

**DEPARTMENT OF AGRICULTURE****Rural Utilities Service****7 CFR Part 1703****Rural Business-Cooperative Service****Rural Utilities Service****7 CFR Part 4280**

RIN 0570-AA19

**Rural Economic Development Loan and Grant Programs**

**AGENCIES:** Rural Business-Cooperative Service and Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the regulations for the Rural Economic Development Loan and Grant Programs. This revised regulation is written in a format that is simpler in design and should improve ease of use by the public and program beneficiaries.

**EFFECTIVE DATE:** June 29, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jody Raskind, Director, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250-3225, Telephone (202) 720-1400.

**SUPPLEMENTARY INFORMATION:****Classification**

This final rule has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

**Programs Affected**

The Catalog of Federal Domestic Assistance number for the programs impacted by this action is 10.854, Rural Economic Development Loans and Grants.

**Intergovernmental Review**

Rural Economic Development Loans and Grants are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," and in 7 CFR part 3015, subpart V.

**Civil Justice Reform**

This final 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.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS 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 of 1969, 42 U.S.C. 4321-4374, an Environmental Impact Statement is not required.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, RBS 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 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS 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 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the Agency has determined that this action would not have a significant economic impact on a substantial number of small entities. This regulation only impacts those who choose to participate in the loan or grant program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

**Executive Order 13132**

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant the preparation of a Federalism Assessment. The provisions contained in this 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 levels of Government.

**Paperwork Reduction Act**

The information collection 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 were assigned OMB control number 0570-0035, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. The revisions in this rulemaking, for 7 CFR part 4280, required an amendment to the burden package and this modification has been approved by OMB.

**E-Government Act Compliance**

The Rural Business-Cooperative Service is committed to complying with the E-Government Act, 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.

**Background**

The proposed rule for the Rural Economic Development Loan and Grant (REDLG) programs was published on December 15, 1999, in the **Federal Register**, in Vol. 64, No. 240, pages 69937-69946, as 7 CFR part 4280. The proposed rule was originally structured in a format consisting of questions and answers. To provide for an easier understanding of these programs, inasmuch as it includes the participation of three distinct parties (the Federal Government, the intermediary, and the third-party ultimate recipient), this final rule has been restructured in the standardized format utilized by the Agency in its other regulations. Consequently, several section numbers and headings of the final rule have been modified due to the change in format.

The existing regulations for the REDLG programs are found at 7 CFR part 1703, subpart B, and will be

removed from Part 1703 upon publication of this final rule.

The REDLG programs were originally implemented in 1989 as part of the rural economic development program of the Rural Electrification Administration, predecessor to the Rural Utilities Service (RUS). As a result of the United States Department of Agriculture reorganization, responsibility for these programs was transferred to Business Programs under the Rural Business-Cooperative Service (RBS), which provides financing for rural areas. These programs are administered at the State level through the Department of Agriculture's Rural Development State Offices.

Since its inception in 1989, these programs have had a substantial impact on economic development in rural areas. As of September 30, 2005, the REDLG programs have provided \$217.5 million in loans and \$92.7 million in grants, leveraged over \$2.5 billion, and directly created an estimated 35,000 new jobs for rural areas.

Under these programs, loans or grants are provided to eligible electric and telecommunications utilities. The purpose of the programs is to encourage these utilities to promote rural economic development and job creation projects. The utility, previously referred to as the "RUS Borrower" now referred to as the "intermediary" can receive loans to help finance projects such as business start-up costs, business expansion, community development, and business incubator projects. The intermediary must use program loan funds to make a pass-through loan to an ultimate recipient such as a business. The intermediary is responsible for fully repaying its loan to the Government even if the ultimate recipient does not repay its loan.

The intermediary must use program grant funds, along with its required contribution, to create a revolving loan fund that the intermediary utility will operate and administer. Loans to the ultimate recipient are made from the revolving loan fund for a variety of projects.

#### Comments and Responses on the Proposed Rule

A total of 22 organizations responded within the official 30-day comment period. In addition to the comments solicited from the general public through the rulemaking process, RBS held a public meeting on August 2, 2000, to hear oral presentations on the proposed rule. Four public organizations made presentations. All comments, both written and oral, were considered and some revisions in the

final rule are in response to those comments. Some of these revisions include clarifications to better explain the programs. The majority of the comments centered on the selection factors established in § 4280.42(b) for Agency use in evaluating and scoring the applications. Other comments pertained to the elimination of a previously eligible purpose and to supplemental funds use. The comments have been grouped into 8 categories and are discussed below based on the applicable section number of the final rule.

*Comment.* Some comments indicated that intermediaries do not want their supplemental contribution applied to the same project as funded by the Agency grant, but wanted their contribution available to lend to a separate project.

*Response.* The Agency is aware that intermediaries have experienced difficulty in full utilization of supplemental funds. RBS has considered these comments and has amended the final rule to give the intermediary the option to use its supplemental contribution for the same project the Agency is financing or to fund another eligible project. If the intermediary chooses to finance a separate eligible project, the matching funds must be used within 3 years from the date of the grant agreement or the grant will be terminated. Subsequent use of revolved funds will be managed in accordance with the Agency—approved revolving loan fund plan and the interest rates on those loans will be at the discretion of the intermediary as shown in the plan, but not to exceed the prevailing prime rate.

*Comment.* Some comments opposed the proposed exclusion of agricultural production as an eligible purpose. The commenting entities believe that agriculture is a vital business component of their state economy and providing for both value-added agriculture and priority markets for farmers is very important.

*Response.* Historically, funding under the REDLG program has not been heavily applied for or utilized by agricultural production projects. The Agency has decided to allow agricultural production as an eligible purpose only where the project benefits farmer-owned cooperatives or a similar farmer-owned organization through which benefits are passed directly to the farmer members.

*Comment.* Some comments stated that applications for advanced telecommunications or computer networks to facilitate medical, educational, or job training projects

should not be eligible for priority points under two separate sections of the regulation, that is, § 4280.42(b)(1)(iii) and 4280.43(d). The comments stated that this type of project should be a priority of the programs since one of the ways rural America can be more competitive is to have advanced telecommunications systems for health care, job training, and business use. They believe, however, that there are other infrastructure and business assistance needs that must also be met.

*Response.* RBS agrees that advanced telecommunications and computer network projects should be a priority. To address this, RBS had initially added five points to those projects in addition to those added under § 4280.42(b)(1)(iii). RBS now agrees that there are other program priorities that must be met and Advanced Telecommunications and computer network projects should not receive two sets of priority points. Accordingly, § 4280.43(d) will be removed.

*Comment.* Some comments stated that using a selection factor that measures job creation per \$100,000 of project costs is too limiting. Another comment supported the existing regulation that awards points for job creation under a subjective factor.

*Response.* RBS disagrees that a measure of jobs per \$100,000 is too limiting. We agree that a broader approach to job creation is helpful. Therefore, we have maintained the selection factor of jobs per \$100,000, but have expanded the definitions to include "direct", "indirect", "full-time", "part-time", and "seasonal" jobs as well as a formula for determining full-time job equivalents. These definitions clarify formulaic requirements for correct calculation of program job creation statistics in accordance with Agency requirements. To calculate full-time equivalent jobs, two part-time jobs are counted as one full-time job or three seasonal jobs as one full-time job. If the total number of part-time and seasonal jobs adds up to a fraction, round up to the next whole number after combining same.

*Comment.* Some comments supported the proposed elimination of the rural restrictions pointing out the positive regional aspects that projects in larger communities have over the rural economy. Other comments urged the Agency to retain these restrictions, pointing out that the Agency should give priority to very rural locations.

*Response.* The Agency has revised its definition of rural to allow projects to be funded in areas with a population of 50,000 or less which is the statutory limit. However, the Agency will retain

its historical practice to allow priority points to projects in rural areas with a population of less than 2,500.

*Comment.* The majority of comments opposed awarding points based on the award being an initial one for the intermediary or the county rather than focusing funding on the best possible projects.

*Response.* RBS has taken into consideration the fact that the majority of intermediaries that are active participants in the REDLG project are concentrated in a few states and these intermediaries have received the highest number of REDLG awards. The intermediaries in these states have access to affiliated economic development organizations that assist the intermediaries in seeking prospective business clients, providing technical assistance in promoting rural development, and in packaging applications. Not all intermediaries throughout the country have such technical expertise available. This discourages their participation in the REDLG program. To ensure that the greatest number of intermediaries has access to the benefits of the program, RBS will award priority points if the application is a first-time award for a new intermediary or if it is an award to an existing intermediary that will fund a project in a county not previously served.

*Comment.* Some comments stated that the requirement for a financial plan that covers the term of the loan was excessive.

*Response.* RBS has changed this section to require a 3-year financial plan from the ultimate recipient.

*Comment.* One comment stated that the selection of awards should be based on points, regardless of the number of previous awards given to the intermediary in a fiscal year.

*Response.* To ensure that the greatest numbers of intermediaries have access to the benefits of the programs, the Agency will retain the proposed provision that the Agency may limit an intermediary to one selected grant application and two selected loan applications in a fiscal year, depending upon availability of funds.

#### Other Clarifications to Final Rule

Section 4280.2: the reference to “loan” was changed to “REDG Zero-Interest Loan” and “REDL Zero-Interest Loan” to better reflect that REDLG encompasses two separate and distinct programs; the definition for “project” was revised to add “ultimate recipient activity” for clarification purposes; the nomenclature “RUS Borrower” was eliminated replaced with

“intermediary.” A definition was provided for “intermediary” to meet the requirements of the programs. The definition indicates that RUS remains the final determinant of an intermediary’s eligibility for participation in the programs; a definition of “rural area” was added; and the definition for an “ultimate recipient” was revised to list all eligible entities.

Sections 4280.3 and 4280.15(a), are revised to clarify the definition of “start-up venture costs.”

Section 4280.15(g), clarifies that zero-interest loans are allowable for REDG projects in accordance with § 4280.21.

Section 4280.17, clarifies that payments on zero-interest loans are due in monthly installments; and provides guidance regarding disposition of partial loan payments made by ultimate recipients.

Sections 4280.19 and 4280.50, state that administration and termination of grants will be subject, where applicable, to 7 CFR parts 3015 and 3019.

Section 4280.21, a reference to Federally-recognized Indian tribes was inserted to clarify the definition of eligible ultimate recipients in connection with § 4280.3.

Section 4280.23, clarifies the intended use of the Intermediary’s contribution to the revolving loan fund and the reasons that will result in termination of the fund.

Provisions previously stated under Section 4280.24 have been combined with Section 4280.23 to maintain consistency in subject matter. The nomenclature “Non-Federal Funds” has been changed to “Revolved Funds” for clarification of the true nature of the funding. Section 4280.24 now clarifies “Revolved Funds.”

Section 4280.27, clarifies that program funds cannot be used to refinance existing indebtedness of the ultimate recipient project; and cites those instances where program funds may be eligible for agricultural production purposes.

Section 4280.29, reflects that either the intermediary or the ultimate recipient may provide the 20 percent supplemental financing required for the Ultimate Recipient Project.

Section 4280.36: clarifies Equal Employment Opportunity, nondiscrimination and civil rights requirements; clarifies that loans made from the revolving loan fund, when funds are derived from repayments or interest earnings, and not directly from the Government, are not subject to the Agency’s environmental clearance process; clarifies the need to comply with flood hazard insurance

requirements; and provides audit requirements for assistance under this program.

Section 4280.42(b)(5), the economic factor used has been changed to per capita personal income rather than median household income. Per capita personal income is a more appropriate indicator of current wages and economic wealth of the county where the project is located and has historically been used in the REDLG programs.

#### List of Subjects

##### 7 CFR Part 1703

Community development, Grant programs—housing and community development, loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

##### 7 CFR Part 4280

Business and industry, Community development, Economic development, Grant programs—housing and community development, loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

■ Therefore, chapters XVII and XLII, title 7, Code of Federal Regulations, are amended as follows:

#### CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

##### PART 1703—RURAL DEVELOPMENT

■ 1. The authority citation for part 1703 continues to read as follows:

*Authority:* 7 U.S.C. 901, *et seq.* and 950aaa, *et seq.*

##### Subpart B—[Removed]

■ 2. Subpart B of part 1703 is removed and reserved.

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

##### PART 4280—LOANS AND GRANTS

■ 3. Subpart A (§§ 4280.1 through 4280.100), is added to part 4280 to read as follows:

##### Subpart A—Rural Economic Development Loan and Grant Programs

Sec.  
4280.1 Purpose.  
4280.2 Policy.  
4280.3 Definitions.  
4280.4–4280.12 [Reserved]  
4280.13 Applicant eligibility.

- 4280.14 [Reserved]  
 4280.15 Ultimate Recipient Projects eligible for Rural Economic Development Loan funding.  
 4280.16 REDL and REDG Loan terms.  
 4280.17 Additional REDL terms.  
 4280.18 [Reserved]  
 4280.19 REDG Grants.  
 4280.20 [Reserved]  
 4280.21 Eligible REDG initial Ultimate Recipients and Projects.  
 4280.22 [Reserved]  
 4280.23 Requirements for lending from Revolving Loan Fund.  
 4280.24 Revolved funds.  
 4280.25 Revolving Loan Fund Plan.  
 4280.26 Administration and operation of the Revolving Loan Fund.  
 4280.27 Ineligible purposes.  
 4280.28 [Reserved]  
 4280.29 Supplemental financing required for the Ultimate Recipient Project.  
 4280.30 Restrictions on the use of REDL or REDG funds.  
 4280.31–4280.35 [Reserved]  
 4280.36 Other laws that contain compliance requirements for these Programs.  
 4280.37 Application forms and filing dates.  
 4280.38 Maximum amount of loans and Grants.  
 4280.39 Contents of an application.  
 4280.40 [Reserved]  
 4280.41 Environmental review of the application.  
 4280.42 Application evaluation and selection.  
 4280.43 Discretionary points.  
 4280.44 Limitation on the number of loans or Grants to an Intermediary.  
 4280.45–4280.46 [Reserved]  
 4280.47 Non-selection of applications.  
 4280.48 Post-selection period.  
 4280.49 [Reserved]  
 4280.50 Disbursement of Zero-Interest Loan funds.  
 4280.51–4280.52 [Reserved]  
 4280.53 Loan payments.  
 4280.54 Construction procurement requirements.  
 4280.55 Monitoring responsibilities.  
 4280.56 Submission of reports and audits.  
 4280.57–4280.61 [Reserved]  
 4280.62 Appeals.  
 4280.63 Exception authority.  
 4280.64–4280.99 [Reserved]  
 4280.100 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 940c.

### Subpart A—Rural Economic Development Loan and Grant Programs

#### § 4280.1 Purpose.

The Rural Economic Development Loan (REDL) and Grant (REDG) Programs provide financing to eligible Rural Utilities Service (RUS) electric or telecommunications borrowers (Intermediaries) to promote rural economic development and job creation projects.

#### § 4280.2 Policy.

(a) *REDL Program.* REDL Zero-Interest Loans are made to Intermediaries, to

relend, at a zero-interest rate, to Ultimate Recipients. Ultimate Recipients are responsible for repayment to the Intermediary. The Intermediary must transmit Ultimate Recipient loan repayments to Rural Development.

(b) *REDG Program.* Grants are made to Intermediaries to establish Revolving Loan Funds. REDG Zero-Interest Loans are made by the Intermediary from the Revolving Loan Fund to Ultimate Recipients for the purpose of financing specific, approved Projects. Ultimate Recipients are responsible for repayment to the Intermediary. The Ultimate Recipient's loan repayments are to be retained in the Revolving Loan Fund, which is maintained by the Intermediary, to finance other rural economic development Projects. Only the initial loan made by the Intermediary from the Revolving Loan Fund has to be at zero interest.

#### § 4280.3 Definitions.

The following definitions are applicable to this subpart:

*Advanced Telecommunications.* Using communications equipment for purposes, such as the simultaneous transmission of images and voice or the electronic transmission of data between multiple sites that do not consist primarily of providing local exchange voice or other routine communications.

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

*Business Incubator.* A facility in which small businesses can share premises, support staff, computers, software or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other overhead expenses, and where such businesses can receive Technical Assistance, financial advice, business planning services or other support.

*Community Facilities Project.* An eligible community facility under the Community Facility Direct or Guaranteed programs.

*Cushion of Credit.* The amount contributed by the Intermediary pursuant to 7 U.S.C. 940c.

*Direct Job.* A job that is created or saved by an Ultimate Recipient employer as a result of funding received from these Programs.

*Established Operation.* An entity that has engaged in the nature of the Project for more than one year.

*Full-Time Job.* A job for which a worker is scheduled to work 35 hours per week, or more, on a regular basis.

*Grant.* For the REDG Program only; a transfer of monies other than a loan, from Rural Development to an Intermediary for specific use in funding a Revolving Loan Fund from which loans are made to Ultimate Recipients. Grant funds must be repaid by the Intermediary to Rural Development in the event the Fund is unused for more than one year, misused, no longer needed for its intended purposes, or the Grant is terminated.

*Independent Provider.* An entity or individual, other than the Intermediary or the Ultimate Recipient that is not owned by a subsidiary or an affiliate of the Intermediary or Ultimate Recipient or would otherwise have an interest in the Intermediary or Ultimate Recipient that would be a conflict of interest or have the appearance of a conflict of interest.

*Indirect Job.* A job that is created or saved as a result of a funded Project, but is not with the Ultimate Recipient.

*Infrastructure.* Facilities required to support private sector economic activity such as: Highways, streets, roads, and bridges; public transit; water supply; wastewater treatment; water resources; solid waste; and hazardous waste services.

*Intermediary.* An entity that is identified by RUS as an eligible borrower under the Rural Electrification Act and obtains a REDG Grant or a REDL Loan.

*Part-Time Job.* A job for which a worker is scheduled to work less than 35 hours per week, on a regular basis.

*Programs.* The Rural Economic Development Loan (REDL) and the Rural Economic Development Grant (REDG) Programs.

*Project.* The facility, equipment, or activity of the Ultimate Recipient that is funded under one of the Programs.

*REDG.* The Rural Economic Development Grant Program.

*REDL.* The Rural Economic Development Loan Program.

*Revolving Loan Fund (or Fund).* A revolving loan fund that is created with Grant funds and the Intermediary's supplemental contribution under the REDG Program that makes loans and uses the loan repayments and interest earnings to make subsequent loans until the Fund is terminated.

*Revolving Loan Fund Plan.* A plan developed by the Intermediary and approved by Rural Development that governs the use of the Revolving Loan Fund. The plan must at least include a detailed explanation of the Intermediary's Fund administration

policies and procedures and planned Fund use after the funds in the Revolving Loan Fund have revolved. Fund administration policies and procedures must at least include information regarding the review and approval of loans from the Fund.

**Rural Area.** This information will be taken from the most recent census data. Any area other than:

(1) A city or town that has a population of greater than 50,000 inhabitants; and

(2) The urbanized area contiguous and adjacent to such a city or town.

**Rural Business-Cooperative Service (RBS).** The Rural Business-Cooperative Service, an agency within the Rural Development mission area of the USDA.

**Rural Development.** For purposes of this regulation, The Rural Business-Cooperative Service (RBS), an Agency of the United States Department of Agriculture, or a successor Agency, will be referred to as Rural Development.

**Rural Utilities Service (RUS).** The Rural Utilities Service, an Agency within the Rural Development mission area of the USDA.

**Seasonal Job.** A job whether Part-Time or Full-Time that begins and ends in accordance with a specified time period of less than a year and generally within a range less than four months.

**Start-Up Venture(s).** An entity that has engaged in the nature of the Project for less than one year. An entity that has operated in excess of one year, but which is about to enter into a new line of business, would be considered a Start-Up Venture.

**State.** Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

**Technical Assistance.** Managerial, financial and operational analysis and consultation by Independent Providers to assist Project owners in identifying and evaluating problems or potential problems and to provide training that enables Project owners to successfully implement, manage, operate and maintain viable Projects.

**Ultimate Recipient.** An entity or individual that receives a loan from an Intermediary. The Ultimate Recipient may be a for profit or not-for-profit entity such as, but not limited to, a sole proprietorship, a corporation, a cooperative, a partnership, or a Limited Liability Company. The Ultimate Recipient may also be a public body, such as, but not limited to, a political

subdivision of a State or locality, or a Federally-recognized Indian tribe.

**Uniform Act.** The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601–4655).

**USDA.** The United States Department of Agriculture.

**Zero-Interest Loan.** A loan made by the Intermediary to the Ultimate Recipient with no interest and which will be repaid to the Intermediary by the Ultimate Recipient.

#### §§ 4280.4–4280.12 [Reserved]

#### § 4280.13 Applicant eligibility.

Applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these Programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

#### § 4280.14 [Reserved]

#### § 4280.15 Ultimate Recipient Projects eligible for Rural Economic Development Loan funding.

An Intermediary may receive REDL funds only when it has a pre-approved Ultimate Recipient and Project that have an immediate need for the Zero-Interest Loan. REDL funds may only be used by the Intermediary to make a Zero-Interest Loan to the Ultimate Recipient to finance financially viable economic development or job creation Projects in a Rural Area. Funds may only be used to provide the following assistance:

(a) Start-Up Venture costs, including, but not limited to financing fixed assets such as real estate, buildings (new or existing), equipment, or working capital;

(b) Business expansion;

(c) Business Incubators;

(d) Technical Assistance;

(e) Project feasibility studies;

(f) Advanced Telecommunications services and computer networks for medical, educational, and job training services;

(g) Other Projects eligible under § 4280.21; or

(h) Community Facilities Projects.

#### § 4280.16 REDL and REDG Loan terms.

REDL and REDG loans made by the Intermediary are governed by the following terms:

(a) The maximum term of a loan is 10 years, including any principal deferment period. The Intermediary may choose a shorter term if desired.

(b) Deferments on Zero-Interest Loans will automatically be granted by Rural Development upon request of the Intermediary as follows:

(1) A deferral for up to 1 year for Projects involving an Established Operation; or

(2) A deferral for up to 2 years for Projects involving a Start-Up venture or a Community Facilities Project whether or not such Project also receives funding under USDA Community Facilities funding programs.

(c) The Intermediary must provide the Ultimate Recipient with the same loan terms as the Intermediary receives from Rural Development.

(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions.

#### § 4280.17 Additional REDL terms.

(a) The Intermediary is responsible for fully repaying the Zero-Interest Loan to RBS even if the Ultimate Recipient does not repay the Intermediary.

(b) The Intermediary is responsible for remitting any partial or full payment to RBS at the time the Ultimate Recipient pays the Intermediary.

(c) Unless deferred pursuant to § 4280.16(b) of this subpart, loan payments to Rural Development under the REDL Program are due monthly.

(d) If the Intermediary does not have an outstanding loan with RUS, the Intermediary must immediately provide, as security for any REDL loan it receives, a Rural Development-approved irrevocable letter of credit that remains in effect until the loan is repaid.

#### § 4280.18 [Reserved]

#### § 4280.19 REDG Grants.

Intermediaries receiving Grants must partially finance a Revolving Loan Fund that the Intermediary will operate and administer, by providing supplemental funds of at least 20 percent of the Grant. Grants are subject to 7 CFR parts 3015, 3019, and 3052, as applicable.

#### § 4280.20 [Reserved]

#### § 4280.21 Eligible REDG Ultimate Recipients and Projects.

The Intermediary may only make loans from the Revolving Loan Fund to entities located in a Rural area of a State. Eligible entities are as follows:

(a) Non-profit entities, public bodies, or Federally-recognized Indian tribes Ultimate Recipients for:

(1) Community development or Community Facility Projects that:

(i) will create or save employment; and

(ii) are open to and serve all Rural residents, and are owned by the Ultimate Recipient;

(2) Business Incubators;

(3) Facilities and equipment to provide education and training to residents of Rural Areas that will facilitate economic development;

(4) Facilities and equipment to provide medical care to residents of Rural Areas. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(5) Projects that utilize Advanced Telecommunications or computer networks to facilitate medical or educational services or job training; or

(6) Project feasibility studies and Technical Assistance. A qualified Independent Provider must perform feasibility studies or Technical Assistance.

(b) For-profit Ultimate Recipients for Projects under paragraphs (a)(3), (4), (5), or (6) of this section.

#### **§ 4280.22 [Reserved]**

#### **§ 4280.23 Requirements for lending from Revolving Loan Fund.**

(a) *Supplemental contribution.* The Intermediary must establish a Revolving Loan Fund and contribute an amount equal to at least 20 percent of the Grant. The supplemental contribution must come from Intermediary's funds which may not be from other Federal Grants, unless permitted by law.

(b) *Use of supplemental contribution.* The Intermediary's contribution will only be used to make REDG loans and not other investment purposes. The Intermediary's contribution must remain a permanent part of the Revolving Loan Fund until the Fund is terminated.

(c) *REDG Zero-Interest Loan Requirements.* The Fund is made up of Rural Development and Intermediary contributions and must be loaned in accordance with one of the following 2 options:

(1) The contribution may be used to fund the same Project that Rural Development is funding. The interest rate on that portion of the financing using Rural Development funds will be at zero percent. The interest rate on that portion of the financing using the Intermediary's contribution may be greater than zero percent but must be less than, or equal to, the prevailing prime rate. Using this option, loan security and recovery of loan losses must provide for the pro rata recovery and distribution between the Intermediary and Rural Development based on the respective amounts of each contribution to the total loan amount for the Project.

(2) The Intermediary's contribution may be used to fund Projects separate from the Project financed with Rural Development funds, provided that the Project is eligible in accordance with § 4280.21.

(3) Whether the Intermediary chooses the option under paragraph (c)(1) or paragraph (c)(2) of this section, its contribution must be used to fund an eligible Project within 3 years from the date of the Grant agreement. If the Intermediary fails to use its contribution within this 3-year period, Rural Development will terminate the Grant.

(d) *Intermediary's supplemental funds.* Once revolved, monies from the Fund may be loaned at an interest rate called for in the Revolving Loan Fund Plan, not to exceed the prevailing prime rate.

(e) *Eligible purposes only.* Until the total amount in the Fund has been loaned, all loans must be made for eligible purposes as stated in § 4280.21. After the Fund has been loaned, in accordance with § 4280.21 of this subpart, the Intermediary shall make loans to finance rural economic development purposes in accordance with the Revolving Loan Fund Plan. All loan repayments, including interest earned, must be deposited into the Fund.

(f) *Termination for cause.* Rural Development will terminate the Fund and require repayment of the Grant funds in accordance with 7 CFR parts 3015 and 3019 if Rural Development determines that the Fund is not being operated according to the approved Revolving Loan Fund Plan, this subpart, or for other good cause determined by Rural Development, such as questionable prepayment of initial loans.

(g) All REDG Loans must be made to Rural Ultimate Recipients.

#### **§ 4280.24 Revolved funds.**

Rural Development and the Intermediary's supplemental funds will be considered revolved after they have been loaned to Ultimate Recipients and subsequently repaid. Loans made from revolved funds will not require prior approval of Rural Development for creditworthiness or environmental clearance purposes. All other Federal compliance requirements, including those in this subpart, remain in effect.

#### **§ 4280.25 Revolving Loan Fund Plan.**

Each REDG Intermediary must adopt a Rural Development-approved plan that specifies that:

(a) The initial loan made from the Fund will be at zero percent interest and have a maximum term of 10 years;

(b) Loans made from loan repayments may carry an interest rate less than, or equal to, the prevailing prime rate. The Intermediary determines repayment terms and security arrangements on these loans.

(c) Loans made from repayments of REDG loans must be for eligible Program purposes;

(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions; and

(e) No changes will be made to a Rural Development-approved Revolving Loan Fund Plan without the prior written approval of Rural Development.

#### **§ 4280.26 Administration and operation of the Revolving Loan Fund.**

(a) The Intermediary will operate and administer the Revolving Loan Fund. The Intermediary may contract with a third party for administrative services regarding the Fund. However, the Intermediary must permanently retain all Project review, approval, and monitoring authority and responsibility. This authority and responsibility cannot be delegated to any other person or entity.

(b) Up to 10 percent of Rural Development Grant funds may be applied toward operating expenses over the life of the Fund. Operating expenses include the costs of administering the Fund and Technical Assistance provided to Project owners by Independent Providers.

(c) In cases where the Intermediary uses its supplemental contribution to the Revolving Loan Fund for a Project other than the Project that resulted in the Intermediary being awarded the Grant, the loan terms must not exceed 10 years and the interest rate must be less than, or equal to, the prevailing prime rate.

#### **§ 4280.27 Ineligible purposes.**

Zero-Interest Loans may not be used:

(a) For activities that would adversely affect the environment, or activities that limit the choice of reasonable alternatives prior to satisfying Rural Development environmental requirements;

(b) To pay off or refinance any existing indebtedness or costs of the Project that were incurred prior to Rural Development receipt of the Intermediary's completed application;

(c) For any electric or telecommunications purpose or for the Intermediary's electric or telecommunications operations, for affiliated operations of the Intermediary, or for the benefit of other Intermediaries or their affiliated operations, except those purposes contained in § 4280.15(f);

(d) To pay the salaries of any employee or owner of the Intermediary, its subsidiaries, or affiliates, except for salaries incurred in administering a

Revolving Loan Fund established under the REDG Program;

(e) For community antenna or cable television systems or facilities;

(f) For residential purposes such as residential dwellings and land sites; facilities to provide entertainment television; to transfer property between owners without making improvements that will promote or sustain economic development in Rural Areas; or for personal, non-business related vehicles;

(g) Where there is directly or indirectly a conflict of interest or the appearance of a conflict of interest in the Project; for Intermediaries this would include a situation in which the Intermediary, its officers, managers, Board of Directors, employees, their spouses, children, or close relatives, have a financial or ownership interest in the Project being funded, including its construction or development;

(h) For any purpose when receipt of loan funds is conditioned upon the requirement that the Ultimate Recipient acquire electric or telecommunications service from the Intermediary or its affiliates;

(i) For any gambling activity;

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

(k) For proposed Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510);

(l) For any illegal activity or any activity involving prostitution;

(m) For Agricultural Production, except where the Project is a farmer-owned cooperative or similar organization where the benefits of the Project are passed on to the farmer-owners, and the Agricultural Production is part of an integrated business that processes the agricultural products, and the Agricultural Production portion of the loan will not exceed 50% of the loan amount;

(n) For any pass-through Grant funding activity (a Grant by the Intermediary to the Ultimate Recipient);

(o) Provision of only local exchange voice telephone service; or

(p) for any other purpose announced in a notice by Rural Development. This will not affect Grants that have already been awarded.

#### § 4280.28 [Reserved]

#### § 4280.29 Supplemental financing required for the Ultimate Recipient Project.

(a) For REDL loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the Project equal to at least 20 percent of the loan to the Intermediary. For

REDG grants, the Intermediary must provide supplemental funds, to capitalize the Revolving Loan Fund, equal to at least 20 percent of the Grant to the Intermediary.

(b) Funds provided by the Ultimate Recipient must be:

(1) Cash or its equivalent;

(2) Provided after Rural Development receives the completed application; and

(3) Disbursed for an eligible Project within a three year period that begins on the day the Intermediary signs the Grant agreement.

(c) Satisfactory evidence of the Ultimate Recipient's funds must be provided to Rural Development before it will advance any funds to the Intermediary.

#### § 4280.30 Restrictions on the use of REDL or REDG funds.

(a) *Conflict of interest.* The Intermediary must not own or manage any Ultimate Recipient Project, unless the Project is acquired as a result of servicing a loan made from the Revolving Loan Fund. Conflicts of interest and all appearances of a conflict of interest are not permitted.

(b) *Fees.* The Intermediary may charge reasonable loan servicing fees, which are limited to one percent per year of the principal amount outstanding on the loan; reasonable professional service fees that are customary for the service being provided and in accordance with any standard fee schedules that have been established for the service; and reasonable expenses the Intermediary has incurred from Independent Providers.

(c) *Interest earnings.* Any interest earned by the Intermediary on advances of Rural Development REDG or REDL funds prior to the disbursement for the Project, must be returned to Rural Development.

#### §§ 4280.31–4280.35 [Reserved]

#### § 4280.36 Other laws that contain compliance requirements for these Programs.

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

(b) *Equal opportunity and nondiscrimination.* Rural Development will ensure that equal opportunity and nondiscriminatory requirements are met in accordance with the Equal Credit

Opportunity Act and 7 CFR part 15d, conducted by USDA. Rural Development will not discriminate against applicants on the bases of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(c) *Civil rights compliance.* Recipients of Grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901 subpart E, § 1901.204. Initial compliance reviews will be conducted with the Intermediary when Form RD 400–4, "Assurance Agreement," is signed. For each loan or Grant an Intermediary receives, a new Form RD 400–4 must be completed. Each Ultimate Recipient must go through the same pre-award compliance review process and must also sign Form RD 400–4. For loans and Grants, a pre-award review is required before loan or Grant approval or any disbursement of funds. For Intermediaries, a post-award compliance review is required 90 days after closing the loan or Grant. This review is not required for Ultimate Recipients. Subsequent compliance reviews will be conducted 3 years from the date the post-award compliance review is completed for Intermediaries and 3 years from the date the pre-award compliance review is completed for Ultimate Recipients. Where Grant funds are used for a Revolving Loan Fund, compliance reviews are required for the Intermediaries for as long as the Fund is in operation. For Ultimate Recipients, compliance reviews are conducted until the loan is repaid to the Fund.

(d) *Architectural barriers.* All facilities financed with Zero-Interest Loans that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to and usable by disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and the "Uniform Federal Accessibility Standards", (41 CFR part 101–19.6, Appendix A).

(e) *Uniform relocation assistance.* Relocations in connection with these

Programs are subject to 49 CFR part 24 as referenced by 7 CFR part 21 except that the provisions in title III of the Uniform Act do not apply to these Programs.

(f) *Drug-free workplace.* Grants made under these Programs are subject to the requirements contained in 7 CFR part 3021 which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–706). An Intermediary requesting a REDG Grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(g) *Debarment and suspension.* The requirements of 7 CFR part 3017 are applicable to these Programs.

(h) *Intergovernmental review of Federal programs.* These Programs are subject to the requirements of Executive Order 12372 (3 CFR 1982 Comp., p. 197) and 7 CFR part 3015, subpart V which implements Executive Order 12372. Proposed Projects are subject to the State and local government review process contained in 7 CFR part 3015.

(i) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, and 7 CFR part 3018, are applicable to these Programs.

(j) *Earthquake hazards.* These Programs are subject to the seismic requirements of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706).

(k) *Environmental requirements.* The requirements of 7 CFR part 1940, subpart G, are applicable to these Programs and to the loans made from the Revolving Loan Fund using Rural Development funds. Financial assistance from the Revolving Loan Fund, when funds are derived from repayments by third parties, is not considered Federal assistance for purposes of meeting the compliance requirements of 7 CFR part 1940, subpart G.

(l) *Affirmative fair housing.* If applicable, the Intermediary will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601–3631).

(m) *Flood hazard insurance.* These Programs are subject to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by 42 U.S.C. 4001–4129.

(n) *Audits.* These Programs are subject to 7 CFR part 3052.

#### **§ 4280.37 Application forms and filing dates.**

(a) The Intermediary may obtain forms that supplement the written narrative sections of its application from the Rural Development State Office for the State where the Intermediary is located.

(b) An original copy only of the application is to be filed with the Rural Development State Office. No other copies are required.

#### **§ 4280.38 Maximum amount of loans or Grants.**

During any given fiscal year, Rural Development will publish an announcement of available loan and Grant funds and will indicate the maximum loan and Grant amounts for which an Intermediary or prospective Intermediary may apply. This announcement will also include contact information and application deadlines. All pending applications on file at RBS, including both loan and Grant applications, from the same Intermediary or prospective Intermediary for the same Project will be considered to be one application in determining that the maximum size of the application is in accordance with this section.

#### **§ 4280.39 Contents of an application.**

An application for a loan or a Grant must contain the following:

(a) Required forms and certifications:

(1) Standard Form 424, “Application for Federal Assistance,” signed by an authorized representative of the Intermediary.

(2) A Resolution of the Board of Directors signed by the directors and certified by the Intermediary’s board secretary. The board resolution must indicate whether the Intermediary is requesting a loan or Grant, agree to the provisions of this subpart and the loan or Grant agreement including the Intermediary’s 20 percent Fund contribution, and state that the Intermediary has the legal authority to enter into a loan or Grant agreement under these Programs;

(3) Form AD 1047, “Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions,” and Form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transactions.”

(4) Assurance statement for the Uniform Act signed by the Ultimate Recipient. This statement provides Rural Development with the required assurance statement that any relocations of persons or acquisitions of real property, as part of completing the Ultimate Recipient Project, will be handled in accordance with this statute.

(5) RD Instruction 1940–Q, Exhibit A–1, applies if the loan is greater than \$150,000 or the Grant is greater than \$100,000;

(6) SF LLL, “Disclosure of Lobbying Activities,” (if the Intermediary or the

Ultimate Recipient engages in lobbying activities);

(7) Form AD 1049, “Certification Regarding Drug-Free Workplace Requirements,” for Grants only;

(8) Seismic certification if construction of a building is proposed. The Project owner certifies that any building constructed will comply with standards that reduce the damage caused by earthquakes;

(9) Form RD 1940–20, “Request for Environmental Information”; and

(10) RUS Form 7, “Financial and Statistical Report” and RUS Form 7a “Investments, Loan Guarantees, and Loans,” or similar information.

(b) A written narrative section must be provided. This section consists of the following:

(1) A Project description, including details of the work to be performed with Rural Development funds, and a business plan, including a discussion of management and prior experience of the Ultimate Recipient.

(2) A discussion of how the Project meets each selection factor in § 4280.42(b).

(3) A Revolving Loan Fund Plan is required if the Intermediary is applying for a Grant to establish a Revolving Loan Fund.

#### **§ 4280.40 [Reserved]**

#### **§ 4280.41 Environmental review of the application.**

(a) Rural Development will conduct a review for the potential of any environmental impacts resulting from the proposed Project identified in the application and inform the Intermediary of any additional information Rural Development needs and any subsequent environmental requirements necessary for Rural Development to make a finding.

(b) Rural Development will conduct all necessary environmental reviews as prescribed in 7 CFR part 1940, subpart G. These reviews must be completed before the application can be considered for approval.

#### **§ 4280.42 Application evaluation and selection.**

(a) Rural Development will evaluate the application and score it based on the selection factors in this section. All applications will be ranked on a nationwide basis, based on the total points scored.

(b) The application will be evaluated and scored using the information provided in accordance with § 4280.39(b)(2) of this subpart.

(1) *Nature of the Project.* Rural Development will award up to 60 points based on whether the Project:



<p>(i) Is a for-profit business, Business Incubator, industrial building or park, or an infrastructure connection project (such as streets or utilities)—20 points;</p> <p>(ii) Provides Technical Assistance to rural businesses or rural residents, or educates or provides medical care to rural residents—20 points;</p> <p>(iii) Will enhance rural economic development by providing Advanced</p>	<p>Telecommunications services and computer networks for medical, educational, and job training services. This review will be based on the application's telecommunications design—20 points.</p> <p>(2) <i>Number of direct full-time equivalent jobs created or saved within a 3-year period.</i> To calculate full-time</p>	<p>equivalent Direct-Jobs, count two part-time jobs as one full-time job or three part-time or seasonal jobs as one full-time job. If the total numbers of part-time and seasonal jobs add up to a fraction, round up to the next whole number after combining same. Indirect-Jobs or non-Rural jobs cannot be used for this calculation.</p>
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If the number of Rural full-time equivalent direct-jobs jobs created or saved per \$100,000 of total, Project cost is:	Then Rural Development will award:
(i) Greater than five .....	25 points.
(ii) From one to five .....	15 points.

<p>(3) <i>Supplemental funds for the Project.</i> Points will be based on a calculation of the amount of supplemental funds to be provided to</p>	<p>the Project. All supplemental funds used in the following calculation must be disbursed to the Project between the date of Rural Development receipt of the</p>	<p>application and 1 year after the first advance of funds by Rural Development:</p>
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If supplemental funds as a percentage of the Rural Development loan or grant to be provided to the Project are:	Then Rural Development will award:
(i) Greater than 200% .....	20 points.
(ii) From 100% to 200% .....	10 points.
(iii) From 50% to less than 100% .....	5 points.

<p>(4) <i>Unemployment rate for the county(ies) where the Project is physically located.</i> Rural Development</p>	<p>will compare the current unemployment rate(s) in the county(ies) to the State and national unemployment rates, and, if</p>	<p>applicable, award points under the following categories, whichever is greater:</p>
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If the unemployment rate(s) in the county(ies) where the Project will be located:	Then Rural Development will award:
(i) Exceeds the national unemployment rate by 30% or more .....	15 points.
(ii) Is greater than the national unemployment rate, but exceeds it by less than 30% .....	5 points.
(iii) Exceeds the State unemployment rate by 30% or more .....	10 points.
(iv) Is greater than the State unemployment rate but exceeds it by less than 30% .....	5 points.

<p>(5) <i>Per capita personal income for the county(ies) where the Project is physically located.</i> Rural Development will compare the per capita personal</p>	<p>income in the county(ies) where the Project will be located to the national and State per capita personal income levels, and, if applicable, award points</p>	<p>under the following categories, whichever is greater:</p>
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If the per capita personal income level in the county(ies) is:	Then Rural Development will award:
(i) Less than or equal to 90% of the national level .....	15 points.
(ii) Between 90 and 100% of the national level .....	5 points.
(iii) Less than or equal to 90% of the State level .....	10 points.
(iv) Between 90 and 100% of the State level .....	5 points.

<p>(6) <i>Rural Area location.</i> (i) If the Project is physically located in an incorporated city or town or equivalent having a population of 1,249 or less, or if it is physically located in an unincorporated area, Rural Development will award 20 points.</p>	<p>population of 1,250 to 2500, Rural Development will award 10 points.</p>	<p>to the present, Rural Development will award 10 points.</p>
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<p>(ii) If the Project is physically located in an incorporated area having a</p>	<p>(7) <i>Decline in population for the county where the Project is physically located.</i> If there has been a decline in population in the county where the Project will be located over the time period covered by the two most recent decennial censuses of the United States</p>	<p>(8) <i>Cushion of Credit Payments.</i> Rural Development will determine the level of Cushion of Credit Payments on deposit by the Intermediary, as follows:</p>
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If the Intermediary's Cushion of Credit account level is:	Then Rural Development will award:
(i) In excess of \$300,000, or a dollar amount in excess of 3 percent of the Intermediary's total assets, whichever is less .....	15 points.
(ii) Within the range of \$100,000 to \$299,999.99, or a dollar amount that is within the range of one percent to 2.99 percent of Intermediary's total assets, whichever is less.	10 points.
(iii) Within the range of \$10,000 to \$99,999.99, or a dollar amount that is within the range of 0.5 percent to .99 percent of Intermediary's total assets, whichever is less.	5 points.

(9) *Initial loan and Grant.* If the loan or Grant application will result in the first award to an Intermediary under these Programs, Rural Development will award 10 points.

(10) *County participation.* If the Project will be the first REDLG Project financed in a county Rural Development will award 10 points.

(11) The business plan for the Applicant's Ultimate Recipient will be evaluated by Rural Development and must include:

(i) A description of the business or Project plans, its management, and, if applicable, its products and operating plans. (The business plan evaluated by Rural Development for Advanced Telecommunications will be its telecommunications and engineering design)—up to 15 points; and

(ii) An appropriate financial plan, including actual balance sheets and income statements covering the most recent 3-year period (for applicants who have been in business this long), and projected balance sheets, income statements, and cash flow statements for the ensuing 3-year period, supported by assumptions showing the basis for the projections—up to 20 points.

**§ 4280.43 Discretionary points.**

The RBS Administrator has the discretion to designate up to 25 points (no more than 5 points for each of the following elements) based on whether the Project:

(a) Is located in a Rural Empowerment Zone, Rural Economic Area Partnership Zone, Rural Enterprise Community, or Champion Community;

(b) Is located in a county that has experienced the loss, removal, or closing of a major source or sources of employment in the last 3 years which causes an increase of 2 percentage points or more in the county's most recent unemployment rate compared with the same period immediately before the dislocation;

(c) Is located in a county that has experienced chronic or long-term economic deterioration;

(d) Is located in a county that was designated a disaster area by the President of the United States that significantly affected rural economic

development and job creation. The county must have been designated within 3 years prior to filing of the completed application with Rural Development; or

(e) Is consistent with the Rural Development State Office's approved strategic plan and mission area objectives and is identified as a priority area for assistance in the States' plan.

**§ 4280.44 Limitation on number of loans or Grants to an Intermediary.**

Depending on the amount of funds available, Rural Development may publish an announcement limiting an Intermediary to one selected Grant application and two selected loan applications in a fiscal year.

**§§ 4280.45–4280.46 [Reserved]**

**§ 4280.47 Non-selection of applications.**

Provided the application requirements have not changed, an application not selected will be reconsidered in 3 subsequent funding competitions for a total of four funding competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

**§ 4280.48 Post selection period.**

Rural Development will notify the Intermediary in writing if the application is selected. The documents to be executed by the Intermediary will include:

- (a) For a loan:
  - (1) A Letter of Conditions with Project-specific terms and conditions;
  - (2) A loan agreement with general terms and conditions;
  - (3) A note covering the repayment terms of the loan; and
  - (4) A legal opinion concerning the authority of the Intermediary to engage in the Project.
- (b) For a Grant:
  - (1) A Letter of Conditions with Project-specific terms and conditions;
  - (2) A Grant agreement with general terms and conditions; and
  - (3) A legal opinion concerning the authority of the Intermediary to participate in the Revolving Loan Fund and to engage in the Project.

**§ 4280.49 [Reserved]**

**§ 4280.50 Disbursement of Zero-Interest Loan funds.**

(a) For a REDL loan, Rural Development will disburse Zero-Interest Loan funds to the Intermediary in accordance with the terms of the executed loan agreement. All loan funds will be disbursed either as an advance to the Intermediary, in multiple advances, or as a reimbursement for eligible project costs, once the Intermediary has complied with Rural Development requirements.

(b) The Intermediary must provide to the Ultimate Recipient all loan funds that the Intermediary receives from Rural Development within one year of receiving them. If the Intermediary does not re-lend Rural Development funds within one year, the loan funds, and all interest earned on the loan funds, must be returned to the Agency.

(c) For a REDG loan, Rural Development will disburse Grant funds to the Intermediary in accordance with 7 CFR parts 3015 and 3019, as applicable. Specifically, Rural Development will disburse the Grant funds in advance if the following requirements are met:

(1) The Intermediary has established written procedures that will minimize the time elapsing between the transfer of funds from Rural Development and their disbursement to the Ultimate Recipient;

(2) The management system of the Intermediary meets the requirements of 7 CFR parts 3015 and 3019, as applicable;

(3) All necessary supplemental funds for the Project have been obligated or committed to the Revolving Loan Fund; and

(4) The requests for cash advances made by the Intermediary are limited to the minimum amounts needed and timed to be in accordance with the actual immediate cash needs of the Ultimate Recipient for carrying out the Project.

**§§ 4280.51–4280.52 [Reserved]**

**§ 4280.53 Loan payments.**

The Intermediary must make all REDL payments to Rural Development by

electronic funds transfer or other means as specified in the loan documents.

**§ 4280.54 Construction procurement requirements.**

Construction, including bidding and awarding of contracts, must be conducted in a manner that provides maximum open and free competition.

**§ 4280.55 Monitoring responsibilities.**

(a) The Intermediary must monitor the Project to ensure that:

(1) Funds are used only for the approved purposes as specified in the legal documents;

(2) Disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or other forms of evidence, which are maintained on the premises of the Intermediary;

(3) Project time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved; and

(4) The Project is in compliance with all applicable regulations.

(b) Rural Development may inspect and copy records and documents that pertain to the Project. The Intermediary must retain these records for the term of the Project loan plus 2 years. In addition, Rural Development may also perform Project site visits and reviews of the use of loan or Grant proceeds.

(c) Rural Development will review and monitor Grants in accordance with 7 CFR parts 3015, 3017, 3018, 3019, 3021, and 3052.

**§ 4280.56 Submission of reports and audits.**

(a) In addition to any reports required by 7 CFR parts 3015 and 3019, the Intermediary must submit the following monitoring reports to Rural Development:

(1) *Loan*. The Intermediary must submit Form RD 4280-1 "Survey of Recipients of Rural Economic Development Loan and Grant Program" to Rural Development on an annual basis until it no longer owes money to USDA under the REDLG Program.

(2) *Grant (Revolving Loan Fund)*. The Intermediary must submit the Form RD 4280-1 to Rural Development on an annual basis until all projects financed with Rural Development Grant proceeds have been repaid or are otherwise retired, whichever occurs last. Thereafter, on a triennial basis until the fund is terminated, the Intermediary will submit to Rural Development the Form RD 4280-1, reporting on the activity of all loans made from the Revolving Loan Fund.

(b) If the Intermediary does not have an existing loan with RUS, the Intermediary will submit a copy of its annual audit to Rural Development within 90 days of its completion. All REDL audits must be conducted in accordance with Generally Accepted Government Auditing Standards or Generally Accepted Accounting Principles and REDG audits in accordance with 7 CFR part 3052.

(c) Rural Development may require Ultimate Recipients that receive loans financed with Grant funds provided under the REDG Program to submit annual audits to comply with Federal audit regulations. In accordance with 7 CFR part 3052, Ultimate Recipients that are nonprofit entities, or a State or local government, may be required to submit an audit subject to the threshold established in OMB Circular No. A-133.

**§§ 4280.57-4280.61 [Reserved]**

**§ 4280.62 Appeals.**

An Intermediary may appeal any appealable adverse decision made by Rural Development that affects the Intermediary in accordance with 7 CFR part 11.

**§ 4280.63 Exception authority.**

Except as specified in paragraphs (a) through (c) of this section, the RBS Administrator may, on a case-by-case basis, make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or when such an exception is in the best interests of the Federal Government and is otherwise not in conflict with applicable law.

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

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

(c) *Rural area definition*. No exception to the definition of rural area, as defined, can be made.

**§§ 4280.64-4280.99 [Reserved]**

**§ 4280.100 OMB control number.**

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0035. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Dated: May 17, 2007.

**Douglas L. Faulkner**,  
Deputy Under Secretary, Rural Development.  
[FR Doc. 07-2636 Filed 5-29-07; 8:45 am]  
BILLING CODE 3410-XY-U

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Part 103**

[Docket No. USCIS-2006-0044; CIS No. 2393-06]

RIN 1615-AB53

**Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule**

**AGENCY:** United States Citizenship and Immigration Services, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule adjusts the fee schedule for U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit applications and petitions, including nonimmigrant applications and visa petitions. These fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. USCIS is revising these fees because the current fee schedule does not adequately reflect current USCIS processes or recover the full costs of services provided by USCIS. Without an immediate adjustment of the fee schedule, USCIS cannot provide adequate capacity to process all applications and petitions in a timely and efficient manner. In addition, the revised fees will eliminate USCIS' dependency on revenue from interim benefits, temporary programs, and premium processing fees. This rule also merges fees for certain applications and petitions so applicants and petitioners will only have to pay a single fee. In addition, the rule expands the classes of aliens that will be exempt from paying filing fees for certain immigration benefits, and modifies the criteria for waiving the filing fee due to an individual's inability to pay. Based on comments received by USCIS during the public comment period, this rule changes the fees for adjustment of status applications, and the fee waiver and exemption eligibility criteria for several immigration benefits. This final rule will provide sufficient funding for USCIS to meet national security, customer service, and processing time goals, and to sustain and improve service delivery.