



November 18, 2009

Branch Chief
Regulations and Paperwork Management Branch
U.S. Department of Agriculture
Via Federal eRulemaking Portal: www.regulations.gov

Re: Comments on Proposed Rule 7 CFR 4280, Rural Microentrepreneur Assistance Program

Pursuant to the Proposed Rule for the Rural Microentrepreneur Assistance Program (RMAP), 7 CFR 4280 published October 7, 2009, the Corporation for Enterprise Development (CFED) submits the following comments.

CFED appreciates the United States Department of Agriculture's (USDA or "the Agency") publication of the proposed rule that would implement the 2008 Rural Microentrepreneur Assistance Program. We commend the considerable, thoughtful and insightful work of the Agency staff to develop this proposed rule and hope that our insight proves valuable in the formulation of the Final Rule.

CFED is a national nonpartisan, nonprofit organization dedicated to expanding economic opportunity to include all people. We believe such economic opportunity will bring greater social equity, alleviate poverty and lead to a more sustainable economy. As a leader in economic development for nearly three decades, CFED collaborates with diverse partners at the national, regional, state and local levels. We bring together community practice, public policy and private markets in new and effective ways.

Our comments address several specific areas:

1. Definitions.
2. Administrative concerns.
3. "Enhancement Grant" program structure.
4. Loan program structure and provisions.
5. Technical Assistance grant structure.
6. Application scoring.
7. Program funding structure.

Note: All references below to "the law" or "the statute" refer to section 6022 of the *Food, Conservation, and Energy Act of 2008* (P.L. 110-246). All references to "report language" refer to H.Rept.110-256 Sec.367.

1. Definitions

§4280.302(a), Definition of microentrepreneur and microenterprise

This definition states that "...All microentrepreneurs assisted under this regulation must be located in rural areas." Statute calls for microenterprises to be located in rural areas, and not necessarily for microentrepreneurs to live in rural areas. While some entrepreneurs do work from home, our concern is that an entrepreneur that provides a service or operates a microbusiness in a rural area may be disqualified from participation under this definition.

CFED recommends changing this definition to read "...All microenterprises assisted under this regulation must be located in rural areas."

§4280.316(b)(3)(iii) and Defining Socially Disadvantaged Microentrepreneurs

The scoring rules concerning provision of Technical Assistance to microentrepreneurs, §4280.316(b)(3)(iii), contains a reference to an undefined group of "socially disadvantaged" microentrepreneurs. Specifically, we are concerned that it is not stated whether "socially disadvantaged" includes gender (presumably female microentrepreneurs). This is inconsistent from §4280.316(b)(v) of the Proposed Rule ("Diversity of microloan portfolio.") where gender is a specifically mentioned demographic group.

CFED recommends either (a) including a definition for "socially disadvantaged" under §4280.302 that includes women and other disadvantaged groups, or (b) expanding §4280.316(b)(1)(v) to include an explanation of the term "socially disadvantaged." Ultimately, we believe that female microentrepreneurs should be considered "socially disadvantaged" for the purposes of any provision under the Proposed Rule.

2. Administrative Concerns

Applications by Collaboratives

The Proposed Rule should be clarified on the ability of multiple groups to collaborate on an application (i.e. statewide microenterprise associations, microenterprise intermediaries, statewide community action agency/programs, etc.). Many such collaboratives could prove valuable in unserved and underserved rural areas, and bring together efficient and effective microenterprise development services among multiple MDOs.

CFED recommends that the Final Rule be clarified to allow applications by such collaboratives where other eligibility requirements are met.

(I)(B)¶6 (Pp. 51714-51715), Announcement of Funding Availability

This paragraph states that the availability of funds will be announced annually in the Federal Register, but does not provide a date fixed or a proxy against which Microenterprise Development Organizations (MDOs) can expect to learn of funding

availability. CFED understands that the Congressional appropriations process is unpredictable, and that it would prove difficult for USDA to set a specific date or even quarter by which funding would be made available in any given Fiscal Year. At the same time, we are also seeking maximum transparency throughout the RMAP process.

CFED proposes that USDA set a timeline for notice of funding availability that both reflects the Congressional funding process and allows for greater accountability to RMAP participants. We recommend that notice of funding availability be made either (a) no later than 45 days after the enactment of the appropriate spending bill, or (b) no later than 30 days after the disbursement of funds and/or budget authority to USDA.

3. "Enhancement Grants" Program Structure

§4280.310(a)(5), Enhancement Grants

Section 6022(b)(4)(A) of the statute addresses "Grants to Support Rural Microenterprise Development." As stated in the law, these grants are made to MDOs to "provide training, operational support, business planning, and market development assistance, and other related services to rural microentrepreneurs." After careful examination of both statute and accompanying report language, CFED believes that USDA has misinterpreted this provision and created a grant process (i.e. the "Enhancement Grants") that fails to address Congressional intent.

First, a plain reading of the statute shows the primary intent to be the provision of operating grants to MDOs, in order for them to better serve rural microentrepreneurs. Removing examples of the type of technical assistance, the statutory section reads (with the critical words underlined): "The Secretary shall make grants to microenterprise development organizations to (I) provide training ... to rural microentrepreneurs ..." Taken at face value, we believe that the proposed "Enhancement Grant" method is not an accurate regulatory representation of statute.

In addition, report language accompanying the statute (H.Rept. 110-256 Sec.367(b)(3)) provides further guidance in stating that "The Secretary may make a grant under the program to a qualified organization (i) to provide training, operational support, or a rural capacity building service to a qualified organization to assist the qualified organization in developing microenterprise training, technical assistance... and other related services..." The proposed "Enhancement Grant" also fails to meet stated Congressional intent as expressed in the law's report language, primarily by awarding grants to MDO trainees rather than MDO trainers as mandated.

The result of these misinterpretations are that the "Enhancement Grant" proposed by USDA does not result in technical assistance to rural microentrepreneurs as intended by the law nor as a tool for broader field-wide capacity building as further outlined in the report language. While capacity building can involve the staff development purposes expressed in the "Enhancement Grants" provision, capacity building of the rural microenterprise development field as a whole provides a broader scope by which to build

the field's infrastructure capacity. As a general rule, rural MDOs have few resources for technical assistance for their clients, and RMAP should be designed and implemented to help to fill the gaps in service that exist in many rural areas.

CFED proposes deleting the "Enhancement Grant" program as suggested by USDA in the Proposed Rule, and replacing it with a "Rural Microenterprise Field Technical Assistance Grant" that adheres to both statute and report language. This grant should have two tracks for which an MDO can apply: (a) providing MDOs with core funding to operate their technical assistance programs, and (b) providing a microenterprise collaborative (e.g. State Microenterprise Association, etc.) with funding for large-scale, field-wide capacity building.

To achieve maximum reach, CFED recommends that MDOs be permitted to participate in the "Rural Microenterprise Field Technical Assistance Grant" without also having to participate in the lending portion of the broader RMAP program.

In addition, CFED also proposes that operating/technical assistance grants to intermediaries be given the imperative, with funding provided under the "Rural Microenterprise Field Technical Assistance Grant" split on a 4:1 ratio towards providing MDOs with core funding.

Lastly, should the Agency implement this recommendation, it will need to develop a separate application scoring process designed to gather and evaluate information on the applicant's capacity to provide such services and/or their proposed plan for doing so.

4. Loan Program Structure and Provisions

§4280.311(e), Loan provisions for Agency loans to Microlenders.

The Proposed Rule sets the maximum amount that any MDO may borrow in a single year at \$500,000, and the aggregate debt owed to the program by any single MDO at no more than \$2,500,000. Since the purpose of RMAP is, in part, to increase the number of loans made to rural microenterprises, then it would be best not to set a low limit in the level of funding that can be provided. While most rural MDOs will not borrow the maximum amount, large lenders that can demonstrate success in making and managing a large volume of loans should have the opportunity to do so.

CFED recommends raising these amounts to \$1 million and \$4 million, respectively. In addition, the maximum amount of the accompanying TA grant received by the MDO (currently set in the Proposed Rule at \$100,000) should also increase in conjunction with these higher limits. As statute mandates that not more than 25% of the total outstanding balance of microloans made by the MDO, CFED recommends that TA grants received under the loan provisions of RMAP be the maximum allowable by law.

§4280.311(d)(10), Disbursement of loan funds to MDOs.

§4280.311(d)(11), Deadline for making microloans.

§4280.311(d)(12), Microloan "pipeline."

This section of the Proposed Rule outlines Agency lending to MDOs, as well as MDO re-lending to microentrepreneurs. In particular, the Proposed Rule states that MDOs will be eligible to receive a disbursement of up to 25 percent of the total loan amount at the time of the loan closing, with additional disbursements available on a quarterly basis. In addition, an MDO must make a loan within 30 days of any disbursement, and must furthermore justify disbursements with a description of their incoming "microloan pipeline." The Proposed Rule goes on to explain that the disbursement, the deadline for making microloans, and the reference to the "microloan pipeline" all serve to "...ensure that microlenders utilize their funding in an appropriate manner..."

While CFED recognizes and applauds the Agency's initiative to prevent misuse of funds, we believe that the proposed process is highly problematic, disruptive, and potentially damaging to the success of RMAP.

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

Second, the Proposed Rule states that an MDO must make one or more microloans within 30 days of any disbursement it receives from USDA. Again, we feel that the Agency's unstated goal is to prevent the draw down of loan dollars for the purpose of receiving and possibly misusing TA grants. We feel that this rule is unnecessary and laden with unintended consequences. Should a microloan fall through on the day of closing, an MDO would be in violation of this rule through no fault of their own. We believe that the comprehensive approach stated above, or one similar to that, would better accomplish both the goals of the Agency and of MDOs.

Lastly, the Proposed Rule states that requests by MDOs for loan disbursement must be accompanied by a description of the incoming "microloan pipeline." This rule has two very serious flaws: (a) it conflates borrower interest in pursuing a microloan with the certainty of that borrower qualifying for a microloan, and (b) it fails to consider the impact of unpredictable economic factors and outside forces.

A "microloan pipeline," as the term is used in the microenterprise field, is not a predictor of future borrowers but rather an expression of loans in the process of closing. While an MDO may work to forecast demand for microloans, the incoming pipeline is ultimately

unpredictable and does not provide a reliable proxy by which to judge the intent of MDOs requesting a loan disbursement.

Again, CFED recommends allowing MDOs to draw down as needed and receive annual or quarterly Technical Assistance grants based on statutory allowances, program performance, and demonstrated needs. This recommendation includes eliminating the requirement that an MDO must make a microloan within 30 days of a disbursement received by USDA, and that the "microloan pipeline" be utilized as an indicator of microloan demand.

(IV)(F) (Pp. 51718), Regulatory Flexibility Act and the RMRF

This section of the rule clearly states that "Rural Development estimates that most of the administrative costs incurred by MDOs participating in the program will be covered by the interest rate spread between the one percent loan from Rural Development and the interest rate on loans made to the microentrepreneur by the MDO." However, this explanation of the role of income from microloans is not formally codified in Subpart D. Furthermore, Section 4280.311(a) of the Proposed Rule states that interest earnings accrued by the RMRF will become part of the RMRF and may be used only for limited purposes, primarily additional loans, payments to USDA, and, with advance notice to supplement the LLRF (§4280.311(d)(2)).

CFED recommends that USDA clarify that Section 4280.311(a) applies only to interest earnings on the underlying USDA loan to the MDO. In addition, USDA should codify that interest income from microloans: (a) need not be deposited into the RMRF, and/or (b) may be deposited and withdrawn from the RMRF without restriction. Failure to clearly allow MDOs to keep and use microloan interest income would likely render RMAP unusable for MDOs.

§4280.311(f)(2), Loan Loss Reserve Fund Capitalization §4280.311(f)(4) LLRF Funded in Advance

These sections of the Proposed Rule establish the rules and capitalization requirements of the loan loss reserve fund (LLRF) required pursuant to Section 6022(b)(3)(C) of the law. The Proposed Rule requires that the loan loss reserve be capitalized "in advance," and that it must be capitalized with non-federal funding.

Our work with rural MDOs and entrepreneurship development efforts indicates that sources of private funding are highly scarce in rural areas. Local and state public resources are also very limited, and declining due to current economic and budget circumstances. As a result, many rural MDOs are highly dependent upon federal funds to operate. We are concerned that these rural MDOs will automatically be excluded from RMAP because they have no (or limited) non-federal and particularly private funds to capitalize a loan loss reserve.

CFED recommends that USDA allow federal funds, such as Community Development Block Grant resources, to be used to capitalize the LLRF.

§4280.311(f)(3)(i), Replenishing the Loan Loss Reserve Fund

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

5. Technical Assistance Grants Structure

§4280.312(c), Technical Assistance Grants to MDOs

The Proposed Rule states that TA grants can only be used for people that have “received one or more microloans” from the MDO. This is contrary to statute, which explicitly states that these TA grant funds can be used for services to microentrepreneurs that “are seeking a loan from the” MDO (Section 6022(b)(4)(B)(i)(II)). The law clearly intends to support microentrepreneurs who are owners and operators of rural businesses or prospective owners of operators of rural businesses. The definition of “microentrepreneur” in both the law and Proposed Rule include both existing and prospective microentrepreneurs. This section ignore the need for training and technical assistance for prospective borrowers as mandated by law.

CFED recommends that the TA grant structure allow for the training and technical assistance of prospective microentrepreneurs as well as existing microentrepreneurs by awarding TA grants quarterly or annually, based on statutory allowances, program performance and demonstrated need. In addition, CFED also recommends that, during the first year of an intermediary's participation in RMAP, the TA grant should be a full-year grant based on the amount of the loan to the intermediary.

(III)(J) ¶4 (Pp. 51717), Technical Correction

This section states that TA grants will be based on the loan amount made to anMDO "in accordance with the statute." The statute does not at any time state that TA grants should be calculated in this manner, however the report language does allow for this mechanism.

6. Application Scoring

General Scoring Structure

Section 4280.316(a) of the Proposed Rule provides up to 45 points for all loan applications. §4280.316(a)(4) requires that resumes of all staff on the MDO’s organizational chart be provided in the application, and up to five points are awarded for both the “quality” of staff resumes and for inclusion of the organizational chart. Meanwhile, the same number of points is awarded for the MDOs understanding of microlending. The allocation of points for the basic scoring of all applicants fails to recognize what is important for MDOs to properly serve rural microentrepreneurs. The

ability of staff to administer the program can be determined through other required application items and through MDO history, and the points awarded for resumes and an organizational chart could be focused elsewhere.

§4280.316(b)(1)(v), Diversity of Microloan Portfolio

This Proposed Rule provides points for how closely an MDOs microloan portfolio tracks the demographics of their service area. The history of microenterprise in the United States revolves heavily around serving traditionally underserved markets of entrepreneurs; specifically minorities and women. As such, many MDOs specialize in serving certain traditionally underserved population segments of their service area. We are concerned that this rule would penalize MDOs for reaching out to these populations. CFED recommends that the scoring structure be altered so that the applications of MDOs that have stated missions to provide services to underserved populations are scored appropriately.

§4280.316(b)(5), Administrative Expenses

Section 4280.316(b)(5) of the Proposed Rule concerns use of TA grant funds (connected to the loan to MDOs) for administrative expenses by an MDO. The statute allows not more than 10 percent of the TA grant to be used to pay for administrative expenses (Section 6022 (4)(C)). The Proposed Rule arbitrarily provides points on an application according to how much below 10 percent an MDO proposes using for administrative expenses, providing zero points for 8 to 10 percent of the TA grant used for administrative expenses. An MDO could be penalized for doing precisely what the law allows. This section of the rule also has the potential to penalize non-profits (a focused eligible organization throughout the Proposed Rule) that may have no other access to funds for administrative expenses.

CFED recommends eliminating the point system for MDO proposals on use of TA grant funds connected to loans to MDOs for administrative expenses, and replacing it with a statement on administrative expenses that conforms to the law.

§4280.316(b)(2), Portfolio Management

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

widely-accepted measure of portfolio quality in the microenterprise or community development finance industry.

Furthermore, §4280.316(b)(2)(ii) requires applicants to “enter the total number of microloans 30 to 90 days in arrears or that have been written off at year end.” There are several issues with this approach. First, it conflates delinquent loans with loan losses, which are typically reported and assessed separately (in part because the commonly-accepted definitions of these measures require different denominators when calculating a percentage value). Second, the measures required in the Proposed Rule involve the number of late or written off loans, not the dollar value of those loans. In assessing the level of risk in a portfolio, it is the value of loans at risk rather than the number that is most significant -- as a delinquent or bad loan of \$40,000 will necessarily pose more risk to a portfolio than a delinquent or bad loan of \$4,000. Finally, the approach in the Proposed Rule does not request information on loans that are greater than 90 days in arrears, but have not yet been written off. These are the delinquent loans that generally pose the greatest risk to the lender, particularly if the lender does not have or adhere to a strict policy and time frame for writing off loans that have become significantly delinquent.

CFED would instead recommend that in assessing portfolio quality, the Proposed Rule request that applicants provide information for the past three fiscal years on the following three measures:

- Portfolio at risk: defined as the outstanding principal balance of loans with payments greater than 30 days past due, divided by the total dollar amount of outstanding loans, as of the last day of the fiscal year.
- Loan loss rate: defined as the total dollar value of loans declared as written off or nonrecoverable, net of recoveries, divided by the average outstanding value of the portfolio over the course of the fiscal year.
- Restructured loan rate: the dollar amount of all loans that have been restructured, divided by the total dollar amount of outstanding loans as of the last day of the fiscal year.

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

7. Program Funding Structure

The Proposed Rule contains no explanation of the division of funding among the components of the program, nor does it explain how much of the money allocated to the program by Congress comes in the form of loan subsidies or can be treated as such. Without this knowledge, it is impossible to understand the priority of funding for the different programs under RMAP, or to make a detailed recommendation on how funding

should be used across program activities based on the needs of the rural microenterprise development field.

CFED recommends that USDA formally circulate this information for public comment, including the subsidy rate that will be used to calculate the RMAP loan program level, as this information may require commenters (including CFED) to alter its comments and suggestions.

We appreciate the opportunity to comment on Proposed Rule 7 CFR 4280, the Rural Microentrepreneur Assistance Program, and look forward to being a resource for USDA as you move forward with the drafting of a Final Rule.

Sincerely,

Carol Wayman
Federal Policy Director