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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4280

RIN 0570-AA85

Guaranteed Loanmaking and Servicing Regulations; Corrections

AGENCIES: Rural Business-Cooperative Service and Rural Utilities Service; USDA.

ACTION: Correcting amendments.

SUMMARY: On June 3, 2016, the Rural Business-Cooperative Service promulgated changes to its Guaranteed Loanmaking and Servicing Regulations. Following final implementation of this final rule, RBS found that conforming amendments for adoption for the Rural Energy for America Program (REAP) had not been included. This technical correction makes amendments to allow REAP to continue to use procedures and forms from the revised Guaranteed program.

DATES: Effective [Insert date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Need for Corrections

The Agency published a final rule on June 3, 2016, (81 FR 35984) for the purpose of improving program delivery, clarifying the regulations to make them easier to understand, and reducing delinquencies. The Agency discovered that conforming amendments had not been included for 7 CFR part 4280 to continue to allow the Rural Energy for America Program to use procedures and forms already codified for the Guaranteed program and correctly reference revised 7 CFR part 4279. This notice makes technical corrections to include the actual language in 7 CFR part 4280 referencing language from 7 CFR part 4279 prior to amendment of such regulation in 2017, update references included in 7 CFR part 4280 to updated sections of 7 CFR part 4279, and update the title of Form RD 4280-2 from Grant Agreement to Financial Assistance Agreement, all as intended at the time of revision of 7 CFR part 4279. In addition, information on lender eligibility and credit quality is updated to bring them into conformance with the Guaranteed program and current implementation.

List of Subjects in 7 CFR Part 4280

Business and industry, Energy, Grant programs – Business, Loan programs—Business and industry, Rural areas.

Accordingly, 7 CFR chapter XLII is amended by making the following correcting amendments:

PART 4280 – LOANS AND GRANTS

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

Authority: 5 U.S.C. 301; 7 U.S.C. 940c; and 7 U.S.C. 1932(c).

Subpart B – Rural Energy for America Program

§§ 4280.103, 4280.110, 4280.112, 4280.113, 4280.122, 4280.123, and 4280.196 [Amended]

2. In §§ 4280.103, 4280.110, 4280.112, 4280.113, 4280.122, 4280.123, and 4280.196, remove the words “Grant Agreement” and add in their place the words “Financial Assistance Agreement” wherever they appear in the following places:

- a. § 4280.103;
- b. § 4280.110(i) introductory text, (i)(1), and (i)(2);
- c. § 4280.112(b)(2);
- d. § 4280.113(a)(4)(ii)(A) and (B);
- e. § 4280.122(d), (e), (f), (g) and (h);
- f. § 4280.123 introductory text and (d);
- g. § 4280.196 introductory text.

3. Amend § 4280.103 by:

a. Placing the newly designated definition *Financial Assistance Agreement (Form RD 4280-2, Rural Business Cooperative Service Financial Assistance Agreement, or successor form)* in alphabetical order.

b. Revising the definition of *State* to read as follows:

§ 4280.103 Definitions.

* * * * *

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

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4. Revise § 4280.125 to read as follows:

§ 4280.125 Compliance with §§ 4279.29 through 4279.99 of this chapter.

(a) *General.* Except for § 4279.29 of this chapter, all loans guaranteed under this subpart must comply with the provisions found in §§ 4279.30 through 4279.99 of this chapter.

(b) Instead of § 4279.29 of this chapter, the Eligible lenders provisions of this subpart are:

(1) Traditional lenders. An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions provided, they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies provided they are regulated by a State or National insurance regulatory agency. Eligible lenders include the National Rural Utilities Cooperative Finance Corporation.

(2) Other lenders. Rural Utilities Service borrowers and other lenders not meeting the criteria of paragraph (a) of this section may be considered by the Agency for eligibility to become a guaranteed lender provided, the Agency determines that they have the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program.

(i) Such a lender must:

(A) Have a record of successfully making at least three commercial loans annually for at least the most recent 3 years, with delinquent loans not exceeding 10 percent of loans outstanding and historic losses not exceeding 10 percent of dollars loaned, or when the proposed lender can demonstrate that it has personnel with equivalent previous experience and where the commercial loan portfolio was of a similar quantity and quality; and

(B) Have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender.

(ii) A lender not eligible under paragraph (a) of this section that wishes consideration to become a guaranteed lender must submit a request in writing to the State Office for the State where the lender's lending and servicing activity takes place. The lender's written request must include:

(A) Evidence showing that the lender has the necessary capital and resources to successfully meet its responsibilities.

(B) Copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities. If licensing by the State is not required, an attorney's opinion to this effect must be submitted.

(C) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity; status of loan portfolio including delinquency rate, loss rate as a percentage of loan amounts, and other measures of success; experience of management and loan officers; audited financial statements not more than 1 year old; sources of funds for the proposed loans; office location and proposed lending area; and proposed rates and fees, including loan origination, loan preparation, and servicing fees. Such fees must not be greater than those charged by similarly located commercial lenders in the ordinary course of business.

(D) An estimate of the number and size of guaranteed loan applications the lender will develop.

(3) Expertise. Loan guarantees will only be approved for lenders with adequate experience and expertise to make, secure, service, and collect REAP loans.

5. Revise § 4280.126 to read as follows:

§ 4280.126 Guarantee/annual renewal fee.

Except for the conditions for receiving reduced guarantee fee and unless otherwise specified in a Federal Register notice, the provisions specified in § 4279.120 of this chapter apply to loans guaranteed under this subpart.

6. Amend § 4280.129 by revising paragraph (e)(3) to read as follows:

§ 4280.129 Guaranteed loan funding.

* * * * *

(e) * * *

(3) Routine lender fees, as described in § 4279.120 (c) of this chapter.

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7. Amend § 4280.130 by revising paragraph (b) to read as follows:

§ 4280.130 Loan processing.

* * * * *

(b) The provisions found in §§ 4279.125(d), 4279.150, 4279.166, 4279.161, and 4279.167(b) of this chapter do not apply to loans guaranteed under this subpart.

8. Revise § 4280.131 to read as follows:

§ 4280.131 Credit quality.

The lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a written credit analysis including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) *Cash flow.* All efforts will be made to structure or restructure debt so that the business has adequate debt coverage and the ability to accommodate expansion.

(b) *Collateral.* (1) Collateral must have documented value sufficient to protect the interest of the lender and the Agency and, except as set forth in paragraph (b)(2) of this section,

the discounted collateral value will be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy.

(2) Some businesses are predominantly cash-flow oriented, and where cash flow and profitability are strong, loan-to-value coverage may be discounted accordingly. A loan primarily based on cash flow must be supported by a successful and documented financial history.

(c) *Industry*. Current status of the industry will be considered and businesses in areas of decline will be required to provide strong business plans which outline how they differ from the current trends. The regulatory environment surrounding the particular business or industry will be considered.

(d) *Equity*. Borrowers must demonstrate evidence of a financial contribution in the project of not less than 25 percent of total Eligible Project Costs. Federal grant funds may be used as the financial contribution.

(e) *Lien priorities*. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

(f) *Management*. A thorough review of key management personnel will be completed to ensure that the business has adequately trained and experienced managers.

9. Revise § 4280.134 to read as follows:

§ 4280.134 Personal and corporate guarantees.

Except for Passive Investors, all personal and corporate guarantees must be in accordance with § 4279.132 of this chapter.

10. Amend § 4280.137 by revising paragraphs (b)(2)(viii)(C) and (c)(1), and the first sentence of paragraph (c)(2), to read as follows:

§ 4280.137 Application and documentation.

* * * * *

(b) * * *

(2) * * *

(viii) * * *

(C) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the borrower's business operation that reflects the use of the loan proceeds or grant award; 2 additional years of financial statements, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

* * * * *

(c) * * *

(1) *Application contents.* If the application is for a loan with total project costs in the amount of \$80,000 or less, the application must contain the information specified in § 4280.119(b), except as specified in paragraph (c)(2) of this section (e.g., the grant application

SF-424 forms under § 4280.119(b) are not required to be submitted), and must present the information in the same order as shown in § 4280.119(b). If the application is for less than \$200,000, but more than \$80,000, the application must contain the information specified in § 4280.118(b), except as specified in paragraph (c)(2) of this section (e.g., the grant application SF-424 forms under § 4280.117(a) are not required to be submitted), and must present the information in the same order as shown in § 4280.118(b). If the application is for \$200,000 and greater, the application must contain the information specified in § 4280.117, except as specified in paragraph (c)(2) of this section, (e.g., the grant application SF-424 forms under § 4280.117(a) are not required to be submitted), and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (c) of this section must use Form RD 4279-1, “Application for Loan Guarantee,” and the forms and certifications specified in paragraphs (b)(2)(ii), (iii) (if not previously submitted), (v), (viii), (ix), (x), and (xi) of this section. * * *

11. Amend § 4280.142 by revising the first sentence of the introductory text to read as follows:

§ 4280.142 Conditions precedent to issuance of loan note guarantee.

The provisions of § 4279.181 of this chapter apply except for § 4279.181(a)(9)(v). * * *

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Dated: June 8, 2018

Bette B. Brand
Administrator
Rural Business-Cooperative Service

Dated: June 14, 2018

Kenneth L. Johnson

Administrator

Rural Utilities Service

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