Area, but must provide assistance to businesses located in Rural Areas.

Conflict of interest. When the grantee’s employees, Board of Directors, or their immediate families have a legal or personal financial interest in the recipient(s) receiving the benefits or services of the grant. Agency employees should refer to 2 CFR 400.1 to 400.18.

Corporation. A body of persons granted a charter legally by a state government or federally recognized Indian Tribe recognizing it as a separate entity having its own rights, privileges, and liabilities distinct from its members.

Departmental Grant Regulations. The USDA grant regulations at 2 CFR Chapter IV.

Economic Development. The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels or gains in other measurements of economic activity, such as land values.

Indian Tribe (Tribal). Indian Tribes on Federal and State reservations and other federally recognized Indian Tribal groups.

Industrial Site. The development of undeveloped real estate for uses which will assist Small and Emerging Businesses.

Long-term. The period of time covered by the three most recent decennial censuses of the United States to the present.

Nonprofit. An entity chartered as a nonprofit organization under applicable State or Tribal law.

Office of Management and Budget regulations. The regulations of the Department of the Office of Management and Budget which includes such items as uniform administrative requirements, cost principles, and audit requirements for Federal awards. Some examples of such regulations include, but are not limited to 2 CFR 200 and 2 CFR 400.

Other Business Development. Any business related activity that will assist Small and Emerging Businesses and may include but is not limited to business incubators, business training centers, and other training activity which leads directly to Small and Emerging Business development.

Planning. A process to coordinate Economic Development activities, develop guides for action, or otherwise assist local community leaders in the Economic Development of Rural Areas.

Priority Communities. Communities targeted for Agency assistance as determined by the U.S. Department of Agriculture Under Secretary for Rural Development that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor, or have experienced Long-Term population decline or job deterioration.

Project. The result of the use of grant funds provided under this subpart through Technical Assistance or Planning relating to the Economic Development of a Rural Area; or the result of the use of program funds (i.e., a facility whether constructed by the applicant or a third party made with grant fund0s, Technical Assistance, startup operating costs, or working capital). A revolving fund established in whole or in part with grant funds will also be considered a Project. *When the Agency refers to grant funds in this definition, matching funds are also included.*

Public Bodies/Government Entity. Public Bodies include States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and education institutions organized under State and Federal laws, and Indian Tribes.

Rural and rural area. As described in 7 U.S.C. 1991(a)(13)(A) and (D) et seq. *Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be "rural in character" by the Under Secretary for RD, or as otherwise identified in this definition as follows:*

> *(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their RD State Office to request a determination of whether their project is located in a rural area under this provision.*
>
> *(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.*

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

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

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

(6) The determination that an area is "rural in character" will be made by the Under Secretary of RD. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is "rural in character" under this definition will apply to areas that are within:

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

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

(ii) Units of local government may petition the Under Secretary of Rural Development for a "rural in character" designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) above and discuss why the petitioner believes the area is "rural in character," including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Small and Emerging Business. Any private and/or Nonprofit business which will employ 50 or fewer new employees and has less than $1 million in gross revenue; for retail operations, total sales minus cost of goods sold minus returns or for a service organization, gross revenue minus cost of providing service or for a manufacturing operation it will be total sales minus cost of raw materials minus the cost of production. *For an Indian Tribal business to be considered small and emerging, its management and Board of Directors must operate independently of the Tribal Council. In order to be considered independent, the majority of the Board of Directors must come from areas other than the Tribal Council members or their families and they cannot be removed without cause.*

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

Technical Assistance. A function performed for the benefit of a private business enterprise or a community and which is a problem solving activity, such as market research, product and/or service improvement, feasibility study, etc., to assist in the Economic Development of a Rural Area.

§ 4280.404 Exception authority.

The Administrator may make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's financial interest.

§ 4280.405 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR Part 11.

§ 4280.406 Conflict of interest.

(a) General. No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, Conflict of Interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and matching funds or award of Project construction contracts to an individual owner, partner, or stockholder, or to a beneficiary or immediate family of the applicant or borrower when the recipient will retain any portion of ownership in the applicant's or grantee's Project. Grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest. All transactions must be Arm's-length Transactions.

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

(c) Member/Delegate Clause. No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress so long as the member's ownership is less than 10 percent.

§ 4280.407 Statute and regulation references.

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

§ 4280.408 U.S. Department of Agriculture Departmental Regulations and Laws that Contain other Compliance Requirements.

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

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

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

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

(2) Grants will require one subsequent compliance review following Project completion. This will occur prior to the last disbursement of grant funds. *One subsequent compliance review is a minimum, many projects will require more than one such as for equipment, real estate and revolving loan funds.*

(d) Environmental requirements. Actions taken under this subpart must comply with 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency. (Revised 04-01-16, SPECIAL PN.)

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

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

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

(4) Applications for Technical Assistance or Planning Projects are generally excluded from the environmental review process by 7 CFR 1970.53 provided the assistance is not related to the development of a specific site. However, as further specified in 7 CFR 1970.53, the grantee for a Technical Assistance grant, in the process of providing Technical Assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the Technical Assistance as requested by the Agency and in accordance with 7 CFR part 1970. (Revised 04-01-16, SPECIAL PN.)

(5) Applicants for grant funds must consider and document within their plans the important environmental factors within the Planning area and the potential environmental impacts of the plan on the Planning area, as well as the alternative Planning strategies that were reviewed.

(6) Whenever an applicant files an application that includes a direct construction Project and a plan, they must have a separate environmental evaluation.

(7) The Agency staff will give particular emphasis to ensure compliance with the environmental policies. The Agency staff will advise prospective recipients of grants to consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants, and projects that minimize the potential to adversely impact the environment.

(8) The Environmental Justice and Civil Rights Impact findings must be certified by agency staff on Form RD 2006-38, "Environmental Justice and Civil Rights Impact Analysis and Certification" and included in the applicant's case file along with all applicable attachments to support the assessment. Please refer to Environmental Justice and Civil Rights Impact Analysis administrative notices published periodically for clarification and procedures to use in complying with these requirements.

(e) Discrimination complaints.

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

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

(f) Uniform Relocation and Real Property Acquisition Policies Act. All Projects must comply with the requirements set forth in 7 CFR part 21.

(g) Floodplains and wetlands. All Projects must comply with Executive Order 11988 "Floodplain Management" and Executive Order 11990 "Protection of Wetlands." The applicable regulations are codified at 44 CFR parts 59 through 80.

(h) National Historic Preservation Act of 1966. All Projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with subpart F of part 1901 of this chapter.

§ 4280.409 - [Reserved]

§ 4280.410 Other Laws and Regulations that contain Compliance Requirements for this Program.

(a) Equal employment opportunity. For all construction contracts and grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60-1). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) Architectural barriers. All facilities financed with Zero-Interest Loans that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to and usable by disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, (42 U.S.C. 4151-4157).

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

(d) Drug-free workplace. Grants made under these programs are subject to the requirements contained in 2 CFR Chapter IV which implements the Drug-Free Workplace Act. RBDG recipients will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(e) Debarment and suspension. The requirements of 2 CFR Chapter IV are applicable to this program.

(f) Intergovernmental review of Federal programs. These programs are subject to the requirements of Executive Order 12372 and 2 CFR Chapter IV. Proposed Projects are subject to the State and local government review process contained in 2 CFR Chapter IV.

(g) Restrictions on lobbying. The restrictions and requirements imposed by 31 U.S.C. 1352, and 2 CFR Chapter IV, are applicable to these programs.

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

(i) Affirmative fair housing. If applicable, the grantee will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601-3631 and 24 CFR part 100).

(j) Flood hazard insurance. The RBDG program is subject to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by 42 U.S.C. 4001-4129 and 7 CFR part 1806, subpart B.

(k) Uniform administrative requirements, cost principles, and audit requirements for Federal awards. The requirements of 2 CFR Chapter IV, or its successor regulations are applicable to this program.

(l) Planning and performing construction and other development. The requirements of 7 CFR part 1924, subpart A, or its successor regulations, are applicable to this program.

(m) Transparency Act. The requirements of 2 CFR part 170 are applicable to this program.

(n) Conflicts of interest. The applicable requirements of 2 CFR 400, or its successor regulations are applicable to this program.

(1) In regards to conflict of interest or the appearance of a conflict of interest and in accordance with 2 CFR 400, safeguards will be established to prohibit employees (includes but not limited to local, State, Federal Government or nonprofit corporations) from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(2) The members of the intermediary/grantee governing body, members of the board of directors, or governing board of the RLF, members of its lending board or loan committee and employees of a department or authority that operates or provides administrative services of the RLF, including immediate family, may not hold any legal or financial interest or influence in the third party recipient.

(3) To meet the requirements of the regulations, a public body or Indian tribe that applies for an RLF program loan, must in its application, describe its organizational structure and its structure for the administration of the RLF. The intermediary/grantee should have a distinct lending committee and list of dedicated employees by position. In this instance, those members of the board, lending committee, and separate employment duties, are prevented by conflict of interest to be allowed to be the third party recipient.

(4) As an example, the tribe or public body may have an economic development authority or business development department organized under the tribe or public body to administer the RLF. The detailed description of the structure of the authority or department would be included in the approved Lender's Manual, and will include policies and procedures and separation of duties to ensure no conflicts of interest. An employee of a department, separate from the administration of the RLF and their immediate family, may be eligible third party recipients. An employee of the financial department responsible for collection of RLF loan payments and their immediate family are ineligible third party recipients.

(5) An intermediary/grantee organized as an Indian tribe may make RLF loans to entities owned by its tribe only if the entity is organized and governed independently from the tribe. An example of a tribal entity that is an eligible third party recipient is a business organized as a corporation, incorporated and wholly-owned by the tribe and the corporation's board of directors is initially appointed by the tribe, but governed by the corporation independently of the tribe and future board members will be selected by the corporations independent board. Tribal entities governed under the Tribal Government are not eligible third party recipients of an RLF administered by its tribe. (Such entities may be eligible third party recipients of the RLF administered by other intermediaries/grantees.)

(6) Any changes to the lending department must be reflected in the Lender's Manual and approved by the Agency prior to any change.

§ 4280.411 Forms, guides, and attachments.

All forms, guides, and attachments referenced in this subpart are available online at: http://forms.sc.egov.usda.gov/eForms/ or in any Rural Development State office.

§§ 4280.412 – 4280.414 [Reserved]

RURAL BUSINESS DEVELOPMENT GRANTS

§ 4280.415 Rural Business Development Grants.

Sections 4280.416 through 4280.439 identify the provisions that the Agency will use for making awards for Rural Business Development Grants.

ELIGIBILITY

§ 4280.416 Applicant eligibility.

To receive an RBDG under this subpart, an applicant must meet the requirements specified in paragraphs (a) through (e) of this section. If an award is made to an applicant, that applicant (grantee) must continue to meet the requirements specified in this section. If the grantee does not, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(a) Type of applicant. The Applicant must be one of the following:

(1) A public Body/Government Entity;

(2) An Indian Tribe; or

(3) A Nonprofit entity.

(4) These entities must serve rural areas.

(5) This is to clarify eligibility with respect to Credit Unions. There has been a presumption that credit unions were defined as cooperatives as organized under the Federal Credit Union Act. It has been brought to the attention of the Agency that credit unions may be properly organized as either a private nonprofit corporation or a cooperative. Thus, credit unions could be eligible for the RBDG program, depending upon the exact nature of their organizational structure. If a Federal credit union is deemed an eligible grantee, and the credit union is seeking to use the grant for a revolving loan fund, you must further examine the characterization of the borrowers, the ultimate recipients of the loan funds. Again, the Federal Credit Union Act limits credit unions to making loans to its members, other credit unions, and to other credit union organizations. It must be clear from the grant application that the credit union has members that would be eligible ultimate recipients.

(6) Cooperatives are not eligible unless organized as a private nonprofit corporation. Unless advised otherwise by your Regional Attorney, Office of the General Counsel (OGC), you should request their opinion that: (1) the credit union is eligible and has authority to administer the proposed grant as intended; (2) proposed RBDG purpose is eligible; and (3) the credit union has the authority (in its organizational documents) to make loans for eligible RBDG purposes.

(b) Financial strength and expertise. The Applicant must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(1) Financial strength will be analyzed by the Agency based on financial data provided in the application. The analysis will consider the applicant's tangible net worth, which must be positive, and whether the applicant has dependable sources of revenue or a successful history of raising revenue sufficient to meet cash requirements.

(2) Expertise will be analyzed by the Agency based on the applicant staff’s training and experience in activities similar to those proposed in the application and, if consultants will be used, on the staff's experience in choosing and supervising consultants. Examples of documentation would be employee or consultant resumes, certified statements from other projects they have completed and previous work experience which would be similar to the proposed project. If the applicant chooses to contract out the technical assistance, the grantee will still be responsible to ensure that the scope of work will be completed in accordance with the application.

(c) Universal identifier and system for awards management. Unless exempt under 2 CFR 25.110, the Applicant must:

(1) Be registered in the System for Awards Management (SAM) prior to submitting an application;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency; and

(3) Provide its Dun and Bradstreet Data Universal Numbering System (DUNS) number in each application it submits to the Agency. Generally, the DUNS number is included on Standard Form (SF) 424, “Application for Federal Assistance.”

(d) Delinquent debt. The applicant must not have any delinquent debt to the Federal Government. If an applicant has any delinquent debt to the Federal Government, the applicant will be ineligible to receive any funds obligated under this subpart until the debt has been paid.

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

§ 4280.417 Project eligibility.

For a Project to be eligible for funding under this subpart, the proposed Project must meet each of the requirements specified in paragraphs (a) through (e) of this section.

(a) Types of projects. Grant funds may be used for Projects identified in either paragraph (a)(1) business opportunity type grants or (a)(2) business enterprise type grants of this section. Unless otherwise announced in a Notice of Solicitation of Applications, the Agency will set aside 10 percent of its RBDG appropriation for business opportunity type grants. The Agency reserves the right to reallocate funds set aside for business opportunity type grants to business enterprise type grants if it becomes apparent to the Agency that there is insufficient demand for the funds set aside for the business opportunity type grants. *Grant applicants need to identify whether they are applying as a business opportunity or a business enterprise type grant.*

(1) Business opportunity Projects. Grant funds may be used for business opportunity Projects that include one or more of the following activities:

(i) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies. *This includes but it not limited to asset mapping for economic development*;

(ii) Identify, train, and provide Technical Assistance to existing or prospective rural entrepreneurs and managers;

(iii) Establish Business Support Centers and otherwise assist in the creation of new Rural businesses;

(iv) Conduct local community or multi-county Economic Development Planning;

(v) Conduct leadership development training of existing or prospective adult rural entrepreneurs and managers;

(vi) Establish centers for training, technology, and trade that will provide training to Rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets; or

(vii) Pay reasonable fees and charges for professional services necessary to conduct the Technical Assistance, training, or planning functions.

(2) Business enterprise projects. Grant funds may be used to finance and/or develop Small and Emerging Businesses in Rural Areas including, but not limited to, the following activities:

(i) Acquisition and development of land, easements and rights-of-way;

(A) RD staff should ensure that this purpose is to specifically assist small and emerging business enterprises, not to provide land for residential housing.

(B) Through the revolving loan program, a construction company may receive a loan from a grantee to expand its construction business. It is not acceptable to use RBDG funds to finance housing for residents; Rural Development has other programs in place for site development and residential housing. The RBDG should not be used to duplicate other Rural Development program purposes.

(ii) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities;

(iii) Provision of loans for startup operating cost and working capital;

(A) Since the instruction specifically states “loans,” RD staff should ensure that the grantee must loan the funds to a small and emerging business enterprise for startup operating costs and working capital. “Pass-through” grants are not an allowable purpose for the RBDG program.

(B) In addition, RBDG funds cannot be used by the grantee for the grantee’s own startup costs or working capital. However, the grantee can use grant funds for salaries and expenses directly related to providing technical assistance or training to small and emerging business enterprises.

(iv) Reasonable fees and charges for professional services necessary for the planning and development of the Project. Professional services are services similar to architectural, engineering or legal. Application packaging cost are not permitted;

(v) Establishment of a revolving loan fund to provide financial assistance to third parties through a loan; and

(vi) Establishment, expansion, and operation of Rural distance learning networks or development of Rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancements for adult students. This includes but it not limited to workforce development training; or

(vii) Provision of Technical Assistance for Small and Emerging Businesses, including but not limited to feasibility studies and business plans; and/or

(A) RD staff will ensure that information such as where the project will be located and the anticipated results of the successful grant implementation will be documented.

(B) Applications for grants to provide financial assistance to third party recipients (revolving loan funds) requires agency employees to complete a Class II environmental assessment prior to grant approval. Also, after the grant is approved, each third party project will have an environmental assessment completed until all Federal funds have been used. Revolved funds are not subject to this requirement.

(C) Based upon the eligible purposes outlined in this Instruction, agency staff will ensure that RBDG funds are not used to purchase portions of loans or interest in loans already made and closed by a lending institution. When the grantee makes a request to provide financial assistance to third parties through a loan, the grantee must use RBDG funds to establish a revolving loan program. This does not preclude the joint financing of a third-party loan, through the revolving loan program, with other credit sources.

(viii) Provision of Technical Assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

(ix) Loan participations. The purchase of a participation in a loan shall be considered a loan to an Ultimate Recipient for the purposes of RBDG revolving loan funds. It is the Agency's position that a grantee may sell participation or purchase a participation in a loan using the RBDG revolving loan fund.

(b) Result of projects.

(1) For business opportunity type grants, the Project must have a reasonable prospect that the Project will result in the Economic Development of a Rural Area.

(2) For business enterprise type grants, the Project must have a reasonable prospect that it will result in the development or financing of Small and Emerging Businesses.

(c) Basis for success or failure. Grants may be made only when the application demonstrates a need for the Project and includes a basis for determining the success or failure of the Project and individual major elements of the Project and outlines procedures that will be taken to assess the Project's impact at its conclusion.

(d) Local and area-wide strategic plans. Business opportunity type grants may be made only when the proposed Project is consistent with any local and area-wide strategic plans for community and Economic Development, coordinated with other Economic Development activities in the Project area, and consistent with any Rural Development State Strategic Plan.

§§ 4280.418 – 4280.420 [RESERVED]

Funding Provisions

§ 4280.421 Term requirement.

A grant may be considered for the amount needed to assist with the completion of a proposed Project, provided that the Project can reasonably be expected to be completed within 1 full year after it has begun. *The project is considered to begin on the date of obligation. In those rare instances when the project is not completed within the 12 month period, the State may extend the project for a second year upon the request of the grantee prior to the 12 month period ending. The State Office must be able to determine that the project will be completed within the allotted extension.*

§ 4280.422 <u>Joint funding</u>.

To the extent permitted by law, Agency grant funds may be used jointly and in proportion with funds furnished by the grantee or from other sources including Agency loan funds.

§ 4280.423 <u>Ineligible uses of grant funds</u>. Grant funds may not be used towards any of the uses identified in paragraphs (a) through (n) of this section.

(a) Duplicate current services or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided.

(b) Pay costs of preparing the application package for funding under this program or any other program.

(c) Pay costs for any expenses incurred prior to receipt of a full application, except for those permitted under Departmental Regulations.

(1) Agency employees should refer to 2 CFR 200.407 when grantee is requesting reimbursement for cost incurred prior to receipt of a full application. If the Agency has not given written approval to the grantee prior to the receipt of a full application, these cost will not be reimbursable. It is the Agency's policy not to grant prior written approval for any cost incurred prior to 90 days before the receipt of a full application.

(d) Fund political activities.

(e) Pay for assistance to any private business enterprise which does not create and/or support jobs in the United States.

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

(g) Fund Agriculture Production either directly or through horizontally integrated livestock operations except for commercial nurseries, timber operations or limited Agricultural Production related to Technical Assistance Projects. The following are not considered Agriculture Production:

(i) Aquaculture, including conservation, development, and utilization of water for aquaculture;

(ii) Commercial fishing;

(iii) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage;

(iv) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation; or

(v) The growing of mushrooms or hydroponics.

(h) To finance comprehensive area-wide type Planning. This does not preclude the use of grant funds for Planning for a given Project.

(i) To make loans when the rates, terms and charges for those loans are not reasonable or would be for purposes not eligible under 7 CFR part 4274 subpart D.

(j) For programs operated by cable television systems. *However, rural local non-profit entities that produce television programs to provide information on issues of importance to farmers and rural residents are eligible.*

(k) To fund a part of a Project that is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the Project.

(l) To pay for Technical Assistance that duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with FS and the Agency to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for Technical Assistance under the FS program. The grantee will provide documentation to FS and the Agency regarding the contact with each agency.

(m) Pass through grants. Pass through grants are for, but not limited to:

(1) The purchase, refurbishing, or remodeling of real estate for use as a business incubator without charging a fair market rental;

(2) The purchase of equipment for use by an ultimate recipient without charging a fair market rental; and

(3) The making of a Revolving Loan Fund (RLF) loan without taking appropriate security to reasonably assure repayment of the loan.

(4) Since the RBDG program is designed to promote economic development, for the purposes of this regulation the Agency will consider market rent to be anything equivalent to or above straight line depreciation as identified in the IRS rules and regulations. The program income received from these rents may be used to maintain and possibly replace the original items funded by the grant. This process should not be considered a pass through since it is more than a nominal value, but significantly less than the grantee would pay under commercial circumstances.

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

§§ 4280.424 – 4280.426 [Reserved]

Applying for a Grant

§ 4280.427 Application.

Applications for an RBDG grant as specified in § 4280.417(a)(1) and (2) must contain the following:

(a) An original and one copy of SF 424, “Application For Federal Assistance (For Non-construction);”

(b) Copies of applicant’s organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(c) A proposed scope of work, including a description of the proposed Project, i.e., RLF, Technical Assistance, Industrial Site, Business Opportunity and Other Business Development, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the Project, and the estimated time it will take from grant approval to beginning of Project implementation;

(d) A written narrative that includes, at a minimum, the following items:

(1) An explanation of why the Project is needed, the benefits of the proposed Project, and how the Project meets the grant eligible purposes;

(2) Area to be served, identifying each governmental unit, i.e. town, county, etc., to be affected by the Project;

(3) Description of how the Project will coordinate Economic Development activities with other Economic Development activities within the Project area;

(4) Business to be assisted, if appropriate; and Economic Development to be accomplished;

(5) An explanation of how the proposed Project will result in newly created, increased or supported jobs in the area and the number of projected new and supported jobs within the next 3 years;

(6) A description of the applicant's demonstrated capability and experience in providing the proposed Project assistance or similar Economic Development activities, including experience of key staff members and persons who will be providing the proposed Project activities and managing the Project;

(7) The method and rationale used to select the areas and businesses that will receive the service;

(8) A brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(9) Other information the Agency may request to assist it in making a grant award determination;

(e) The latest 3 years of financial information to show the applicant’s financial capacity to carry out the proposed work. If the applicant is less than 3 years old, at a minimum, the information should include all balance sheet(s), income statement(s) and cash flow statement(s). A current audited report is required if available;

(f) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372;

(g) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the RBDG; *Agency employees must make a determination that the other funds proposed are in place as part of their financial analysis toward the feasibility of the project. If there is not a firm commitment in writing of the other funding, it may not be considered for leveraging and scoring purposes and the project must be feasible without those funds;*

(h) A budget which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the Project; and

(i) RBDG construction Project grants must conform with 7 CFR part 1924, subpart A requirements.

§§ 4280.428 – 4280.429 [Reserved]

§ 4280.430 Notification of decision.

When the Agency has determined that an application is not eligible or that no further action will be taken, the Agency will notify the applicant in writing of the reasons why the application was not favorably considered and provide any appeal rights.

§§ 4280.431 – 4280.433 [Reserved]

Processing and Scoring Applications

§ 4280.434 General processing and scoring provisions.

The Agency will review each application for assistance in accordance with the priorities established in § 4280.435. The Agency will assign each application a priority rating and will select applications for funding based on the priority ratings and the total funds available to the program.

(a) Applications. The Agency will score each application based on the information contained in the application and its supporting information. All applications submitted for funding must contain sufficient information to permit the Agency to complete a thorough priority rating. *Agency employees may not consider any information not provided by the applicant in writing for scoring purposes.*

(b) Unfunded applications. The Agency will notify eligible applicants if funds are not available. If an applicant wishes to have their application maintained in an active file for future consideration, the applicant must revise and update their application in writing for the Agency to reconsider in a future funding cycle. *Agency employees will notify unsuccessful applicants who did not receive funding due to insufficient funds in writing that their application will not be funded. The potential grantee will be permitted to respond in writing that they wish their application to be reconsidered in future funding cycles. The applicant at this time, may provide additional updated information to be considered in future funding cycles.*

§ 4280.435 Scoring criteria. The Agency will use the criteria in this section to score applications for purposes identified under § 4280.417(a)(1)and (2).

State Directors should refer to the project selection criteria scoresheet which provides selection process for projects and outlines how discretionary points can be used to provide points to ensure geographical distribution within the State as well as providing assistance for economically distressed areas and areas which have been declared disaster areas. Once all points are decided, the RBDG projects received by the State established due date must be funded in order of highest score to lowest score. States should publish funding cycle due dates by which RBDG applications should be received in either the State or Area Office. These due dates should be posted on the State Rural Development Web site as well as in widely distributed public media throughout the State. Once the due date has passed, all completed applications should be scored including the assigned discretionary points for those projects eligible for discretionary points. The projects should be ranked in order from highest to lowest. When the next lower scoring project has requested more funding than the remaining State allocation, the State Office should approach the potential grantee and offer the remaining funds if the grantee can split or reduce the Scope of Work to make a viable project, the remaining funds should be awarded to this grantee. However, if the grantee cannot make a viable project with the offered funds, then the State may move to the next project in line for funding consideration and continue to fund projects until all State allocations have been depleted. The project which was passed over, due to insufficient funds, will become the State’s first choice for the National Office Reserve funding cycle.

In accordance with RD Instruction 1940-L, section 1940.589(j), the State Director has the option to suballocate to District (Area) Offices. Suballocations must be conducted in accordance with section 1940.552(j) of RD Instruction 1940-L.

(a) Leveraging. If the grant will fund a critical element of a larger program of Economic Development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows. If points are awarded for leveraging, funds must be spent proportionally, and if leveraged funds are not utilized proportionately with the grant, the Agency reserves the right to take any legal action, including terminating the grant. If Rural Development's portion of Project funding is:

(1) Less than 20 percent—30 points;

(2) 20 but less than 50 percent—20 points;

(3) 50 but less than 75 percent—10 points; or

(4) 75 percent or more-0 points.

(b) Points will be awarded for each of the following criteria met by the community or communities that will receive the benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (b)(1) through (b)(4) of this section, total points awarded under paragraph (b) must not exceed 40.

(1) Trauma. Experiencing trauma due to a major natural disaster that occurred not more than 3 years prior to the filing of the application for assistance—15 points;

(2) Economic distress. The community has suffered a loss of 20 percent or more in their total jobs caused by the closure of a military facility or other employers within the last 3 years—15 points;

(3) Long-term poverty. Has experienced Long-Term poverty as demonstrated by being a former Rural empowerment zone, Rural economic area partnership zone, Rural enterprise community, champion community, or a persistent poverty county as determined by USDA's Economic Research Service—10 points;

(4) Population decline. Has experienced Long-Term population decline—10 points as demonstrated by the latest three decennial censuses.

(c) Population. Proposed Project(s) will be located in a community of:

(1) Under 5,000 population—15 points;

(2) Between 5,000 and less than 15,000 population—10 points; or

(3) Between 15,000 and 25,000 population—5 points. When the project serves multiple locations or large geographical areas such as a county, the population should be determined by the largest eligible community in the area to be served and awards points accordingly.

(d) Unemployment. Proposed Project(s) will be located in areas where the unemployment rate:

(1) exceeds the State rate by 25 percent or more—20 points;

(2) exceeds the State rate by less than 25 percent—10 points; or

(3) is equal to or less than the State rate—0 points. *When the project covers multi-locations or larger geographical areas such as one or two counties and specific data is not available for the geographic region, a weighted average based on the population for the project area will be used to determine these points.*

(e) Median household income. Proposed Project(s) will be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act for a family of 4 for the State is:

(1) Less than poverty line—25 points;

(2) More than poverty line but less than 65 percent of State MHI—15 points;

(3) Between 65 and 85 percent of State MHI—10 points; or

(4) Greater than 85 percent State MHI—0 points.
When the project covers multi-locations or larger geographical areas such as one or two counties and specific data is not available for the geographic region, a weighted average based on the population for the project area will be used to determine these points.

(f) Experience. Applicant has evidence of successful experience in the type of activity:

(1) 10 or more years-30 points;

(2) At least 5 but less than 10 years-20 points;

(3) At least 3 but less than 5 years-10 points; or

(4) At least 1 but less than 3 years-5 points.
Evidence of successful experience may be a description of experience supplied and certified by the applicant based upon its current employees' resumes.

(g) Small business start-up or expansion. Applicant has evidence that small business development will be supported by startup or expansion as a result of the activities to be carried out under the grant. Written evidence of commitment by a small, or a Small and Emerging Business must be provided to the Agency, and should include the number of jobs that will be supported and created. —5 points for each letter up to 25 points. *Generic or duplicated letters are not acceptable, letters must address the specific business producing the letter, the connection to the project activities and further provide information relative to jobs to meet the criteria below.*

(h) Jobs created or supported. The anticipated development, expansion, or furtherance of business enterprises as a result of the proposed Project will create and/or support existing jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business to be assisted.

(1) one job for less than $5,000-25 points;

(2) one job for $5,000 but less than $10,000-20 points;

(3) one job for $10,000 but less than $15,000-15 points;

(4) one job for $15,000 but less than $20,000-10 points; or

(5) one job for $20,000 but less than $25,000-5 points.

(i) Size of grant request. Grant Projects utilizing funds available under this subpart of:

(1) less than $100,000—25 points;

(2) $100,000 to $200,000—15 points; or

(3) more than $200,000 but not more than $500,000-—10 points.

(j) Indirect cost. Applicant is not requesting grant funds to cover their administrative or indirect costs-5 points.

(k) Discretionary points. Either the State Director or Administrator may assign up to 50 discretionary points to an application. Assignment of discretionary points must include a written justification. Permissible justifications are geographic distribution of funds, special Secretary of Agriculture initiatives such as Priority Communities, or a state's strategic goals. Discretionary points may only be assigned to initial grants. However, in the case where two Projects have the same score, the State Director may add one point to the Project that best fits the State's strategic plan regardless of whether the Project is an initial or subsequent grant. *Since Congress*

mandated that the RBDG program operate essentially the same as the former RBOG and RBEG programs, any grants received under those programs will be considered as RBDG grants for the purpose of this scoring criteria. In other words, if an applicant has previously received an RBOG grant and is currently applying for a business opportunity RBDG grant, it would be considered a subsequent grant. Similarly, if an applicant has received a technical assistance grant under the RBEG program and is applying for a technical assistance grant under the RBDG program, it would be considered a subsequent grant. In both cases, no discretionary points may be awarded.

§§ 4280.436 – 4280.438 [Reserved]

GRANT AWARDS AND AGREEMENT

§ 4280.439 Grant awards and agreements. The Agency will award and administer RBDG grants in accordance with applicable Departmental regulations, this subpart, and the unauthorized grant provisions of 7 CFR part 1951, subpart O.

(a) Letter of conditions. The Agency will provide each approved applicant a letter of conditions, which sets out the conditions under which the grant will be made, including, but not limited to, an Agency grant agreement. Each Letter of Conditions will contain the following paragraphs. *"This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application." "This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed $_____." "Please complete and return the attached Form RD 1942-46, 'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application." Other items in the Letter of Conditions should include those relative to: maximum amount of grant; requirements regarding the availability and purpose of other funding; funds being utilized proportionally; final plans and specifications; construction contract documents and bidding; required project audit; evidence of compliance with all applicable Federal, State, and local requirements; closing instructions; compliance with any required environmental mitigation measures; and other requirements which the Agency deems necessary to ensure grant performance including those of regional commissions when a grant is being made by a Regional Commission.*

(b) Applicant's intent to meet conditions. The applicant must complete, sign and return a "Letter of Intent to Meet Conditions," to the Agency. If applicant identifies certain conditions that the applicant cannot meet, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed by the letter of conditions by the applicant before the grant will be made.

(c) Grantee certification. The following statement will be entered in the comment section of the Request for Obligation of Funds, or be contained in the grant agreement, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those contained in 2 CFR 200 and 2 CFR 400 in effect on the date of grant approval; and the approved "Letter of Conditions."

(d) Fund disbursement. The Agency will determine, based on 2 CFR 200, as applicable, whether disbursement of a grant will be by advance or reimbursement. A Request for Advance or Reimbursement must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

§§ 4280.440 – 4280.442 [Reserved]

POST AWARD ACTIVITIES AND REQUIREMENTS

§ 4280.443 Grant monitoring and servicing

RBDG grants will be monitored and serviced in accordance with the grant agreement, this subpart, and 2 CFR Chapter IV.

§§ 4280.444 – 4280.447 [Reserved]

§ 4280.448 Transfers and assumptions.

The Agency will approve transfer and assumption requests on grants awarded under this subpart on a case by case basis, and then only to eligible entities under section 4280.416.

§ 4280.449 <u>Reporting</u>.

(a) (2 CFR 200.328) A Financial Status Report and a project performance activity report will be required of all grantees on a quarterly basis until initial funds are expended and yearly thereafter, if applicable, based on the Federal fiscal year. The grantee will cause said project to be completed within the total sums available to it in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency. A final project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and supported as a result of the grant. Grantees must continuously monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees must submit an original of each report to the Agency no later than 30 days after the end of the quarter. The project performance reports must include, but not be limited to, the following:

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

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(4) Any special reporting requirements such as jobs supported and created, businesses assisted, or economic development which results in improvements in median household incomes, and any other specific requirements should be placed in the reporting section in the Letter of Conditions.

(5) When Agency employees are reviewing quarterly financial and status reports and project performance reports, Agency employees must refer to Subpart E, cost principles of 2 CFR part 200, section 400 – 475 to ensure that all reimbursements are considered allowable cost.

(i) Terms such as reasonable and necessary for performance under the grantee's scope of work should be considered.

(ii) If the grantee has an approved indirect cost rate, Agency employees must allow the use of this rate, otherwise, if the grantee wishes to use an indirect cost rate, a maximum of 10 percent will be allowed as specified in Rural Development's Appropriation law.

(b) Within 90 days after the conclusion of the project, the grantee will provide a final project evaluation report. The last quarterly payment will be withheld until the final report is received and approved by the Agency. Even though the grantee may request reimbursement on a monthly basis, the last three months of reimbursements will be withheld until a final project, project performance and financial status report are received and approved by the Agency.

(c) The Agency may require grantees to prepare a report suitable for public distribution describing the accomplishments made through the use of the grant and, in the case where the grant funded the development or application of a "best practice," each "best practice."

(d) The grantee must provide for Financial Management Systems that include:

(1) Accurate, current, and complete disclosure of the financial result of each grant;

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

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

(e) The grantee must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except when audit findings and litigation issues have not been resolved, then the records must be retained beyond the 3-year period or until such findings and/or issues have been resolved. The grantee must provide the Agency and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

(f) 2 CFR 200.329. For real property with a useful life of 15 years or more, the Agency's policy will be to require a performance report every 3 years.

(g) Insurance Requirements. Grantees and loan recipients are required to obtain and maintain:

(1) Flood or mudslide insurance, if applicable.

(2) Other insurance. The Agency may require other insurances such as, but not limited to, real estate and equipment hazard, key person, business interruption, and fidelity bonds.

(h) Records retention. (2 CFR 200.333) Records must be maintained for a period of 3 years after the final expenditure report. In the case of litigation or audit findings, records must be retained until all litigation and findings have been resolved and final action taken.

§ 4280.450 Audit requirements.

(a) Grantees must provide an annual audit in accordance with 2 CFR 200 (Agency employees should refer to Subpart F – Audit Requirements, section 2 CFR 200.500 – 521). The audit requirements apply to the years in which grant funds are received and years in which work is accomplished that will be paid for with grant funds.

(b) If grant expenditures do not meet the 2 CFR 200 thresholds, which is currently $750,000, then a compilation and management report will be required.

(c) Post close-out adjustments (2 CFR 200.344-345).

§ 4280.451 Grant servicing.

The Agency will service grants in accordance with 7 CFR part 1951, subparts E and O, 2 CFR 200 and 2 CFR 400 and other applicable regulations. Grantees must allow the Agency representative to perform periodic inspection of the program operations. All non-confidential information resulting from the Grantee's activities must be made available to the general public on an equal basis. 2 CFR 200 is the new OMB regulation which covers both processing and servicing of grants for the entire Federal Government and therefore, the Departmental Regulations 7 CFR 3015, 3016, 3019 and 3052 have been rescinded as of December 26, 2014. 2 CFR 400 is now the Departmental Regulation concerning conflict of interest. When considering servicing of grants, we must refer to all the regulations stated above.

(a) Management Assistance. Grantees will be supervised as necessary to ensure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under 2 CFR part 200 and 2 CFR part 400.1 through 400.18 and all other applicable regulations.

(b) Disbursement of funds. Funds not disbursed to the grantee within 42 months from the date of obligation, will be automatically deobligated. The 2014 Farm Bill mandated that Rural Development combine the RBOG and the RBEG programs into one regulation. In the congressional record, Congress indicated that they expected this combined program would operate in essentially

the same manner as the programs were operated prior to this regulation taking affect. The current regulation permits an extension of up to 36 months in those circumstances where the grant for unforeseen circumstances was not completed within the 1 year time frame. Since the grantee has 90 days to submit a final progress and financial report, we have given Agency employees 90 days to review, approve and pay the final reimbursement. Therefore, at the end of the 42 months, any funds not reimbursed to the grantee will be deobligated automatically without appeal.

§ 4280.452 Programmatic changes.

The Grantee must obtain prior approval for any change to the scope or objectives of the approved project. If a grantee fails to obtain prior approval of changes to the scope of work or budget, the Agency may suspend, terminate, and recover the grant funds.

REVOLVING LOAN FUND GRANTS

§ 4280.453 Revolving Loan Fund Grants.

Grants made for the purpose of establishing or recapitalizing a revolving loan, will be processed and serviced in accordance with this Subpart, 7 CFR part 4274, subpart D, 7 CFR part 1951, subpart R, 2 CFR part 200 and 2 CFR part 400.

§ 4280.454 Sections of 2 CFR part 200 that Agency Employees Should Reference

Subpart B General requirements.

Subpart C Pre-award requirements.

(a) Section 200.201 Fixed amount awards

Subpart D Post federal award requirements.

(a) Section 200.306 Value of matches

(b) Section 200.307 Program income

(1) For RBDG, program income is any income generated by the grant project, usually income from equipment rental or income from the lease of real estate.

(2) Program income must be maintained in an account and readily identifiable as such. These funds may be used to pay for maintenance and repair cost, replacement costs, and administrative expenses generated to create the program income such as accounting for the monies, prorata share of bank fees, etc.

(3) Deduct from total allowable cost

(4) Income received after grant closeout goes to the grantee unless otherwise stated in the LOC.

(c) Section 200.308 Change in budgets

(1) Reasons that mandate prior approval

(2) Costs incurred before award or prior to receipt of full application

(3) 12-month extension

(4) No transfer to different categories when cumulative amount when greater than 10 percent of total budget without agency approval.

(d) Property standards

(1) Section 200.310 Insurance – LOC

(2) Section 200.311 Real property

(i) Title in grantee's name

(ii) Use in the project, grantee cannot encumber the title

(iii) LOC should contain notice of Federal interest requirement

(iv) Property disposition

(A) Requires Agency approval

(B) Grantee retains title and must pay the Agency its percentage of the fair market value or provide equivalent replacement property

(C) Sale for fair market value and compensate the Agency for its prorate share

(D) Transfer property to a third party with Agency approval

(3) Section 200.313 Equipment

(i) If fair market value is less than $5,000, grantee may keep.

(ii) If the fair market value is greater than $5,000, grantee may keep if the Agency is reimbursed its prorata share of its fair market value.

(iii) Grantee may sell equipment and deduct $500 or 10 percent, whichever is less for sales expenses and then reimburse the Agency its prorata share.

(4) Section 200.314 Supplies

(i) If the aggrevate value of the supplies is less than $5,000, the grantee may keep. (08-24-16, SPECIAL PN.)

(ii) If the aggrevate value of the supplies if more than $5,000, and there is no other Federal use, then the Agency must be reimbursed its prorata share. (08-24-16, SPECIAL PN.)

§ 4280.455 <u>Remedies for Noncompliance (2 CFR 200.338)</u>.

(a) If the grantee fails to perform or report, the Agency will take one of the following actions:

(1) Withhold cash payment;

(2) Deny the use of any funds and/or match for the applicable parts not in compliance;

(3) Suspend in whole or in part or terminate the grant;

(4) Initiate suspension or debarment proceedings;

(5) Withhold further Federal awards;

(6) Take other legally available remedies.

(b) The grant can be terminated:

(1) By Rural Development for noncompliance;

(2) By mutual consent of the Agency and the grantee; and

(3) By the grantee in writing to the Agency.

§§ 4280.456 – 4280.499 [Reserved]

§ 4280.500 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0570–0022 and 0570-0024 in accordance with the Paperwork Reduction Act of 1995. You are not required to respond to this collection of information unless it displays a valid OMB control number.

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