



June 7, 2015

Branch Chief
Regulations and Paperwork Management Branch
U.S. Department of Agriculture
300 7th Street SW., 7th Floor
Washington, DC 20024

Submitted electronically via <http://www.regulations.gov>

Re: **NSAC Comments on Value-Added Producer Grant Program Final Rule**
80 Fed. Reg. 26788-26811 (May 8, 2015)

On behalf of our 41 represented member organizations¹, the National Sustainable Agriculture Coalition (NSAC) offers the following recommendations on USDA's final rule on the Value-Added Producer Grant Program (VAPG).

NSAC has long championed VAPG as an important program that helps increase farm income and marketing opportunities, create new jobs, contribute to community economic development, and enhance food choices for consumers. NSAC helped shape VAPG's first authorization in the Agricultural Risk Protection Act of 2000. NSAC led the campaign to expand VAPG as part of the 2002 Farm Bill, which expanded the program to include such value-added production methods as organic and grass-fed, while increasing the program's mandatory funding levels.

NSAC advocated for changes and increased funding for VAPG through the 2008 Farm Bill, which further expanded the program's scope. Specifically, the 2008 Farm Bill expanded VAPG to include locally produced and marketed food projects and regional food supply chain projects. Additionally, the 2008 Farm Bill codified the program priority for small and mid-sized family farms, and established the set-asides for beginning and socially disadvantaged farmers and for regional food supply chain projects.

¹ Agriculture and Land-Based Training Association - Salinas, CA; Alternative Energy Resources Organization - Helena, MT; California Certified Organic Farmers - Santa Cruz, CA; California FarmLink - Santa Cruz, CA; C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture) - Hereford, TX; Center for Rural Affairs - Lyons, NE; Clagett Farm/Chesapeake Bay Foundation - Upper Marlboro, MD; Community Alliance with Family Farmers - Davis, CA; Dakota Rural Action - Brookings, SD; Delta Land and Community, Inc. - Almyra, AR; Ecological Farming Association - Soquel, CA; Farmer-Veteran Coalition - Davis, CA; Flats Mentor Farm - Lancaster, MA; Florida Organic Growers - Gainesville, FL; GrassWorks - New Holstein, WI; Hmong National Development, Inc. - St. Paul, MN and Washington, DC; Illinois Stewardship Alliance - Springfield, IL; Institute for Agriculture and Trade Policy - Minneapolis, MN; Interfaith Sustainable Food Collaborative - Sebastopol, CA; Iowa Natural Heritage Foundation - Des Moines, IA; Izaak Walton League of America - St. Paul, MN/Gaithersburg, MD; Kansas Rural Center - Whiting, KS; The Kerr Center for Sustainable Agriculture - Poteau, OK; Land Stewardship Project - Minneapolis, MN; Michael Fields Agricultural Institute - East Troy, WI; Michigan Food & Farming Systems (MIFFS) - East Lansing, MI; Michigan Organic Food and Farm Alliance - Lansing, MI; Midwest Organic and Sustainable Education Service - Spring Valley, WI; National Catholic Rural Life Conference - Des Moines, IA; The National Center for Appropriate Technology - Butte, MT; Nebraska Sustainable Agriculture Society - Ceresco, NE; Northeast Organic Dairy Producers Alliance - Deerfield, MA; Northern Plains Sustainable Agriculture Society - LaMoure, ND; Northwest Center for Alternatives to Pesticides - Eugene, OR; Ohio Ecological Food & Farm Association - Columbus, OH; Oregon Tilth - Corvallis, OR; Organic Farming Research Foundation - Santa Cruz, CA; Rural Advancement Foundation International - USA - Pittsboro, NC; Union of Concerned Scientists Food and Environment Program - Cambridge, MA; Virginia Association for Biological Farming - Lexington, VA; Wild Farm Alliance - Watsonville, CA.

In the 2014 Farm Bill, NSAC's advocacy helped lead to the policy clarification for priority projects from producer groups, coops, and businesses and to securing \$63 million in mandatory funding over the life of the bill.

Throughout farm bill reauthorizations and the annual appropriations process, NSAC has consistently prioritized securing funding and support for VAPG. With long-standing involvement in the creation and development of VAPG, we submit the following recommendations to further strengthen this important program.

We appreciate the decision to hold a public comment period for this final rule. There is much to be admired in the rule, but there also remain some very critical problem areas. Following its review of the public comments, **we believe it is paramount for the Agency to publish a revised final rule by 2016 to make those critical improvements as outlined and detailed in our comments and recommendations that follow.**

Thank you for your consideration of these comments and for your work promoting local and regional food systems, assisting rural businesses, and supporting rural community development. We look forward to working with you to further improve the rule, program delivery, and evaluation.

Sincerely,



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NSAC Policy Specialist



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NSAC Policy Director

cc:
Under Secretary Mensah
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NSAC Recommendations on VAPG Final Rule

We are pleased that the rule has finalized needed changes for several definitions, including:

- Clarifying that a “steering committee” must be comprised wholly of independent producers;
- Clarifying that, in order to be eligible for a VAPG grant, agricultural producers must be individuals or entities producing agricultural commodities by engaging in the day-to-day labor and management of farm operations (or have the legal right to harvest an agricultural commodity for a VAPG project) instead of the expanded version that would have allowed those not actively engaged in labor and management to be eligible for VAPG funding;
- Eliminating reference to a qualified consultant for the definitions of feasibility study, planning grant, and marketing plan;
- Revising “mid-tier value chain” to include consumers as participants of an eligible project; and
- Revising the definition of “medium-sized farm or ranch” to conform to the Economic Research Service’s more commonly used gross sales threshold of \$1,000,000 for operators of medium-sized farms or ranches.

We urge that all of these improvements be retained in a revised final rule.

Despite these improvements to the definitions, however, there are several areas in the rule that fail to adequately implement the purpose of VAPG and changes from the 2008 and 2014 Farm Bills. We believe that the final rule contains several changes that make the rule less, rather than more, effective and in keeping with congressional intent. We enumerate each of these problem areas below, including our detailed proposals for how to remedy the problems.

Given the problems and shortcomings of the final rule, **we urge you to re-issue a new final rule based on the comments received in order to enable the rule to properly implement Farm Bill changes and to effectively carry out the purpose of the program, and to do so by 2016.**

Critical Improvements Needed

We urge you to make each of the following six changes in the process of issuing a revised final rule by 2016. At the end of each recommendation we provide a redline version of the changes we are recommending compared to the existing final rule.

1. Correct the criteria for the beginning and socially-disadvantaged farmer and rancher reserved funding pool and the criteria for awarding priority points for the four priority producer groups to conform to legislative intent.

We strongly disagree with both the Agency’s implementation of the reserved funding pool for beginning and socially-disadvantaged farmers and ranchers and its implementation of priority points for the four statutory producer categories: small- and mid-sized family farmers and ranchers, and beginning, socially-disadvantaged, and veteran farmers and ranchers. We urge you to correct the following five definitional and scoring problems.

(a) Fix the set-aside for beginning and socially disadvantaged farmers and ranchers with respect to group proposals.

We object to the final rule's interpretation of the required composition for entities comprised of beginning and socially-disadvantaged farmers and ranchers to qualify for one of the two statutory ten percent reserved funding pools (or set-asides). Under the final rule, in order for an applicant organization with multiple farmer or rancher owners to be eligible for reserved funding, 100 percent of the applicant organization must be comprised of beginning or socially-disadvantaged farmers and ranchers.

The purpose of the set-aside is to help groups that have been traditionally underserved have a level playing field to compete for VAPG program funding. Projects that provide a substantial benefit for beginning or socially-disadvantaged farmers and ranchers (BFRs or SDFRs) could easily come from a producer group that has three-quarters, half, a third, or a quarter of its membership coming from the targeted reserve group. Each of those producer groups would be serving significantly more BFRs than the overall percentage of BFRs in the country (17.2 percent according to USDA²) and thus would aid in advancing greater opportunity for the underserved group.

This unnecessarily restrictive limitation is unsupported by the statutory language. Indeed, the 2008 Farm Bill only required that 10 percent of funds be reserved “*to fund projects that benefit beginning farmers or ranchers or socially disadvantaged farmers or ranchers.*”³ This arbitrary 100 percent limitation greatly weakens the effectiveness of the clear statutory language and legislative intent to advance new farming opportunities. As it is rare for producer groups to be comprised entirely of beginning or socially-disadvantaged farmers and ranchers, this will disqualify entities with substantial representation from underserved groups, thus rendering the set-aside impractical and underutilized with respect to group projects.

Clearly, there is no legal reason for USDA to make such a tortured eligibility criteria for the reserved funds. As stated above, the farm bill directs USDA to “*reserve 10 percent of the amounts made available for each fiscal year under this paragraph to fund projects that benefit beginning farmers or ranchers or socially disadvantaged farmers or ranchers.*” (emphasis added). The reserve fund statutory language does not say the set aside is for beginning farmers only, but rather clearly states it is for projects that benefit beginning and socially disadvantaged farmers.

A project that includes a greater number of BFRs or SDFRs than the norm is clearly a project that benefits those targeted underserved groups. A project that intends to increase the number of participating BFRs or SDFRs in the business as a result of the project would be of even greater benefit to the targeted group and to the congressional goal of increasing farming opportunities. Both of these possibilities can and should be accounted for in a revised final rule.

The agency continues to confuse independent producer awards to a single farm with group projects with respect to priority points, just as it did when implementing the program during the last farm bill

² Williamson, James. “Beginning Farmers and Ranchers and the Agricultural Act of 2014.” *Amber Waves, USDA Economic Research Service* (2014).

³ Food, Conservation, and Energy Act of 2008 § 6202 (b)(7)(C)(i)

cycle. For a single farm to qualify for a VAPG award under the set-aside, the operator clearly must be either a BFR or SDFR. But for group projects, it is illogical for the agency to simply extrapolate eligibility criteria from single farms operated by a BFR or SDFR to group projects intended to benefit BFR or SDFRs; such an attempt clearly ignores the letter and spirit of the law. The test that must be applied, per the statutory directive, is whether or not a proposed group project benefits beginning or socially disadvantaged farmers.

The agency needs to fix the set aside language to make it clear that for single farm projects the applicant must be a BFR or SDFR, but for group projects, the criterion is whether the project benefits BFRs or SDFRs. We recommend the agency use a 25 percent standard in making this assessment, such that if 25 percent or more of the group are BFRs or SDFRs, the project qualifies for the set-aside.

This threshold is nearly 8 percent higher than the percentage of farms operated by beginning farmers compared to the total number of farms, 17 percent higher than the percentage of farms operated by racial and ethnic minority operators, and nearly 6 percent higher than the percentage of farms operated by socially disadvantaged operators in total (including gender).⁴ As such, it clearly exceeds the norm and thus adequately ensures that new farming opportunities and diversity are being created or strengthened by the project.

Detailed language recommendations follow at the end of this section.

(b) Fix the definition of beginning and socially disadvantaged farmers with respect to priority points.

We oppose the restriction that more than 50 percent of an entity must be comprised of BFRs or SDFRs in order to qualify for priority points. This too is overly restrictive and impractical. Having applicant entities with more than 50 percent of its membership comprised of BFRs or SDFRs, though less restrictive than the 100 percent requirement in the rule with respect to the set aside, will also lead to fewer beginning and socially disadvantaged farmers and ranchers benefiting from the program via the priority points, in direct contradiction of the clear congressional intent in declaring it a priority in the first place.

Again, there is no legal rationale for USDA's criteria for entity proposals that benefit BFRs or SDFRs. In fact, the rule contradicts the very clear intent of Congress in amending this portion of the statute as part of the 2014 Farm Bill.

In the preamble to the final rule the agency claims there are "*differences contained in the authorizing language in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), resulting in two separate priority categories.*"⁵ This is incorrect, and demonstrates a severe misunderstanding about the current authorizing language for VAPG.

⁴ Williamson, James. "Socially Disadvantaged Farmers: Race, Hispanic Origin, and Gender." *USDA Economic Research Service* (2014), <http://www.ers.usda.gov/topics/farm-economy/beginning-disadvantaged-farmers/socially-disadvantaged-farmers-race-hispanic-origin-and-gender.aspx>.

⁵ 80 Fed. Reg. at 26797

First, the statute in question is Section 231 of the Agricultural Risk Protection Act of 2000, as amended by the 2002, 2008, and 2104 Farm Bills. Changes made in 2008 that were repealed in 2014 are no longer relevant, so it is not clear why the preamble makes such a point of referencing the now deleted language.

More importantly, the preamble goes on to note that despite the deleted language from 2008 (now superseded by the “best contributes to” language from 2014), the new language somehow requires the agency to adopt its 50 percent rule for the priority points because “*while the Agricultural Act of 2014 does not contain the ‘contribute to opportunities’ language, it still contains separate language in paragraph (6) that gives ‘priority’ to beginning farmers or ranchers and socially-disadvantaged farmers or ranchers.*”⁶ The reasoning here is deeply flawed.

The 2014 Farm Bill revision creating (6)(A) and (6)(B) makes a clear and careful distinction between single farm projects -- (6)(A) -- and group projects -- (6)(B). As is the case for individual projects under the set aside, if the applicant is a single farm, then the applicant must be a BFR or SDFR. But, under (6)(B), if the applicant is a group, then the agency must award points on the basis of an evaluation of the degree to which a project contributes to creating opportunities for the priority categories, including BFRs and SDFRs.

Hence, the revised final rule should remove the extraneous 50 percent provision and strictly follow the farm bill directive to apply the “best contributes to” criterion.

Finally, we note that the final rule -- correctly -- does not specify the compositional make-up required of groups comprised of veteran farmers or small- and mid-sized family farmers. Though completely inconsistent with the application of the 50 percent requirement in the case of BFRs and SDFRs, this decision, however inconsistent, is the correct one. The agency should apply the same rules to BFRs and SDFRs that it does for veterans and for small and mid-sized family farms.

We hasten to add, for the record, that should the agency choose the opposite approach and require more than 50 percent of an entity be comprised of veteran farmers or small- and mid-sized family farmers for the purposes of priority point scoring, we would also strenuously object to that limitation as well. In sum, the revised final rule should keep to the farm bill’s “best contributes to” criterion without any other non-statutory, artificial, and harmful limitations.

Detailed language recommendations follow at the end of this section.

(c) Fix implementation of the “best contribute to creating or increasing marketing opportunities” for priority producer groups provision.

We oppose the agency’s interpretation of the 2014 Farm Bill provision to prioritize group projects that “best contribute to creating or increasing marketing opportunities” for one or more of the four priority producer groups. The final rule provides for up to 5 points for applications depending on the following criteria, whether: applicant groups are comprised of two or more priority groups (1 point), are comprised of 75 percent or more of any one or any combination of priority groups (2 points), and will increase the number of priority groups that comprise the applicant group’s membership (2 points).

⁶ 80 Fed. Reg. at 26797

This faulty criteria skirts the clear farm bill directive entirely because it does not address the actual issue of what project will actually “best contribute to creating or increasing marketing opportunities” for one or more of the four priority producer groups. Rather than heed to the farm bill directive, the criteria established by the agency in the final rule rewards applicants based simply on the make-up of the applicant group. Additionally, the criteria punishes, via point reductions, individual producers who come from the four priority categories as well as groups serving a single priority category or groups with less than a 75 percent make-up by a priority producer group. The statute does not direct the agency to make up out of whole cloth these new priority categories, and it most certainly does not give the agency the right to downgrade the statutory priorities in this manner. In comments that NSAC submitted on the “best contribute to” change from the 2014 Farm Bill during the April 25, 2014 USDA listening session, we mentioned that a:

graduated point system in which more points are awarded as the ratio of priority category producers increase relative to the total number of producers benefitting from the project, would be helpful to quantify “substantial participation.” [page 2]

However, in those same comments, we also noted that project evaluations “should not be limited to a quantifiable determination only, but should also include qualitative aspects for the project proposal.” Instead of using numerical tests and ‘all-or-nothing’ scoring as described for both the reserved funding pool and priority producer criteria, the revised final rule should use a meaningful and effective proposal review and evaluation process (see point five below) to determine which group projects do the best job of advancing one or more of the Congressional priorities.

The agency should provide specific instructions to project proposal evaluators, including specific questions reviewers should ask of each proposal purporting to address one or more of the four priorities. In addition, in order for proposal writers to provide the pertinent information, the agency should include specific instructions for how the applicant should indicate whether or not the project addresses one of the four priorities and, if so, to what extent it does so.

(d) Reverse the inappropriate reduction in total priority points for priority categories.

We object to the reduction in total points for the priority categories. In the 2010 proposed rule, 15 points were available for the type of applicant. The 2011 interim rule reduced the amount of points from 15 to 10 lump sum points for priority groups. In comments submitted on April 14, 2014, we recommended that the points be raised back up to 15.

Instead of raising or even maintaining the 10 points for priority categories, USDA has, by creating additional requirements for priority groups, effectively reduced the total points available to individual producers and to groups of producers that fall into the priority categories from 10 to as low as 5 points. This reduction demonstrates a devaluing of priority categories – exactly the opposite of what was intended when Congress created priority categories to help boost opportunities for underserved producers.

We are incredulous that the agency even contemplated reducing the point value to five, much less put it into a final rule. We strongly urge the agency to eliminate the final rule’s reduction in priority points that any one project can amass, and to reinstate the 15 points from the proposed rule.

(e) Expand the definition of beginning farmer and rancher to incorporate active engagement

Finally, we urge you to expand the definition of beginning farmers and ranchers to add the other key criteria from Section 343(a) of the Consolidated Farm and Rural Development Act, namely substantial and material participation and substantial day-to-day labor and management. We do not believe the agency should be in the business of making VAPG awards to farm owners who are not actively engaged in farming. To do so would counteract the purpose of the program in increasing opportunities for independent producers. The simple addition to the definition we propose below, taken directly from Section 343(a) of the CONACT, as directed by the farm bill, would solve the problem.

RECOMMENDATION #1 – incorporating (a) - (e) above

We urge you to make the following changes to the rule.

(~~Strikethroughs~~ represent deletions and underlines represent additions.)

§ 4284.902

Beginning farmer or rancher. (1) For purposes of determining eligibility to receive priority points under § 4284.924, a Beginning Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years, materially and substantially participates in the operation of the farm or ranch, and provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

(ii) An eligible Applicant entity, other than a Harvester, ~~that has an Applicant ownership or membership of more than 50 percent farmers or ranchers each of whom have operated a Farm or Ranch for no more than 10 years~~ determined to best contribute to the creation of or increase in marketing opportunities for beginning farmers or ranchers who have operated a Farm or Ranch for no more than 10 years, materially and substantially participates in the operation of the farm or ranch, and provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located.

(2) For the purposes of determining eligibility to receive funding reserved for Beginning Farmers and Ranchers under § 4284.923, a Beginning Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years, materially and substantially participates in the operation of the farm or ranch, and provides substantial day-to-day labor and management of the farm or ranch,

consistent with the practices in the State or county in which the farm or ranch is located; or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership ~~comprised entirely of (i.e., 100 percent)~~ of at least 25 percent farmers or ranchers ~~that~~ each of whom have operated a Farm or Ranch for no more than 10 years, materially and substantially participates in the operation of the farm or ranch, and provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located.

Socially-disadvantaged farmer or rancher. This term has the meaning given in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)): Socially-Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a “Socially-Disadvantaged Group.”

(1) For the purposes of determining eligibility to receive priority points under § 4284.924, if there are multiple farmer or rancher owners or members of the Applicant organization, ~~more than 50 percent of the ownership must be held by members of a Socially-Disadvantaged Group~~ those determined to best contribute to the creation of or increase in marketing opportunities for socially-disadvantaged farmers or ranchers.

(2) For the purposes of determining eligibility to receive funding reserved for Socially-Disadvantaged Farmers and Ranchers under § 4284.923, if there are multiple farmer or rancher owners of the Applicant organization, at least 25 percent of all farmer and rancher owners ~~(i.e., 100 percent)~~ or members must be members of a Socially-Disadvantaged Group.

§ 4284.923 Reserved funds eligibility.

The Applicant must meet the requirements specified in this section, as applicable, if the Applicant chooses to compete for reserved funds. A Harvester is not eligible to compete for reserved funds under paragraph (a) of this section, but is eligible to compete for reserved funds under paragraph (b) of this section. In accordance with application deadlines, all eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same Fiscal Year, as funding levels permit.

(a) If the Applicant is applying for Beginning Farmer or Rancher or Socially-Disadvantaged Farmer or Rancher reserved funds, the Applicant must provide the following documentation to demonstrate that the applicant meets all of the requirements for the applicable definition found in § 4284.902.

(1) For beginning farmers and ranchers (including veterans), documentation must include a description from each of the individual owner(s) of the applicant farm or ranch organization, addressing the qualifying elements in the beginning farmer or rancher definition, including the length and nature of their individual owner/operator experience at any farm in the previous 10

years, along with one IRS income tax form from the previous 10 years showing that each of the individual owner(s) did not file farm income; or a detailed letter from a certified public accountant or attorney certifying that each owner meets the reserved funds beginning farmer or rancher eligibility requirements. For individual farm or ranch applicants ~~entities with multiple owners~~, all owners must be eligible beginning farmers or ranchers. For group entity applicants, 25 percent or more of the owners or members must be eligible beginning farmers or ranchers.

(2) For Socially-Disadvantaged farmers and ranchers, documentation must include a description of the applicant's farm or ranch ownership structure and demographic profile that indicates the owner(s)' membership in a Socially-Disadvantaged group that has been subjected to racial, ethnic or gender prejudice; including identifying the total number of owners of the applicant organization; along with a self-certification statement from the individual owner(s) evidencing their membership in a Socially-Disadvantaged group. For individual farm or ranch applicants, All farmer and rancher owners must be members of a Socially-Disadvantaged group. For group entity applicants, 25 percent or more of the owners or members must be eligible Socially-disadvantaged farmers or ranchers.

§ 4284.942 Proposal evaluation criteria and scoring applications.

(5) Priority Points (up to ~~40~~ 15 points). Priority points may be awarded in both the General Funds competition and the Reserved Funds competitions. ~~Qualifying applications may be awarded priority points under paragraphs (b)(5)(i) and (ii) of this section, for up to a total of 10 points.~~

~~(i)~~ Eligible Independent Producer Project Priority categories (lump sum score of 0 or ~~5~~ 15 points). Qualifying Applicants that are eligible independent producer projects may request priority points under this paragraph if they meet the requirements for one of the following categories and provide the documentation specified in § 4284.924, as applicable. Priority categories are: Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, Veteran Farmer or Rancher, Operator of a Small- or Medium-sized Farm or Ranch that is structured as a Family Farm, ~~Mid-Tier Value Chain Cooperative~~. It is recommended that Applicants utilize the Agency application package when documenting for priority points and refer to the documentation requirements specified in § 4284.924. Eligible independent producer Applications from qualifying priority categories will be awarded 5 15 points. Applicants will not be awarded more than ~~5~~ 15 points even if they qualify for more than one of the priority categories.

(ii) Best contributing (up to ~~5~~ 15 points). Applications from Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures (applicant groups) may be awarded up to ~~5~~ 15 ~~additional~~ points for contributing to the creation of or increase in marketing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of a Small- or Medium-sized Farm or

Ranch that are structured as a Family Farm (priority groups). Applicant groups must submit documentation on the percentage of existing membership that is comprised of one or a combination of the above priority groups and on the anticipated expansion of membership to one or more additional priority groups. Applications must contain sufficient information as described in the annual solicitation and application package to enable the Agency to make the appropriate determinations for awarding points. If the application does not contain sufficient information, the Agency will not award points accordingly.

2. Reduce the amount of discretionary geographic points (from 10 to 5) and reinstate the amount of points for priority categories (from 10 to 15).

Under the final rule, both discretionary geographic preference points and statutory priority points each receive 10 out of 100 total points. By continuing to set geographic preference points on par with program priority points, the agency is providing a means for projects that do not serve the program priorities to nonetheless gain the same number of points as those that do, provided they are submitted from a geographically favored state. This greatly diminishes the role of the statutory priorities and counteracts the basic concept of a competitive grants program, i.e., awarding funding to the most viable and sustainable projects that best help U.S. agricultural producers enter into value-added activities.

While we support the idea of assisting producers in all States with value-added projects, we believe the most effective way to accomplish this objective is to engage in effective outreach through the RD State offices and directors, the RD Outreach staff, the Office of Advocacy and Outreach, Strike Force, and engagement with NGOs and colleges and universities.

We urge you to reduce the point value of the geographic preference to five points out of 100, while raising the maximum points for the program priorities from 10 points to 15 points out of 100. In our view, 15 points out of 100 to reflect the congressionally-prescribed program priorities is certainly not too large. By retaining five points for geographic diversity, flexibility is retained to ensure that more States can be served in instances where enhanced outreach proves insufficient.

RECOMMENDATION #2

In addition to the increase to 15 points for the program priorities included in recommendation #1 above, we also urge you to make the following change to the rule for geographic points.

(~~Strikethroughs~~ represent deletions and underlines represent additions.)

§ 4284.942 Proposal evaluation criteria and scoring applications.

(6) Priority Categories (graduated score 0–~~4~~ 5 points). Unless otherwise specified in a notification issued under § 4284.915(b)(1), the Administrator or State Director has discretion to award up to ~~4~~ 5 points to an application to improve the geographic diversity of awardees in a Fiscal Year. In the event of a National competition, the Administrator will award points and for a State-allocated competition, the State Director will award points.

3. Remove cooperatives and mid-tier value chains from the priority categories.

The final rule should remove the non-statutory priority categories for cooperatives (coops) and mid-tier value chains.

Neither the 2008 Farm Bill nor the 2014 Farm Bill made coops or mid-tier value chains a priority category. Nevertheless, the interim final rule published February 23, 2011 and effective March 25, 2013 allowed, for the first time, projects from farmer and rancher cooperatives and mid-tier value chains to receive priority points. The farm bill not only did not a statutory set-aside for these groups, but also it did not authorize USDA to add priorities beyond those designated in law by Congress – there is no language indicating “and other priorities as determined by the Secretary” in this section of the farm bill. Therefore, as there is absolutely no legal basis for the current provision making coops and mid-tier value chains priority categories, and since the farm bill did not provide agency discretion in this matter, they must be removed in a new final rule.

Making coops and mid-tier value chains eligible categories for the priority points has the effect of weakening, or even negating, the statutory priorities. Projects that best serve small and mid-sized family farms or beginning, socially disadvantaged, or veteran farmers and ranchers are awarded priority points, per the statutory requirements. Project proposals from cooperatives or mid-tier value chains that meet one or more of these four statutory priorities also receive those priority points. The addition of coops and mid-tier value chains as additional priority categories logically means that coops and mid-tier value chains that do not meet the statutory priorities – i.e., that do not substantially serve small and mid-sized family farms or beginning, socially disadvantaged, or veteran farmers and ranchers – will also receive priority points. Thus, the inclusion of separate priority categories for coops and mid-tier value chains effectively negates the priorities for the program established by Congress in 2008 and reaffirmed in 2014. Clearly, Congress did not intend this result.

RECOMMENDATION #3

We urge you to delete coops and mid-tier value chains from the priorities as follows.

(~~Strikethroughs~~ represent deletions and underlines represent additions.)

§ 4284.924 Priority scoring eligibility.

Applicants that demonstrate eligibility may apply for priority points if their applications: Propose projects that contribute to increasing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm; ~~or propose Mid-Tier Value Chain projects; or are a Farmer or Rancher Cooperative. A Harvester is eligible for priority points only if the Harvester is proposing a Mid-Tier Value Chain project.~~

- (a) Applicants seeking priority points as Beginning Farmers or Ranchers or as Socially Disadvantaged Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable.

(b) Applicants seeking priority points as Veteran Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable, and must submit form DD-214, “Report of Separation from the U.S. Military,” or subsequent form.

(c) Applicants seeking priority points as Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm must:

(1) Be structured as a Family Farm;

(2) Meet all requirements in the associated definitions; and

(3) Provide the following documentation:

(i) A description from the individual owner(s) of the Applicant organization addressing each qualifying element in the definitions, including identification of the average annual gross sales of agricultural commodities from the farm or ranch in the previous three years, not to exceed \$500,000 for operators of small-sized farms or ranches or \$1,000,000 for operators of medium-sized farms or ranches;

(ii) The names and identification of the blood or marriage relationships of all Applicant/owners of the farm; and

(iii) A statement that the Applicant/owners are primarily responsible for the daily physical labor and management of the farm with hired help merely supplementing the family labor.

~~(d) Applicants seeking priority points for Mid-Tier Value Chain proposals must be one of the four eligible Applicant types and provide the documentation specified in § 4284.923(b)(1) through (7), demonstrating that the project meets the Mid-Tier Value Chain definition.~~

~~(e) Applicants seeking priority points for a Farmer or Rancher Cooperative must:~~

~~(1) Demonstrate that it is a business owned and controlled by Independent Producers that is legally incorporated as a Cooperative; or that it is a business owned and controlled by Independent Producers that is not legally incorporated as a Cooperative, but is identified by the State in which it operates as a cooperatively operated business;~~

~~(2) Identify, by name or class, and confirm that the Independent Producers on whose behalf the value-added work will be done meet the definition requirements for an Independent Producer, including~~

~~that each member is an individual Agricultural Producer, or an entity that is solely owned and controlled by Agricultural Producers, that substantially participates in the production of the majority of the Agricultural Commodity to which value will be added; and~~

~~(3) Provide evidence of “good standing” as a cooperatively operated business in the State of incorporation or operations, as applicable.~~

(f) Applicants applying as Agricultural Producer Groups, Farmer and Rancher Cooperatives, or Majority-Controlled Producer-Based Business Ventures (group Applicants) may request additional priority points for projects that “best contribute to creating or increasing marketing opportunities” for operators of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers. The annual solicitation and Agency application package will provide instructions and documentation requirements for group Applicants to apply for these additional priority points.

4. Revise the definition of family farm in the final rule to match “Section 761.2 of title 7, Code of Federal Regulations (as in effect on December 30, 2007),” in conformance with the statutory directive.

The farm bill requires the agency to adopt 7 U.S.C 761.2 as the definition of family farm for VAPG. That section reads as follows:

Family farm is a business operation that:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence;

(2) Has both physical labor and management provided as follows:

(i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(ii) A substantial amount of labor to operate the farm is provided by:

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(3) May use full-time hired labor in amounts only to supplement family labor.

(4) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

Contrast that to the definition of family farm in the final VAPG rule:

Family farm. A Farm (or Ranch) that produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence; whose owners are primarily responsible for daily physical labor and strategic management; whose hired help only supplements family labor; and, whose owners are related by blood or marriage or are Immediate Family.

The agency errs in melding the labor test and the management test in its truncated version of Section 761.2 in the definition section of the final rule. In contrast with Section 761.2, the final rule requires that the principals be primarily responsible for management of the operation, whereas Section 761.2 requires that **all** the strategic management decisions be made by those persons as well as a majority of the day to day operational decisions.

We urge the agency, in re-issuing a revised final rule, to faithfully conform to Section 761.2, as it is required to do by statute but fails to do in this final rule.

RECOMMENDATION #4

Follow the statutory directive to match the VAPG definition of family farm to Section 761.2 and make a conforming change to § 4284.924 (c)(3)(iii) , as follows.

(~~Strikethroughs~~ represent deletions and underlines represent additions.)

§ 4284.902

Family farm. A Farm (or Ranch) that produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence; whose owners are responsible for all strategic management decisions and a majority of the day-to-day operational decisions; whose owners are primarily responsible for daily physical labor ~~and strategic management~~; whose hired help only supplements family labor; and, whose owners are related by blood or marriage or are Immediate Family.

§ 4284.924 Priority scoring eligibility.

Applicants that demonstrate eligibility may apply for priority points if their applications: Propose projects that contribute to increasing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm; ~~or propose Mid-Tier Value Chain~~

~~projects; or are a Farmer or Rancher Cooperative. A Harvester is eligible for priority points only if the Harvester is proposing a Mid-Tier Value Chain project.~~

(a) Applicants seeking priority points as Beginning Farmers or Ranchers or as Socially Disadvantaged Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable.

(b) Applicants seeking priority points as Veteran Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable, and must submit form DD-214, "Report of Separation from the U.S. Military," or subsequent form.

(c) Applicants seeking priority points as Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm must:

(1) Be structured as a Family Farm;

(2) Meet all requirements in the associated definitions; and

(3) Provide the following documentation:

(i) A description from the individual owner(s) of the Applicant organization addressing each qualifying element in the definitions, including identification of the average annual gross sales of agricultural commodities from the farm or ranch in the previous three years, not to exceed \$500,000 for operators of small-sized farms or ranches or \$1,000,000 for operators of medium-sized farms or ranches;

(ii) The names and identification of the blood or marriage relationships of all Applicant/owners of the farm; and

(iii) A statement that the Applicant/owners provide all the strategic management decisions and a majority of the day-to-day operational decisions and are primarily responsible for the daily physical labor ~~and management~~ of the farm with hired help merely supplementing the family labor.

5. Provide a broad outline of the application review process in a revised final rule, providing for full peer review panels on par with all other USDA national competitive grant programs and with government best practices.

We object to the final rule's failure to incorporate both a broad outline of the application review process and a section concerning review panels. The inclusion of these sections would allow for greater consistency for applicants and a fairer process.

Including such a broad outline would not be restrictive, as the yearly NOFA would be able to provide further details and make adjustments to the review process on an as-needed basis.

Additionally, having full review panels would ease the workload on the limited number of RD staff and independent reviewers and would provide for more comprehensive review while avoiding the possibility of undue political influence by the state office or of collusion by an independent reviewer and state office staff member.

In the preamble to the final rule, the agency disagrees with this recommendation on two grounds.

First, the “*Agency disagrees with the recommendation to incorporate into the rule even a broad outline of the review process because of the ensuing loss of flexibility.*”⁷ All the other USDA competitive grants programs include the review process in their rulemakings and evidently do not understand this to be a loss of critical flexibility. It appears, therefore, that the agency is claiming a special status for itself, not claimed by other USDA agencies with similar programs. Yet it offers no defense to justify its special status claim other than a presumed loss of flexibility. We find this completely unconvincing. In our view, there is no good reason why RBCS cannot do what NIFA, AMS, and FNS do. In fact, there is every possible good government reason for it to do so.

Second, the Agency also “*disagrees with the suggestion to include a section in the rule concerning review panels. Compared to some programs that use a review panel process, the VAPG program has a much higher volume of applications and applications that are more diverse in nature. Because of these two characteristics, a set review panel process, in the Agency’s estimation, does not offer any benefits compared to the current process in which applications are scored by both Rural Development state office personnel and assigned, qualified, nonfederal independent reviewers. Therefore, the Agency has not incorporated either of the commenter’s suggestions in the Final Rule.*”⁸

This is also completely unconvincing. At NIFA, AFRI receives several thousand applications annually, yet operates review panels. At AMS, the Farmers Market and Local Food Promotion Program received over 650 applications in FY 14 and over 700 applications in FY 15, yet operates review panels. At FNS, the Farm to School Program received over 300 applications in each of FY 13, 14, and 15 -- despite having only a fraction of the funding VAPG has available to it – and they operate review panels. Moreover, the diversity of proposals received by programs such as AFRI, SARE, and FMLFPP easily exceed those received by VAPG. Neither numbers nor diversity is a valid argument for the lack of review panels.

It appears to us to again come down to the argument that RBCS is special and deserves to do things differently than its sister agencies and differently from well-established best practices for federal competitive grants programs. We believe the agency’s insistence on being the outlier is fundamentally misconceived and we urge you to reconsider this position.

As we have said before, there is no shortage of excellent USDA models of robust peer review processes for national competitive grants programs that have high application rates and diverse proposals, including programs operated by NIFA (e.g., Agriculture and Food Research Initiative; Sustainable Agriculture Research and Education; Beginning Farmer and Rancher Development

⁷ 80 Fed. Reg. at 26793

⁸ 80 Fed. Reg. at 26793

Program), AMS (e.g., Farmers Market and Local Food Promotion Program), and FNS (e.g. Farm to School Grants).

We believe RBCS should take the best ideas from other USDA competitive grants programs and formulate its own peer review process for VAPG grants. A more robust review system is critical to the effectiveness and integrity of the program.

RECOMMENDATION #5

We urge the agency to adopt some basic ground rules for application review and evaluation as detailed below. We stress that this language is common to USDA competitive grants programs, very flexible, and allows for year to year changes, but with core, good government principles in place in the rule, as they should be. While we are proposing fairly bare-bones language, each of the subsections below could be expanded as the agency may deem desirable.

(Entirely new section to the rule, hence all underlined.)

§ 4284.943 Application review and evaluation.

(a) *Guiding principles.* The guiding principle for application review and evaluation is to ensure that each proposal is treated in a consistent and fair manner, that applicants receive appropriate feedback and comments on their proposals, and that awards decisions are made in as timely a manner as possible.

(b) *Review panels.* In addition to review by the Agency, each eligible application will be reviewed and evaluated by an external review panel. The number of review panels will be determined by the Agency on an annual basis.

(c) *Selection of reviewers.* The agency will publish procedures to allow reviewers and potential reviewers to express their interest in serving and to submit and update their personal information and qualifications. Reviewers will be selected based on relevant training and experience.

(d) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants.

(e) *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.

(f) *Guidance for reviewers.* All reviewers will receive a description of the review criteria and scoring information. Reviewers will be instructed to use this criteria and scoring information, and only that, to judge the merit of the proposals they review.

(g) *Feedback to applicants.* Copies of individual reviews and/or summary reviews, not including the identity of reviewers, will be sent to the applicant after the review process has been completed.

6. Provide for regular stakeholder input on an annual basis for each future NOFA.

There is no formal agency process in place for soliciting and considering stakeholder input on the VAPG NOFA. We urge you to add language to the revised final rule creating a regular process in which, with the publication of each funding notice, language is included inviting comments on the content of the next funding notice. A due date for such comments would be determined by the Agency and published with the NOFA.

RECOMMENDATION #6

We urge you to add a process for stakeholder input as follows.

(Entirely new section to the rule, hence all underlined.)

4284.944 Stakeholder input. The Agency will solicit and consider input from stakeholders for use in formulating future funding notices. The Agency will provide instructions for submission of stakeholder input in each funding notice, and will consider any comments received within a specified timeframe in the development of future funding notices for the program.