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PARTS 2202–2299 [RESERVED]

CHAPTER XXV—OFFICE OF ADVOCACY AND OUTREACH, DEPARTMENT OF AGRICULTURE

Part		*Page*
2500	OAO Federal financial assistance programs—general award administrative procedures	61
2502	Agricultural Career and Employment (ACE) Grants Program	74
2503–2599	[Reserved]	

PART 2500—OAO FEDERAL FINANCIAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROCEDURES

Subpart A—General Information

Sec.
2500.001 Applicability of regulations.
2500.002 Definitions.
2500.003 Other applicable statutes and regulations.

Subpart B—Pre-Award: Solicitation and Proposals

2500.011 Competition.
2500.012 Requests for proposals.
2500.013 Types of proposals.
2500.014 Eligibility requirements.
2500.015 Content of a proposal.
2500.016 Submission of a proposal.
2500.017 Confidentiality of proposals and awards.
2500.018 Electronic submission.

Subpart C—Pre-Award: Proposal Review and Evaluation

2500.021 Guiding principles.
2500.022 Preliminary proposal review.
2500.023 Selection of reviewers.
2500.024 Evaluation criteria.
2500.025 Procedures to minimize or eliminate duplication of effort.
2500.026 Applicant feedback.

Subpart D—Award

2500.031 Administration.

Subpart E—Post-Award and Closeout

2500.041 Payment.
2500.042 Cost sharing and matching.
2500.043 Program income.
2500.044 Indirect costs.
2500.045 Technical reporting.
2500.046 Financial reporting.
2500.047 Project meetings.
2500.048 Review of disallowed costs.
2500.049 Prior approvals.
2500.050 Suspension, termination, and withholding of support.
2500.051 Debt collection.
2500.052 Award appeals procedures.
2500.053 Expiring appropriations.
2500.055 Audit.
2500.056 Civil rights.

Subpart F—Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program

2500.101 Applicability of regulations.
2500.102 Purpose.
2500.103 Definitions.
2500.104 Eligibility requirements.
2500.105 Project types and priorities.
2500.106 Funding restrictions.
2500.107 Matching.
2500.108 Term of award.
2500.109 Program requirements.

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Subpart A—General Information

§ 2500.001 Applicability of regulations.

The regulations in subparts A through E of this part apply to the programs authorized under section 14013 of the FCEA to be administered within the Office of Advocacy and Outreach (OAO). The purpose of this part is to set forth regulations for competitive and noncompetitive grants, cooperative agreements, and other assistance agreements awarded through OAO.

§ 2500.002 Definitions.

Applicant means the entity that has submitted a proposal in response to an OAO Request For Proposal (RFP).

Authorized Departmental Officer (ADO) means the Secretary or any employee of the Department with delegated authority to issue or modify award instruments on behalf of the Secretary.

Authorized Organizational Representative (AOR) means the President or Chief Executive Officer of the applicant organization or the official, designated by the President or Chief Executive Officer of the applicant organization, who has the authority to commit the resources of the organization to the project.

Award means financial assistance that provides support to accomplish a public purpose. Awards may be grants, cooperative agreements, or other assistance agreements.

Award agreement means the agreement between OAO and the awardee which sets forth the terms and conditions under which the OAO funds will be made available. Award agreement is used as a general term to describe grant agreements, cooperative agreements, and other assistance agreements.

Award closeout means the process by which the award operation is concluded

at the expiration of the award period or following a decision to terminate the award.

Award period means the timeframe of the award from the beginning date to the ending date as defined in the award agreement.

Awardee means the entity designated in the grant agreement, cooperative agreement, or other assistance agreement as the legal entity to which the award is given.

Baseline monitoring is the minimum, basic monitoring that will take place on an ongoing basis throughout the lifetime of every award.

Beginning date means the date the award agreement is executed by the awardee and OAO and from which costs can be incurred.

Community-based organization means a nongovernmental organization with a well-defined constituency that includes all or part of a particular community.

Cooperative agreement means the award of funds to an eligible awardee to assist in meeting the costs of conducting a project which is intended and designed to accomplish the purpose of the program as identified in the RFP, and where substantial involvement is expected between OAO and the awardee when carrying out the activities included in the agreement. This agreement may also be referred to more generally as an award.

Department means the U.S. Department of Agriculture.

Disallowed costs means the use of Federal financial assistance funds for unauthorized activities or items as stipulated in the applicable Federal cost principles (2 CFR part 220, 2 CFR part 225, and 2 CFR part 230).

Ending date means the date the award agreement is scheduled to be completed. It is also the latest date award funds will be provided under the award agreement, without an approved time extension.

Participant means an individual or entity that participates in awardee-led activities funded under the award agreement. Furthermore, a participant is any individual or entity who has applied for, otherwise participated in, or received a payment, or other benefit as a result of participating in an activity funded by an OAO award.

Partnering means a joint effort among two or more eligible entities with the capacity to conduct projects intended and designed to accomplish the purpose of the program.

Program leader means the program supervisor within OAO.

Project means activities supported under an OAO award.

Project Director (PD) means the individual designated by the awardee in the proposal and award documentation, and approved by the ADO who is responsible for the direction and management of the award.

Project Officer (PO) means an individual within OAO who is responsible for the programmatic oversight of the award on behalf of the Department.

Request for Proposals (RFP) means an official USDA funding opportunity. At OAO discretion, funding opportunities may be referred to as request for proposals, request for applications, notice of funding availability, or funding opportunity.

Review panel means an evaluation process involving qualified individuals within the relevant field to give advice on the merit of proposals submitted to OAO.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom authority may be delegated.

Terminate funding means the cancellation of Federal assistance, in whole or in part, at any time before the ending date.

§ 2500.003 Other applicable statutes and regulations.

Several Federal statutes and regulations apply to proposals for Federal assistance considered for review and to grants and cooperative agreements awarded by OAO. These include, but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular No. A–129, regarding debt management;

(c) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), as amended, which prohibits discrimination on the basis of race, color, or national origin, and 7

CFR part 15, subpart A (USDA implementation);

(d) 7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives and incorporating provisions of the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224, 31 U.S.C. § 6301–6308, as well as general policy requirements applicable to awardees of Departmental financial assistance.

(e) 7 CFR Part 3016—USDA implementation of Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(f) 7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement).

(g) 7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans.

(h) 7 CFR Part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (now relocated at 2 CFR part 215).

(i) 7 CFR Part 3021—USDA implementation of Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(j) 7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-Profit Organizations.

(k) 7 U.S.C. 3318—conferring upon the Secretary general authority to enter into contracts, grants, and cooperative agreements to further the research, extension, or teaching programs in the food and agricultural sciences of the Department of Agriculture.

(l) 29 U.S.C. 794 (Section 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

(m) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, promoting the utilization of inventions arising from federally supported research or development; encouraging maximum participation of small business firms in federally supported research and development efforts; and promoting collaboration between commercial concerns and nonprofit organizations, including universities, while ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions (implementing regulations are contained in 37 CFR part 401)

(n) Title IX of the Education Amendment of 1972 (20 U.S.C. 1681–1683 and 1685–1686), as amended, which prohibits discrimination on the basis of sex;

(o) Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), as amended, which prohibits discrimination on the basis of age;

(p) Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse;

(q) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(r) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(s) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing;

(t) Any other nondiscrimination provisions in the specific statute(s) under which proposals for Federal assistance are made, and the requirements of any other nondiscrimination statute(s) which may apply to the proposal.

Subpart B—Pre-Award: Solicitation and Proposals

§ 2500.011 Competition.

(a) *Standards for competition.* Except as provided in paragraph (b) of this section, OAO will enter into discretionary grants or cooperative agreement only after competition, unless restricted by statute.

(b) *Exception.* The OAO ADO may make a determination in writing that

competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Federal Government and necessary to the goals of the program. Non-competitive determinations will comply with regulations established in 7 CFR 3015.158(d).

§ 2500.012 Requests for proposals.

(a) *General*. For each competitive grant or cooperative agreement, OAO will prepare a program solicitation (also called a request for proposals (RFP)). The RFP may include all or a portion of the following items:

(1) Contact information.

(2) Catalog of Federal Domestic Assistance (CFDA) number.

(3) Legislative authority and background information.

(4) Purpose, priorities, and fund availability.

(5) Program-specific eligibility requirements.

(6) Program-specific restrictions on the use of funds, if applicable.

(7) Matching requirements, if applicable.

(8) Acceptable types of proposals.

(9) Types of projects to be given priority consideration, including maximum anticipated awards and maximum project lengths, if applicable.

(10) Program areas, if applicable.

(11) Funding restrictions, if applicable.

(12) Directions for obtaining additional requests for proposals and proposal forms.

(13) Information about how to obtain proposal forms and the instructions for completing such forms.

(14) Instructions and requirements for submitting proposals, including submission deadline(s).

(15) Explanation of the proposal evaluation process.

(16) Specific evaluation criteria used in the review process.

(17) Type of Federal assistance awards (*i.e.*, grants or cooperative agreements).

(b) *RFP variations*. Where program-specific requirements differ from the requirements established in this part, program solicitations will also address any such variation(s). Variations may occur in the following:

(1) Award management guidelines.

(2) Restrictions on the delegation of fiscal responsibility.

(3) Required approval for changes to project plans.

(4) Expected program outputs and reporting requirements, if applicable.

(5) Applicable Federal statutes and regulations.

(6) Confidential aspects of proposals and awards, if applicable.

(7) Regulatory information.

(8) Definitions.

(9) Minimum and maximum budget requests and whether proposals outside of these limits will be returned without further review.

(c) *Program announcements*. Occasionally, OAO will issue a program announcement (PA) to alert potential applicants and the public about new and ongoing funding opportunities. These PAs may provide tentative due dates and are released without associated proposal packages. No proposals are solicited under a PA. PAs will be announced in the FEDERAL REGISTER or on the OAO Web site.

§ 2500.013 Types of proposals.

The type of proposal acceptable may vary by funding opportunity. The RFP will stipulate what will be required for submission to OAO in response to the funding opportunity.

§ 2500.014 Eligibility requirements.

Program-specific eligibility requirements appear in the subpart applicable to each program and in the corresponding RFPs.

§ 2500.015 Content of a proposal.

The RFP provides instructions on how to access a funding opportunity. The funding opportunity contains the proposal package, which includes the forms necessary for completion of a proposal in response to the RFP. The RFP will be posted on *http://www.Grants.gov*. OAO may also publish the RFP in the FEDERAL REGISTER.

§ 2500.016 Submission of a proposal.

The RFP will provide deadlines for the submission of proposals. OAO may issue separate RFPs and/or establish

separate deadlines for different types of proposals, different award instruments, or different topics or phases of the assistance programs. If proposals are not received by applicable deadlines, they will not be considered for funding. Exceptions will be considered only when extenuating circumstances exist, as determined by OAO, and justification and supporting documentation are provided by the applicant. Conformance with preparation and submission instructions is required and will be strictly enforced unless a deviation has been approved. OAO may establish additional requirements. OAO may return without review proposals that are not consistent with the RFP instructions.

§ 2500.017 Confidentiality of proposals and awards.

(a) *General*. Names of entities submitting proposals, as well as proposal contents and evaluations, except to those involved in the review process, will be kept confidential to the extent permissible by law.

(b) *Identifying confidential and proprietary information in a proposal*. If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided that the information is clearly marked by the applicant with the term ''confidential and proprietary information.'' In addition, the following statement must be included at the bottom of the project narrative or any other attachment included in the proposal that contains such information: ''The following pages (specify) contain proprietary information which (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation.''

(c) *Disposition of proposals*. By law, OAO is required to make the final decisions as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the applicant. However, the Department will retain for three years one file copy of each proposal received; extra copies will be destroyed. Public release of information from any proposal submitted will be subject to existing legal requirements. Any proposal that is funded will be considered an integral part of the award and normally will be made available to the public upon request, except for information designated proprietary by OAO.

(d) *Submission of proprietary information*. The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items that, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information that could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports that attempt to restrict dissemination of large amounts of information may be found unacceptable by OAO and constitute grounds for return of the proposal without further consideration. Without assuming any liability for inadvertent disclosure, OAO will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis.

§ 2500.018 Electronic submission.

Applicants and awardees are encouraged, but not required, to submit proposals and reports in electronic form as prescribed in the RFP issued by OAO and in the applicable award agreement.

Subpart C—Pre-Award: Proposal Review and Evaluation

§ 2500.021 Guiding principles.

The guiding principle for Federal assistance proposal review and evaluation is to ensure that each proposal is treated in a consistent and fair manner. After the evaluation process by the review panel, OAO will provide an opportunity for applicant feedback in as timely a manner as possible.

§ 2500.022 Preliminary proposal review.

Prior to technical examination, a preliminary review will be made of all proposals for responsiveness to the administrative requirements set forth in the RFP. Proposals that do not meet the administrative requirements may be eliminated from program competition. However, OAO retains the right to conduct discussions with applicants to resolve technical and/or budget issues, as deemed necessary by OAO.

§ 2500.023 Selection of reviewers.

(a) *Requirement.* OAO is responsible for performing a review of proposals submitted to OAO competitive award programs. The RFP will identify the criteria that OAO will use for the selection of the proposal review panel.

(b) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants. Names of applicants, as well as proposal content and evaluation comments will be kept confidential to the extent permitted by law, except to those involved in the review process. Reviewers will comply with the above-mentioned confidentiality guidelines.

(c) *Conflicts of interest.* During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Reviewers are expected to be in compliance with the Conflict-of-Interest process made a part of the RFP.

§ 2500.024 Evaluation criteria.

(a) *General.* To ensure any project receiving funds from OAO is consistent with the broad goals of the funding program, the content of each proposal submitted to OAO will be evaluated based on a pre-determined set of review criteria as indicated in the RFP.

(b) *Guidance for reviewers.* In order that all potential applicants for a program have similar opportunities to compete for funds, all reviewers will receive an orientation from the Program Leader of the review criteria. Reviewers are instructed to use those same evaluation criteria, and only those criteria, to judge the merit of the proposals they review.

§ 2500.025 Procedures to minimize or eliminate duplication of effort.

OAO may implement appropriate business processes to minimize or eliminate the awarding of Federal assistance to projects that unnecessarily duplicate activities already being sponsored under other awards, including awards made by other Federal agencies.

§ 2500.026 Applicant feedback.

Unsuccessful applicants may submit a request for applicant feedback in writing to OAO within 10 days after receiving written notice of not being selected for further processing. Applicant feedback requests are to be mailed to the Program Leader at the address below, unless otherwise stated in the ''Notice of Non-Selection'' or in the RFP. At OAO's discretion, either written or oral feedback will be provided to unsuccessful applicants.

U.S. Department of Agriculture, Departmental Management, Office of Advocacy and Outreach, *Attn:* Program Leader (Applicant Feedback), Whitten Building, Rm. 520–A, stop 9821, 1400 Independence Avenue, SW., Washington, DC 20250–9821.

Subpart D—Award

§ 2500.031 Administration.

(a) *General.* Within the limit of funds available for such purpose, the OAO ADO shall make Federal assistance awards to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in the RFP. The date specified by the OAO ADO as the effective date of the award shall be no later than September 30th of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds awarded by OAO shall be expended solely for the

purpose for which the funds are awarded in accordance with the approved statement of work and budget, the regulations, the terms and conditions of the OAO award agreement, the applicable Federal cost principles, and the Department's assistance regulations (e.g., 7 CFR parts 3015, 3016, and 3019).

(b) *Award agreement.* The award agreement and accompanying terms and conditions will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to which OAO has awarded a grant or cooperative agreement.

(2) Title of project.

(3) Name(s) of Project Director(s).

(4) Identifying award number assigned by OAO.

(5) Project period.

(6) Total amount of OAO financial assistance approved.

(7) Legal authority under which the grant or cooperative agreement is awarded.

(8) Appropriate CFDA number.

(9) Approved budget plan (that may be referenced).

(10) Terms and Conditions

Subpart E—Post-Award and Closeout

§ 2500.041 Payment.

(a) *General.* All payments will be made in advance unless a deviation is accepted or as specified in paragraph (b) of this section. All payments to the awardee shall be made via the approved electronic funds transfer (EFT) method. Awardees are expected to request funds via the federally-approved electronic payment system for reimbursement in a timely manner. Exact payment method will be described in the terms and conditions of the award agreement.

(b) *Reimbursement method.* OAO shall use the reimbursement method if it determines that advance payment is not feasible or that the awardee does not maintain or demonstrate the willingness to maintain written procedures that minimize the elapse of time between the transfer of funds and disbursement by the awardee, and financial management systems that meet the standards for fund control and accountability.

§ 2500.042 Cost sharing and matching.

(a) *General.* Awardees may be required to match the Federal funds received under an OAO award. The required percentage of matching, type of matching (e.g., cash and/or in-kind contributions), sources of match (e.g., non-Federal), and whether OAO has any authority to waive the match will be specified in the subpart applicable to the specific Federal assistance program, as well as in the RFP.

(b) *Indirect costs as in-kind matching contributions.* Indirect costs may be claimed under the Federal portion of the award budget. However, unless explicitly authorized in the RFP, indirect costs may not be claimed on both the Federal and nonfederal portion of the award budget.

§ 2500.043 Program income.

(a) *General.* OAO shall apply the standards set forth in this subpart in requiring awardee organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Addition method.* Unless otherwise provided in the authorizing statute, in accordance with the terms and conditions of the award, program income earned during the project period shall be retained by the awardee and shall be added to funds committed to the project by OAO and the awardee and used to further eligible project or program objectives. Any specific program deviations will be identified in the individual subparts.

(c) *Award terms and conditions.* Unless the program regulations identified in the individual subpart provide otherwise, awardees shall follow the terms and conditions of the OAO award. Such terms and conditions will be made a part of the OAO award agreement.

§ 2500.044 Indirect costs.

Indirect cost rates for grants and cooperative agreements shall be determined in accordance with the applicable assistance regulations and cost principles, unless superseded by another authority.

§ 2500.045 Technical reporting.

All projects supported with Federal funds under this part must be documented according to the terms and conditions of the OAO award agreement.

§ 2500.046 Financial reporting.

(a) *SF–425, Federal Financial Report.* As stated in the award terms and conditions of the OAO award agreement, a final SF–425, Federal Financial Report, is due 90 days after the expiration of the award and should be submitted to OAO electronically. The awardee shall report program outlays and program income on the same accounting basis (*i.e.*, cash or accrual) that it uses in its normal accounting system. When submitting a final SF–425, Federal Financial Report, the total matching contribution, if required, should be shown in the report. The final SF–425 must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the report is due, it shall request an extension of time for submitting the report pursuant to paragraph (c) of this section; submit a provisional report (showing the unliquidated obligations) by the due date; and submit a final report when all obligations have been liquidated, but no later than the approved extension date. SF–425, Federal Financial Reports, must be submitted by all awardees, including Federal agencies and national laboratories.

(b) *Awards with required matching.* For awards requiring a matching contribution, an annual SF–425, Federal Financial Report, is required and this requirement will be indicated in the terms and conditions of the OAO award agreement, in which case it must be submitted no later than 45 days following the end of the budget or reporting period.

(c) *After the due date.* Requests are considered late when they are submitted after the 90-day period following the award expiration date. Requests to submit a late final SF–425, Federal Financial Report, will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date, a justification for the late submission, and a justification for the extenuating circumstances. If an awardee needs to request additional funds, procedures in paragraph (d) of this section apply.

(d) *Overdue SF–425, Federal Financial Reports.* Awardees with overdue SF–425, Federal Financial Reports, or other required financial reports (as identified in the award terms and conditions), will have their applicable balances in the approved federal electronic funds transfer system restricted or placed on ''manual review,'' which restricts the awardee's ability to draw funds, thus requiring prior approval from OAO. If any remaining available balances are needed by the awardee (beyond the 90-day period following the award expiration date) and the awardee has not requested an extension to submit a final SF–425, Financial Status Report, the awardee will be required to contact OAO to request permission to draw any additional funds and will be required to provide justification and documentation to support the draw. Awardees also will need to comply with procedures in paragraph (c) of this section. OAO will approve these draw requests only in extenuating circumstances.

(e) *Additional reporting requirements.* OAO may require forecasts of Federal cash requirements in the ''Remarks'' section of the report; and when practical and deemed necessary, OAO may require awardees to report in the ''Remarks'' section the amount of cash advances received in excess of three days (*i.e.*, short narrative with explanations of actions taken to reduce the excess balances). When OAO needs additional information or more frequent reports, a special provision will be added to the award terms and conditions and identified in the OAO award agreement. Should OAO determine that an awardee's accounting system is inadequate, additional pertinent information to further monitor awards may be requested from the awardee until such time as the system is brought up to standard, as determined by OAO. This additional reporting requirement will be required via a special provision to the award terms and conditions of the OAO award agreement.

§ 2500.047 Project meetings.

In addition to reviewing and monitoring the status of progress and final technical reports and financial reports, OAO Project Officers may use regular and periodic conference calls to monitor the awardee's performance as well as conferences, workshops, meetings, and symposia to not only monitor the awards, but to facilitate communication and the sharing of project results. These opportunities also serve to eliminate or minimize OAO funding of unneeded duplicative project activities. Required attendance at these conference calls, conferences, workshops, meetings, and symposia will be identified in the RFP or award document.

§ 2500.048 Review of disallowed costs.

(a) *Notice.* If the OAO Project Officer (PO) determines that there is a basis for disallowing a cost, OAO shall provide the awardee written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(b) *Awardee response.* Within 60 days of receiving written notice of the PO's intent to disallow the cost, the awardee may respond with written evidence and arguments to show the cost is allowable, or that, for equitable, practical, or other reasons, shall not recover all or part of the amount, or that the recovery should be made in installments. An extension of time will be granted only in extenuating circumstances.

(c) *Decision.* Within 60 days of receiving the awardee's written response to the notice of intent to disallow the cost, the PO shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal that has been provided under this section. If the awardee does not respond to the written notice under paragraph (a) of this section within the time frame specified in paragraph (b) of this section, the PO shall issue a management decision on the basis of the information available to it. The management decision shall constitute the final action with respect to whether the cost is allowed or disallowed. In the case of a questioned cost identified in the context of an audit subject to 7 CFR part 3052, the management decision will constitute the management decision under 7 CFR 3052.405(a).

(d) *Demand for payment.* If the management decision under paragraph (c) of this section constitutes a finding that the cost is disallowed and, therefore, that a debt is owed to the Government, the PO shall provide the required demand and notice pursuant to 7 CFR 3.11.

(e) *Review process.* Within 60 days of receiving the demand and notice referred to in paragraph (d) of this section, the awardee may submit a written request to the OAO Director for a review of the final management decision that the debt exists and the amount of the debt. Within 60 days of receiving the written request for a review, the OAO Director will issue a final decision regarding the debt. A review by the OAO Director or designee constitutes an administrative review for debts under 7 CFR part 3, subpart F.

§ 2500.049 Prior approvals.

(a) *Subcontracts.* No more than 50 percent of the award may be subcontracted to other parties without prior written approval of the ADO. Any subcontract awarded to a Federal agency under an award must have prior written approval of the ADO. To request approval, a justification for the proposed subcontractual arrangements, a performance statement, and a detailed budget for the subcontract must be submitted to the ADO.

(b) *No-cost extensions of time*—(1) *General.* Awardees may initiate a one-time no-cost extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply: the terms and conditions of the award prohibit the extension; the extension requires additional Federal funds; and the extension involves any change in the approved objectives or scope of the project. For the first no-cost extension, the awardee must notify OAO in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award.

(2) *Additional requests for no-cost extensions of time before expiration date.* When more than one no-cost extension

of time or an extension of more than 12 months is required, the extension(s) must be approved in writing by the PO. The awardee must submit a written request, which must be received no later than 10 days prior to the expiration date of the award, to the PO. The request must contain, at a minimum, the following information: The length of the additional time required to complete the project objectives and a justification for the extension; a summary of the progress to date; an estimate of the funds expected to remain unobligated on the scheduled expiration date; a projected timetable to complete the portion(s) of the project for which the extension is being requested; and signature of the AOR and the PD.

(3) *Requests for no-cost extensions of time after expiration date.* OAO may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be approved only for extenuating circumstances, as determined by OAO. The awardee's AOR must submit the requirements identified under paragraph (b)(2) of this section as well as an ''extenuating circumstance'' justification and a description of the actions taken by the awardee to minimize these requests in the future.

(4) *Other requirements.* No-cost extensions of time may not be exercised merely for the purpose of using unobligated balances.

§ 2500.050 Suspension, termination, and withholding of support.

(a) *General.* If an awardee has failed to materially comply with the terms and conditions of the award, OAO may take certain enforcement actions, including, but not limited to, suspending the award pending corrective action and terminating the award for cause.

(b) *Suspension.* OAO generally will suspend (rather than immediately terminate) an award to allow the awardee an opportunity to take appropriate corrective action before OAO makes a termination decision. OAO may decide to terminate the award if the awardee does not take appropriate corrective action during the period of suspension. OAO may terminate, without first suspending, the award if the deficiency is so serious as to warrant immediate termination. Termination for cause may be appealed under the terms and conditions identified in the OAO award agreement.

(c) *Termination.* An award also may be terminated, partially or wholly, by the awardee or by OAO with the consent of the awardee. If the awardee decides to terminate a portion of the award, OAO may determine that the remaining portion of the award will not accomplish the purposes for which the award was originally made. In any such case, OAO will advise the awardee of the possibility of termination of the entire award and allow the awardee to withdraw its termination request. If the awardee does not withdraw its request for partial termination, OAO may initiate procedures to terminate the entire award for cause.

§ 2500.051 Debt collection.

The collection of debts owed to OAO by awardees, including those resulting from cost disallowances, recovery of funds, unobligated balances, or other circumstances, are subject to the Department's debt collection procedures as set forth in 7 CFR part 3, and, with respect to cost disallowances, § 2500.048.

§ 2500.052 Award appeals procedures.

(a) *General.* OAO permits awardees to appeal certain adverse post-award administrative decisions made by OAO. Such adverse decisions include: Termination, in whole or in part, and determination that an award is void. An award may be terminated for failure of the awardee to carry out its approved project in accordance with the applicable law and the terms and conditions of award; or for failure of the awardee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the award. Additionally, an award may be determined to be void if, for example, it was not authorized by statute or regulation or because it was fraudulently obtained. Appeals of determinations regarding the allowability of costs are subject to the procedures in § 2500.048.

(b) *Appeal Procedures.* The formal notification of an adverse determination will contain a statement of the awardee's appeal rights. To appeal an adverse

determination, the awardee must submit a request for review to the OAO official specified in the notification, detailing the nature of the disagreement with the adverse determination and providing supporting documents in accordance with the procedures contained in the notification. The awardee's request to OAO for review must be received within 60 days after receipt of the written notification of the adverse determination; however, an extension may be granted if the awardee can show good cause why an extension is warranted. OAO will carefully consider the merits of all requests for appeals and further reviews. However, at the conclusion of the OAO appeal review process, the OAO decision rendered on the appeal is considered final. The awardee will be notified in writing by OAO of final appeal review determinations.

§ 2500.053 Expiring appropriations.

(a) *OAO awards supported with office appropriations.* Most OAO awards are supported with annual appropriations. On September 30th of the 5th fiscal year after the period of availability for obligation ends, the funds for these appropriations accounts expire per 31 U.S.C. 1552 and the account is closed, unless otherwise specified by law. Funds that have not been drawn through the approved electronic funds transfer system, by the awardee or disbursed through any other system or method by August 31st of that fiscal year are subject to be returned to the U.S. Department of the Treasury after that date. The August 31st requirement also applies to awards with a 90-day period concluding on a date after August 31st of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the OAO award terms and conditions.

(b) *OAO awards supported with funds from other Federal agencies (reimbursable funds).* OAO may require that all draws and reimbursements for awards supported with reimbursable funds (from other Federal agencies) be completed prior to June 30th of the 5th fiscal year after the period of availability for obligation ends to allow for the proper billing, collection, and close-out of the associated interagency agreement before the appropriations expire. The June 30th requirement also applies to awards with a 90-day period concluding on a date after June 30th of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the terms and conditions of the OAO award agreement.

§ 2500.055 Audit.

Awardees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which Federal financial assistance funds are received and years in which work is accomplished using these funds.

§ 2500.056 Civil rights.

Awardees must comply with the civil rights requirements of 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended. In accordance, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

Subpart F—Outreach and Assistance For Socially Disadvantaged Farmers and Ranchers Program

§ 2500.101 Applicability of regulations.

The regulations in this subpart apply to the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers (OASDFR) Program authorized under section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 2279), as amended. Unless otherwise specified in this subpart, the requirements of 7 CFR part 2500 subparts A through E will apply in addition to the requirements discussed in this subpart.

§ 2500.102 Purpose.

(a) The purpose of the OASDFR Program is to make competitive awards to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers in:

(1) Owning and operating farms, ranches and non-industrial forest lands; and

(2) In participating equitably in the full range of agricultural programs offered by the Department.

(b) The OASDFR Program awards shall be used exclusively to:

(1) Enhance coordination of the outreach, technical assistance, and education efforts authorized under agriculture programs;

(2) Assist in reaching current and prospective socially disadvantaged farmers, ranchers or forest landowners in a linguistically appropriate manner; and

(3) Improve the participation of those farmers and ranchers in agricultural programs.

§ 2500.103 Definitions.

The definitions provided in subpart A apply to this subpart. In addition, the definitions that apply specifically to the OASDFR Program under this subpart include:

Agriculture programs means those programs administered within the Department, by agencies including but not limited to: Forest Service (FS), Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), Rural Development (RD), Rural Business Cooperative Service (RBCS), National Institute of Food and Agriculture (NIFA), and Agricultural Marketing Service (AMS), and other such programs as determined by the Department on a case-by-case basis either at the OAO Director's initiative or in response to a written request with supporting explanation for inclusion of a program. (For further details on specific programs included under this subpart see 7 U.S.C. 2279(e)(3) or the RFP).

Alaska Native means a citizen of the United States who is a person of one-fourth or more Alaska Indian, Eskimo, or Aleut blood, or combination thereof. (For further specification, see 43 U.S.C 1602(b) or the RFP).

Alaska Native cooperative colleges means an eligible post-secondary educational institution that has an enrollment of undergraduate full-time equivalent students that is at least 20 percent Alaska Native students at the time of submission of a proposal.

Assistance means providing educational and technical assistance to socially disadvantaged farmers, ranchers, and forest landowners in (1) owning and operating farms, ranches, and non-industrial forest lands; and (2) in participating equitably in the full range of agricultural programs offered by the Department through workshops, site visits and other means of contact in a linguistically appropriate manner.

Farmer, rancher, or forest landowner means the person who primarily cultivates, operates, or manages a farm, ranch, or forest for profit, either as owner or tenant. A farm includes livestock, dairy, poultry, fish, fruit, and truck farms. It also includes plantations, ranches, ranges, and orchards.

Hispanic-serving institution means an eligible institution of higher education that has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of submission of a proposal (see 20 U.S.C. 1101a(5)).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (For further specification, see 25 U.S.C. 450b).

Indian tribal community college means a post-secondary education institution which is formally controlled, or has been officially sanctioned, or chartered, by the governing body of an Indian tribe or tribes. (See 25 U.S.C. 1801(a)(4)).

Institution of higher education means an educational institution in any State that is a public or other nonprofit institution that is legally authorized and

accredited by a nationally recognized accrediting agency or association to provide a program of education beyond secondary education for which the institution awards a bachelor's degree. (For further specification, see 20 U.S.C. 1001(a)).

Outreach means the use of formal and informal educational materials and activities in a linguistically appropriate manner that serve to encourage and assist socially disadvantaged farmers and ranchers in:

(1) Owning and operating farms and ranches; and in

(2) Participating equitably in the full range of agricultural programs offered by the Department.

Socially disadvantaged farmer, rancher or forest landowner means a farmer, rancher, or forest landowner who is a member of a socially disadvantaged group. (See 7 U.S.C. 2279(e)(2)).

Socially disadvantaged group means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. (See 7 U.S.C. 2279(e)(1)).

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and federally recognized Indian tribes.

Supplemental funding means funding to an existing awardee in addition to the amount of the original award contained in the grant or cooperative agreement. Such additional funding is intended to continue or expand work that is within the scope of the original agreement and statement of work.

Tribal organization means the recognized governing body of any Indian tribe. A tribal organization is any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community. In any case where an award is made to an organization to perform services benefiting more than one Indian tribe, the approval of each participating Indian tribe shall be a prerequisite to the making of such an award. (See 25 U.S.C. 1603(25).

§ 2500.104 Eligibility requirements.

Proposals may be submitted by any of the following:

(a) Any community-based organization, network, or coalition of community-based organizations that:

(1) Has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers, ranchers, and forest landowners;

(2) Has provided to the Secretary documentary evidence of work with, and on behalf of socially disadvantaged farmers, ranchers, or forest landowners during the three-year period preceding the submission of a proposal for assistance under this program; and

(3) Does not engage in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) An 1890 institution or 1994 institution (as defined in 7 U.S.C. 7601), including West Virginia State University.

(c) An Indian tribal community college or an Alaska Native cooperative college.

(d) A Hispanic-serving institution (as defined in 7 U.S.C. 3103).

(e) Any other institution of higher education (as defined in 20 U.S.C. 1001) that has demonstrated experience in providing agriculture education or other agriculturally related services to socially disadvantaged farmers, ranchers, and forest landowners in a region.

(f) An Indian tribe (as defined in 25 U.S.C. 450b) or a national tribal organization that has demonstrated experience in providing agriculture education or other agriculturally-related services to socially disadvantaged farmers, ranchers, and forest landowners in a region.

(g) Other organizations or institutions that received funding under this program before January 1, 1996, but only with respect to projects that the Secretary considers are similar to projects previously carried out by the entity under this program.

§ 2500.105 Project types and priorities.

For each RFP, OAO may develop and include the appropriate project types

and focus areas based on the critical needs of the socially disadvantaged farmer and rancher community. For standard OASDFR projects, competitive grants or cooperative agreements will be awarded to support programs and services, as appropriate, to encourage and assist socially disadvantaged farmers and ranchers in the following focus areas:

(a) Owning and operating farms and ranches;

(b) Participating equitably in the full range of agricultural programs offered by the Department; and

(c) Other areas as specified by the Secretary in the RFP.

§ 2500.106 Funding restrictions.

Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

§ 2500.107 Matching.

Matching funds are not required as a condition of receiving awards under this subpart.

§ 2500.108 Term of award.

The award term will be defined in the OAO award agreement, and can be later amended upon approval of OAO.

§ 2500.109 Program requirements.

Grants and cooperative agreements under this subpart shall address the priorities in the Department that involve providing outreach and technical assistance to socially disadvantaged farmers, ranchers, and forest landowners to own and operate farms and participate equitably in agricultural programs; and other priorities as determined by the Secretary.

PART 2502—AGRICULTURAL CAREER AND EMPLOYMENT (ACE) GRANTS PROGRAM

Subpart A—General Information

Sec.
2502.1 Applicability of regulations.
2502.2 Definitions.
2502.3 Deviations.

Subpart B—Program Eligibility, Services and Delivery

2502.4 Program eligibility.
2502.5 Program benefits and services.
2502.6 Recipients of program benefits or services.
2502.7 Responsibilities of grantees.

Subpart C—Grant Applications and Administration

2502.8 Pre-award, award, and post-award procedures and administration of grants.

AUTHORITY: 7 U.S.C. 2008q–1

SOURCE: 76 FR 69117, Nov. 8, 2011, unless otherwise noted.

Subpart A—General Information

§ 2502.1 Applicability of regulations.

(a) This part contains program-specific definitions for the ACE Grants Program.

(b) Subpart B establishes the criteria to be used in determining eligibility for an ACE grant award and the requirements for the delivery of program benefits and services, including who is considered eligible to receive such benefits and services and what the responsibilities are of ACE grantees.

(c) Subpart C establishes that, unless otherwise provided herein, the procedures for applying for ACE grants, the processes to be followed by OAO in evaluating grant proposals and awarding program funds, and the procedures for post-award administration of ACE grants are those set forth in a rule proposed ON DATE to codify provisions at 7 CFR part 2500, subparts A, B, C, D, and E.

§ 2502.2 Definitions.

As used in this part (unless otherwise indicated):

Agency means the Office of Advocacy and Outreach (OAO), an agency of the United States Department of Agriculture (USDA) or a successor agency.

Agricultural Employer means any person or entity which employs, as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802, individuals engaged in agricultural employment and may include farmers, ranchers, dairy operators, agricultural cooperatives, and farm labor contractors.

Agricultural Employment means any service or activity as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802, including any activity defined as ''agriculture'' in Section 3(f) or the Fair Labor Standards Act of 1938, 29 U.S.C. 203(f), any activity defined as ''agricultural labor'' in 26 U.S.C. 3121(g) (the Internal Revenue Code); as well as the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. Authorized Departmental Officer (ADO) means the individual, acting within the scope of delegated authority, who is responsible for executing and administering awards on behalf of the U.S. Department of Agriculture.

Community-based organization means a non-governmental organization with a well-defined constituency that includes all or part of a particular community.

Consortium means a group formed by entities with similar goals and objectives for the purpose of pooling resources to undertake a project that would otherwise be reasonably beyond the capabilities of any one member.

Eligible entity, as described in section 379C(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008q(a)), means a non-profit organization, or a consortium of nonprofit organizations, agribusinesses, State and local governments, agricultural labor organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farm workers.

Farmworker means an individual hired to perform agricultural employment, including migrant, seasonal, and hired family farm workers. The term farmworker includes individuals who are not currently employed as a farmworker but who are actively seeking work as such. The term does not include agricultural employers or individuals who are self-employed.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Legally present in the United States shall have the same meaning as the term ''lawfully present'' in the United States as defined at 8 CFR 103.12(a) (addressing eligibility for Title II Social Security benefits under Pub. L. 104–193).

Notice of Funding Availability (NOFA) means a notice published in the FEDERAL REGISTER announcing the availability of money for the grants program which lists the application deadlines, eligibility requirements and locations where interested parties can get help in applying.

Office of Advocacy and Outreach (OAO) means the Office of Advocacy and Outreach, an office within the USDA's Departmental Management.

Request for Proposal (RFP) refers to a grant competition and is used interchangeably with the phrase grant application notice and solicitation for grant applications (SFA).

Retaining an agricultural job means continuing agricultural employment, including upgraded employment.

Returning from an agricultural job means returning to a home area from a position in agricultural employment.

Secretary means the Secretary of Agriculture and any other officer or employee of the United States Department of Agriculture to whom the authority involved is delegated.

Securing an agricultural job means obtaining agricultural employment.

State means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

United States worker (U.S. worker) shall have the same meaning as the term U.S. worker defined by the Department of Labor at 20 CFR 655.4.

Upgrading an agricultural job means advancement to a position in agricultural employment which offers more hours of work and/or better terms and conditions of employment and/or an increase in wages.

§ 2502.3 Deviations.

Any request by the applicant or grantee for a waiver or deviation from any provision of this part shall be submitted to the ADO identified in the agency specific requirements. OAO shall review the request and notify the applicant/grantee whether the request to deviate has been approved within 30 calendar days from the date of receipt

of the deviation request. If the deviation request is still under consideration at the end of 30 calendar days, OAO shall inform the applicant/grantee in writing of the date when the applicant/grantee may expect the decision.

Subpart B—Program Eligibility, Services and Delivery

§ 2502.4. Program eligibility.

(a) Entities eligible to apply for and receive a grant under this part include:

(1) A non-profit organization;

(2) A consortium of nonprofit organizations; or

(3) A consortium which includes a non-profit organization(s) and one or more of the following: agribusinesses, State and local governments, agricultural labor organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farm workers.

(b) Additional information about eligible entities may be included in the RFP. In addition, the RFP will specify the criteria by which an entity's capacity to train farm workers will be evaluated, but at a minimum, the entity shall be required to demonstrate that it has:

(1) An understanding of the issues facing hired farmworkers and conditions under which they work;

(2) Familiarity with the agricultural industry in the geographic area to be served, including agricultural labor needs and existing services for farmworkers; and

(3) The capacity to effectively administer a program of services and benefits authorized by the ACE program.

(c) An applicant will be required to submit information to OAO, as specified in the RFP and/or FOA as part of the grant application.

§ 2502.5 Program benefits and services.

(a) The ACE grants program will be centrally administered by the USDA in a manner consistent with these regulations, as well as the pertinent requirements of 7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3018, 7 CFR part 3019 and 7 CFR 3052.

(b) The Office of Advocacy and Outreach (OAO) has been designated as the organizational unit responsible for administering the ACE program, including, among other things, determining the number and amount of grants to be awarded, the purposes for the grants to be awarded, as well as the criteria for the evaluation and award of grants.

(c) Services and benefits provided under the ACE grants program are limited to those which will assist eligible farmworkers in securing, retaining, upgrading or returning from agricultural jobs.

(d) Such services will include the following:

(1) Agricultural labor skills development

(2) Provision of agricultural labor market information:

(3) Transportation:

(4) Short-term housing while in transit to an agricultural worksite;

(5) Workplace literacy and assistance with English as a second language;

(6) Health and safety instruction, including ways of safeguarding the food supply of the United States;

(7) Such other services as the Secretary deems appropriate.

(e) Grant funds shall not be used to deliver or replace any services or benefits which an agricultural employer, association, contractor, or any other entity is legally obliged to provide.

§ 2502.6 Recipients of program benefits or services.

(a) Those eligible to receive program services or benefits under the ACE program are farmworkers who meet the definition of ''United States Workers'' as set forth in § 2502.2 of this part.

(b) Grantees shall be responsible for verifying the employment of farmworkers who are actively employed and are seeking to participate in program services or benefits. Unemployed farmworkers seeking to participate shall be required to certify to grantees that they are eligible for program services and benefits as provided herein. Additional eligibility requirements may be included in the RFP.

§ 2502.7 Responsibilities of grantees.

Each grantee is responsible for providing services and/or benefits authorized by this program in accord with a service delivery strategy described in

its approved grant plan. The services must reflect the needs of the relevant farmworker population in the area to be served and be consistent with the goals of assisting farmworkers in securing, retaining, upgrading, or returning from agricultural jobs. The necessary components of a service delivery strategy and grant plan will be fully set forth in an RFP but the plan shall include, at a minimum, the following:

(a) The employment and education needs of the farmworker population to be served;

(b) The manner in which the proposed services to be delivered will assist agricultural employers and farmworkers in securing, retaining, upgrading or returning from agricultural jobs;

(c) The manner in which the proposed services will be coordinated with other available services;

(d) The number of participants the grantee expects to serve for each service provided, the results expected and the anticipated expenditures for each category of service.

Subpart C—Grant Applications and Administration

§ 2502.8 Pre-award, award, and post-award procedures and administration of grants.

(a) Unless otherwise provided in this rule, the requirements governing pre-award solicitation and submission of proposals and/or applications, the review and evaluation of such, the award of grant funds, and post-award and close-out procedures are those set forth at 7 CFR part 2500, subparts A, B, C, D, and E.

(b) For purposes of the ACE Grants Program, the provisions of Subpart E, at 7 CFR 2500.49, ''Prior Approvals,'' shall not apply. In lieu of that provision, the following requirements shall apply: Awardees may not subcontract more than 20 percent of the award to other parties without prior written approval of the ADO. To request approval, a justification for the proposed subcontract, a performance statement, and a detailed budget for the subcontract must be submitted in writing to the ADO.

PARTS 2503–2599 [RESERVED]