



United States
Department of
Agriculture

Rural Development



Community Facilities Direct Loan Program Guidance Book for Applicants

Together, America Prospers

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Program Overview

What does this loan program do?

The Community Facilities (CF) Direct Loan Program provides affordable funding to develop essential community facilities. An essential community facility is defined as a facility that provides an essential service to the local community for the orderly development of the community. It must carry out a function customarily provided by a local unit of government. The facility must be located in a rural area and primarily serve rural residents. The facility must be operated on a nonprofit basis and does not include private affairs, commercial, or business undertakings (except for limited authority for industrial parks).

Who may apply for this program?

Eligible borrowers include:

- Public bodies
- Community-based nonprofit corporations
- Federally recognized Tribes

What is an eligible rural area?

Rural areas including cities, villages, townships, and towns including Federally recognized Tribal lands with no more than 20,000 residents according to the latest U.S. Decennial Census.

The boundaries for unincorporated areas in determining populations will be based on the Census Designated Places (CDP).

How may loan funds be used?

Funds can be used to purchase, construct, and/or improve essential community facilities, purchase equipment and pay related project expenses.

Examples of essential community facilities include:

- Healthcare facilities such as hospitals, medical clinics, dental clinics, nursing homes, assisted living facilities, or facilities that provide for the prevention, treatment, and recovery of substance misuse disorders.
- Public facilities such as townhalls, courthouses, airport hangers, bridges, port authorities, or street improvements.
- Community support services such as child care centers, adult daycare, homeless shelters, community centers, or transitional housing.
- Public safety services such as fire departments, police stations, prisons, police vehicles, fire trucks, public works vehicles or equipment.
- Educational services such as schools, colleges and universities, community colleges, charter schools, vocational and technical schools, dormitories, museums, or libraries.
- Local food systems such as community gardens, food pantries, community kitchens, foodbanks, food hubs, or greenhouses.
- E-Connectivity end-user equipment to include distance learning equipment, telemedicine equipment, and health information technology equipment as well as internal wiring and publicly available Wi-Fi capability within a facility.

For a complete list of eligible loan purposes, [see 7 CFR, Part 1942.17\(d\)](#).

Initial Meeting with Rural Development

STEP

1

Initial Customer Meeting

Summary of Activities: The first phase of the process begins with you gaining introductory information about the CF Direct Loan Program.

During this initial meeting, you should learn about the key eligibility considerations like project and applicant eligibility requirements, loan rates and terms, and the funding cycle. Additionally, you should learn about the requirements to seek and apply for credit from other commercial sources.

Since this program is not in direct competition with local and regional commercial lenders, you are required to work with commercial lenders to determine if you can obtain funds for your project through their commercial loan programs at reasonable rates and terms. If no commercial lender is willing to provide 100 percent of the project cost, then you must determine if the commercial lender is willing to participate in the project to a lesser degree. The CF direct loan funds can be leveraged with loan funds from commercial lenders as either a guaranteed loan or as a non-guaranteed loan.

Also, a key aspect of this eligibility determination is driven by the USDA Office of General Counsel (OGC). A legal review of your organizational documents is necessary to ensure that your organization is eligible to receive Federal financial assistance through the CF Direct Loan Program. Please be prepared to provide a copy of your organizational documents and bylaws at this initial meeting.

USDA Rural Development (RD) is interested in learning about your historical financial success. Please be prepared to discuss your financial audits for the last five years during this initial meeting. RD wants to ensure that your organization can meet the 5/5 criteria ([See Attachment E Decision Tree 1 to Determine the Level of Financial Feasibility Evaluation For a Community Facilities Direct Loan or Guarantee](#)). These audits must be presented to RD at the follow-up meeting or the Pre-Application meeting.

It is very important that your expectations are met and that all loan application requirements are discussed during this initial meeting. RD strives to provide superior customer service and to communicate all eligibility requirements and discuss all key program-related information prior to the potential applicant incurring any application-related expenses.

Initial Customer Meeting Discussion Checklist



At a minimum, the following topics should be discussed at this meeting:
(see Attachment A for a detailed checklist)

1. Eligibility

- a. Project
- b. Applicant (to meet the 5/5 criteria)
 - i. Organizational Documents and
 - ii. Most recent five-years of financial audits
- c. Location

2. Loan

- a. Current Interest Rate
- b. Loan Term
 - i. Real Estate
 - ii. Equipment
- c. Debt Service Reserve (DSR) Requirement
- d. Capital Asset Reserve Requirement

3. Federal Funding Cycle

- a. Fiscal Year
- b. Prior Year CF Allocation

4. Test for Other Credit Requirement

5. Reimbursable Upfront Expenditures (Construction Type Projects)

6. Interim Financing

- a. For loans greater than \$50,000

7. Application Time Table

- a. Local Office Review Process
- b. State Office (SO) Review Process
- c. National Office Concurrence (for loans that exceed the SO loan approval authority)

8. Contracts and Procurement

- a. Open and Free Competition Requirement

9. Financial Feasibility Report Requirements

10. Environmental Report Requirements

Eligibility Determination

Eligibility

As mentioned earlier, the three primary eligibility requirements for the CF Direct Loan Program include *entity type*, *location* of the facility, and *purpose* of the facility.

Eligible Entities

[\(See 7 CFR 1942.17\(b\)\(1\)\)](#)

a. Nonprofit corporations:

Nonprofit corporations must have significant ties with the local rural community or region. These ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas.

b. Public bodies

c. Tribal entities

Your entity must provide a function/service typically provided by a local unit of government; no individual, commercial, or business undertakings (except for limited authority for industrial parks).

The entity must have or will obtain legal authority to:

- Own the project;
- Borrow funds;
- Pledge collateral;
- Construct;
- Operate;
- Maintain; and
- Manage the project.

[\(See 7 CFR 1942.17\(b\) \(4\)\)](#)

Evidence of Significant Community Support

[\(See the most recent Administrative Notice \(AN\) on this topic\)](#)

There is a statutory requirement that all public bodies, Tribes, and nonprofit applicants provide evidence that the project has gained significant community support. As part of the application process, section 3811 of the Consolidated Farm and Rural Development Act (ConAct) requires evidence of significant community support in the form of a certification of support for each project or facility from any affected local government body.

If Tribal lands are within the service area of the facility, you will need a letter from the Tribal government.

Eligibility Determination



There are three ways to demonstrate significant ties to the community:

- 1. Close association with or controlled by a local unit of government.**
 - a. Specific taxes pledged to benefit the nonprofit entity.
- 2. Special use tax broadly-based ownership and controlled by members of the community.**
 - a. Governing board of the nonprofit corporation should be:
 - i. Comprised of knowledgeable volunteers, representative of the community or service area.
 - ii. Expertise includes but is not limited to:
 - Financial
 - Administrative
 - Operational management
- 3. Substantial public funding.**
 - a. Taxes
 - b. Revenue bonds
 - c. Other local government sources
 - d. Community-wide fundraising campaign

Eligible Locations

(See 7 CFR 1942.17(b)(2))

Eligible locations include:

- Cities, towns, and Census Designated Places (CDPs) with populations of 20,000 or less, according to the latest Decennial Census of the United States.
- At least the majority of the population served must be in an eligible rural area.
- Projects must primarily serve and benefit rural residents and communities.
- Must be within the jurisdiction of the applicant.

There is no limitation placed on population in unincorporated rural areas, with the exception of CDPs. If a project is close to an ineligible area, you must ensure that the project will primarily serve rural residents.

(See the most recent AN on this subject).

CDPs are geographic entities for the purpose of census data. A CDP is an area with a concentration of population, housing, and commercial structures that is identified by name but is not within an incorporated place. CDPs have no legal boundaries (like a city or village). They are based on demographics, characteristics, and density. If a CDP is located in an unincorporated area, the population of the CDP must be 20,000 or less to be eligible for the CF program.

Eligibility Determination

Eligible Purposes

[\(See 7 CFR 1942.17\(d\)\(1\)\(i\)\(B\)\)](#)

Direct loan funds may be used to construct, enlarge, or otherwise improve community facilities for healthcare, public safety, public services, community support services, educational services, and utility services (such as gas distribution and hydro-electric).

All facilities must be for public use with some exceptions for YMCAs, YWCAs, Boy Scouts, Girl Scouts, and Camp Fire Girls. Other items that can be included in a CF loan include reasonable and necessary fees for:

- Legal
- Architectural and/or engineering
- Fiscal advisors
- Environmental
- Archaeological
- Mitigation measures
- Planning
- Establishing or acquiring rights

[See 7 CFR 1942.17\(d\)\(1\)\(iv\), 7 CFR 1942.17\(d\)\(1\)\(v\), and the most recent \[AN on this topic\]\(#\).](#)

Ineligible Loan Purposes

[\(See 7 CFR 1942.17\(d\) \(2\)\)](#)

Facilities used primarily for recreational purposes are ineligible. Direct loan funds can be used when a project has a recreational aspect. For example, if the project is to be used for educational or healthcare purposes; i.e., a day care center, playground equipment, hospital swimming pool for physical therapy, or a school gym or ballfield as part of a curriculum, then the project could be considered eligible.

Other Ineligible Loan Purposes Include:

1. Commercial enterprises—if the project is typically operated by a private enterprise or for producing profits.
 - a. This does not include nonprofits that provide childcare, geriatric care, and healthcare to rural communities.
2. No more than 25 percent of the total floor space may be used for an ineligible purpose
[\(See the most recent AN on “Use of CF Funds for Leased Space”\).](#)
3. Leases to ineligible organization/activities must be related to and enhance the primary purpose of the loan.
 - a. In many parts of the country, it is customary for local governments to provide limited office space to other local, State, or Federal agencies. In these cases, they are not limited to the less than 25 percent requirement; however, they **MUST** provide supporting documentation that the community typically provides space for the otherwise ineligible agency.
4. On-site utility systems or buildings in connection with industrial parks
5. Television services and facilities
6. Electric generation and transmission facilities or telephone systems
7. Projects that are not modest in size, type, and design
8. Loan and/or grant finder’s fees
9. Broadband transmission

Pre-Application Process

STEP 2

All CF loan regulations, forms, and bulletins can be obtained from the RD website at <http://www.rd.usda.gov/publications/regulations-guidelines> (click on “Instructions” or “Forms,” as appropriate).

Pre-Application Meeting with the Customer

The pre-application meeting is intended to gather information discussed during the initial meeting, which will assist with completing the pre-application. Also, follow-up discussions to ensure that you understand the loan program. This meeting also includes follow-up discussions to ensure:

1. Discussions of the purpose, location, and project eligibility requirements and the CF program funding cycle. These aspects have the greatest impact on how and when a project can be funded.
2. Understanding the Federal fiscal year start and end dates, and CF budget being dependent upon the Congressional allocations to the program.
3. Reviewing your historical financial documents to ensure a successful track record that meets CF's 5/5 criteria. An in-depth review of the financials historical performance will be evaluated and then assessed by the National Office.
 - a. Has the organization been in existence for five years and has it operated on a financially successful basis for at least five years prior to their application?
 - i. [See 7 CFR 1942-A, Section 1942.17\(g\) \(2\) \(iii\) \(A\) \(6\) and \(3\) \(iii\) \(A\) \(2\).](#)
 - ii. An exception can be granted by the National Office but requires heightened evidence of community financial support and aggressive leadership.
4. Application time-line discussions. Time-line components are listed below:
 - a. Organizational documents will be reviewed to determine if the applicant is eligible to receive Federal financial assistance through the CF program.
 - i. The Regional Office of General Counsel (OGC) will review organizational documents to determine if the applicant is eligible to receive CF funding.
 - b. Environmental Review process.
 - i. An applicant should allow 3-6 months for the completion of the Environmental Review process. Depending on the level of environmental review required, the review could take more than 3-6 months.
 - ii. The Environmental Review process will be performed by an independent third party and this process must be completed and approved before the project is considered as eligible for Federal financial assistance. Please contact your local Community Programs (CP) Area Specialist for further guidance on this matter.
 - c. Historic Preservation process.
 - i. Applicants will meet all requirements of the Advisory Council on Historic Preservation Section 106 process. Please [see Attachment F: Decision tree for Determining When Projects Need Section 106 Review](#) for further guidance on this matter.

Pre-Application Process

- d. Financial Feasibility Report requirements.
 - i. Based on the project cost and characteristics, these factors will determine what type of feasibility evaluation is required for your project:
 - ii. A financial feasibility report is required for all community facility projects with a loan amount above \$500,000. For small loans, a financial feasibility analysis without examination opinion will likely be appropriate. [See Decision Tree 1 on page 18 to Determine the Level of Financial Feasibility Evaluation For a Community Facilities Direct Loan or Guarantee](#), which will aid you in determining the appropriate financial feasibility evaluation requirement for your project).
 - iii. You should allow 6-12 weeks for a qualified independent third party to complete the financial feasibility report.
 - iv. Financial feasibility requirements are explained in further detail on pages 15-16 of this guidance book.
 - v. The financial feasibility report should be submitted in “draft” format to allow for changes to be made to the report.
 - vi. Prior to engaging with a consulting firm, we recommend that project costs, etc., be discussed with the State Office Community Program Director.
- 5. Your project must be in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). This is critical when the proposed project involves displacement of people or their personal property. (More information on the URA Act and real property acquisition for Federal and Federally Assisted Programs can be found in the Federal Register at [49 CFR Part 24](#)).
- 6. RD must approve service contracts with legal, architectural/engineering, bond counsel, and accounting service providers. Guidance on RD requirements of service providers are explained below and throughout this guidance book.
 - a. Professional services ([See 7 CFR 1942.17\(L\) \(1\)](#))
 - i. Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to agency concurrence.
 - ii. [RD Instruction 1942-A, Guide 14](#) may be used in the preparation of the legal services agreement.
 - iii. [RD Instruction 1942-A, Guide 27, Attachment 1](#) to AIA Document B141, 1997 Edition, “Standard Form of Agreement Between Owner and Architect,” may be used when appropriate.
 - iv. The applicant must provide an agreement with its pre-application and application for legal services for review by RD and this agreement must be found acceptable by RD.
 - v. Public bodies are required to obtain the services of recognized bond counsel if bonds are to be used as “evidence of indebtedness.” The bond counsel will prepare the form of resolution to be used, in accordance with [7 CFR 1942.19](#).

Pre-Application Process

7. Organizational documents review

- a. Your organizational documents must be submitted to the RD Regional Office of General Counsel (OGC) to ensure that your organization is eligible for Federal financial assistance. These include:
- b. Nonprofit Corporations
 - i. Articles of Incorporation
 - ii. All amendments
 - iii. Bylaws (Most recent edition only)
 - iv. Certificate of Good Standing
 - v. Charter (if applicable)
 - vi. If your organization is faith-based, your organizational documents must be submitted for a faith-based review by the RD Regional OGC.
- c. Public Bodies
 - i. Charter

8. Additional topics to be discussed during this meeting include:

- a. The loan repayment period cannot exceed the useful life of the facilities financed or any statutory limitation on the applicant's borrowing authority.
- b. The project must generate sufficient revenues to repay the debt and fund a debt service reserve account.
- c. The loan will only be considered "approved" once the applicant and State Director sign Form RD 1940-1, "Request for Obligations," and the applicant completes Form RD 1942-46 "Letter of Intent to meet Conditions."
- d. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by Rural Development.

9. Appraisal Requirements

- a. When real estate is taken as security, in order to determine whether the project meets the requirements of [7 CFR 1942.17\(g\) \(2\)\(iii\)\(B\)](#) or [7 CFR 3575.48](#), CF will require an appraisal of the proposed real estate that demonstrates the value of the security is equal to or exceeds the loan amount.

10. Debt Service Reserve (DSR) Requirements

- a. A debt service reserve account is required and must be accumulated at the rate of 10 percent of the annual debt payments until a sum equal to no less than one annual installment is accumulated. Some transactions may require full funding of this account (one year of debt service) at the time of loan closing.

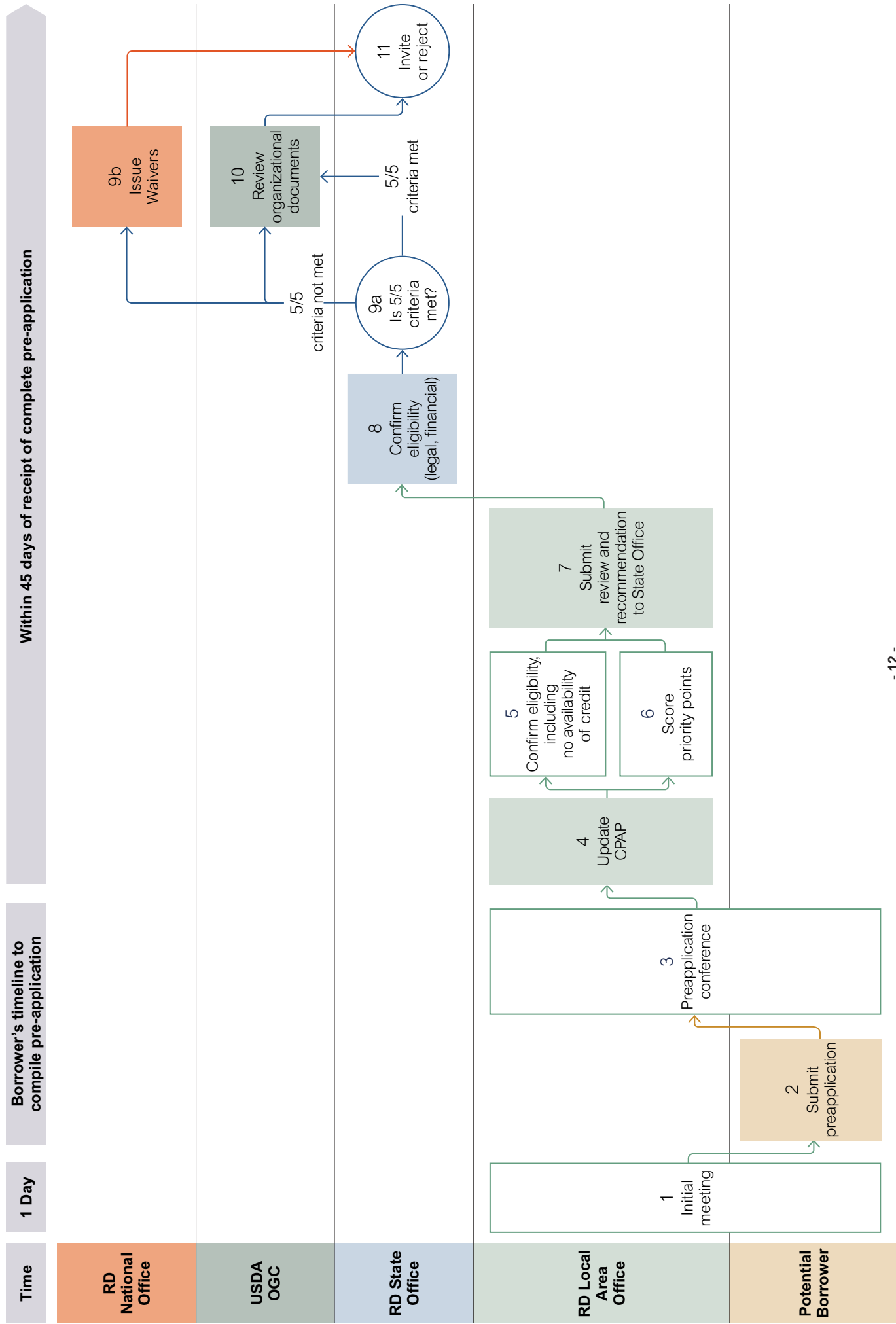
11. Capital Assets Reserve Requirements

- a. A capital asset replacement reserve account in an amount adequate to replace long-lived assets. This amount will be based on the condition of the existing facility and the economic life of the proposed improvements.

12. All Lease and Management Agreements (draft lease and management agreements should be submitted early in the application process)

- a. Prior to the finalization of a lease and/or management agreement, approval of such agreement by the Regional Office of General Counsel is required.
 - i. The applicant must submit a copy of the "Draft Agreement" at time of their application submission.
 - ii. There can be no restricted use clauses in the lease or management agreements.
- b. If the property involves a leasehold interest, then the Regional OGC Attorney must review and approve this leasehold interest.

Community Facilities Direct Loan: Recommended Pre-Application Process



Application Process and Underwriting

STEP 3

The Application Process

The required information for the CF application is listed below. As you will notice, a lot of the information shown below was discussed during your initial meeting. Plus, several of the required documents were submitted during the pre-application process.

Please be sure that all of following items are included in your application package:

1. Standard Form (SF) 424, “Application for Federal Assistance,” accompanied by SF 424A and 424B for non-construction OR SF 424C and 424D for construction.
2. DUNS Number (Dun & Bradstreet Data Universal Numbering System) and Tax ID Number. Guidance is available from Rural Development. (See 7 CFR 1942.2(c)).
3. Organizational Documents
 - a. Public bodies need to submit a copy of their Charter, all relevant Acts of Assembly, and all relevant court orders (if created judicially);
 - b. Corporations need to submit a copy of their signed Articles of Incorporation, Certificate of Incorporation, Amendments, Restatements, Corrections, Mergers, Certificate of Good Standing, and a signed copy of the Corporate By-Laws. If signed copy of the By-Laws is not available, an officer of the corporation (usually the Secretary) must attach a certification that it is a true and correct copy of the current By-Laws. It is HIGHLY recommended to submit these documents prior to submission of the pre-application package. (See 7 CFR 1942.2(a)(1)(v)).
4. Intergovernmental Review comments from local Planning District Commission.
5. System Award Management (SAM) registration at www.sam.gov.
The organization must be registered with SAM to be eligible for RD funding.
6. Financial Feasibility Report – This report is based on the status of the ownership and cost of the project. Sound financial feasibility reports are essential tools for determining if the applicant has the ability to properly meet its financial obligations.
(Refer to the Unnumbered Letter (UL) “Requirements of Financial Feasibility Evaluations”).
7. Preliminary Architectural Report – Use RD Instruction 1942-A, Guide 6, which gives the minimum requirements. (See 7 CFR 1942.18(c)). Also, please contact your RD State Office for staff may require additional documents.
 - a. Brief statement describing: (a) how the facility will be operated; (b) the service area [attach maps]; and (c) sources of income.
8. Copies of outstanding debt instruments (copies of notes, Deeds of Trust, bonds, financing statements/security agreements, and leases, etc.).
9. Financial Statements for the previous five years. (See 7 CFR 1942.5(b)(1)(ii)(F)).

Application Process and Underwriting

10. Form RD 442-3, Balance Sheet – Current.
(See 7 CFR 1942.5(b)(1)(ii)(E))
11. [Form RD 442-7](#), Operating Budget - Proposed financial projections for the first full year of operation. Include proposed development and first full year of operation. Identify income resources and expense items. With the concurrence of RD, [Form RD 1942-52](#), “Cash Flow Projection,” may be used for applicants with annual incomes not exceeding \$100,000.
12. A statement regarding efforts to finance the project/facility through other sources.
13. [Form AD-1047](#), Certification Regarding Debarment; [Form AD-1049](#), Certification Regarding Drug Free Workplace; [RD Instruction 1940-Q](#), Exhibit A-1, Certification Regarding Lobbying; and [Form 1910-11](#), Applicant Certification Regarding Collection Policies, [AD 3031](#), [Form 400-1](#) and [Form 400-4](#).
14. Statement from State Historical Preservation Officer (SHPO) concerning historical sites and archaeological properties, if applicable.
15. Agreement for Architectural Services. (See 7 CFR 1942.18(b)).
16. Legal Services Agreement. (See 7 CFR 1942.17(l)(1)).
17. USDA Survey on Ensuring Equal Opportunity for Applicants.
18. Notice of Public Meeting and Minutes of Public Meeting.
19. Local Government Letter of Support.
20. Lease Agreements (If applicable) should be submitted as a draft agreement for review by the RD OGC. This includes all types of leases (ground, space, etc.).
21. Management Agreements (If applicable) should be submitted as draft agreements for review by the RD OGC.

Assessing Repayment Ability

The bottom line for assessing debt is the organization’s ability to repay the debt with revenue generated by the operations. Debt repayment will largely be assessed through the Financial Feasibility Report and the Underwriter’s analysis.

Other considerations for repayment:

1. Tax increment/Special Assessments: Rural communities may be able to implement one or more tax capture tools known as tax increment finance and special assessments. This is particularly important to capture funds that can be dedicated to repaying debt associated with the project.
2. Service Revenue: Some communities can create special taxes for desirable or beneficial service facilities, such as a school, hospital, or fire station. These service revenues can be dedicated to repaying debt associated with the project.

Application Process and Underwriting

Financial Feasibility Reports

(See 7 CFR 1942.17(h) and the Requirements of Financial Feasibility Evaluations for Community Facility Applications)

7 CFR 1942, Subpart A, section 1942.17(h) establishes the requirements for financial feasibility for all applicants. In many instances, a financial feasibility study completed by a Certified Public Accountant or Accounting (CPA) firm backed by an examination opinion attesting to the validity of the assumptions will be required. For small loans, less than \$500,000, a financial feasibility analysis without an examination opinion will likely be appropriate.

The CF program accepts three levels of financial feasibility reports which are based on the loan amount requested, the applicant experience level, and the security associated with the transaction. The three reports are called: 1. Financial Feasibility Analysis; 2. Financial Feasibility Study with a Compilation Report; and 3. Financial Feasibility Study with Examination Opinion.

A Financial Feasibility Analysis describes the applicant's present situation, analyzes alternatives, and outlines the proposed project. The level of effort required to prepare the report and the depth of the analysis within the report is proportional to the size and complexity of the proposed project. The preparer is expected to fully disclose and analyze all significant factors that may have a favorable or adverse effect on the financial success of the proposed facility.

The Financial Feasibility Analysis will be prepared in accordance with the latest Unnumbered Letter (UL) establishing the requirements for a Financial Feasibility Evaluation.

A Financial Feasibility Study with a Compilation Report consists of applying accounting and financial reporting expertise to assist the applicant in the presentation of prospective financial information and reporting. No assurances are provided; however, the preparer will consider whether the presentation appears appropriate in form and free from obvious material misstatements.

A Financial Feasibility Study with Examination Opinion is the examination of the prospective financial information provided by the applicant ("management") culminating in an examination opinion on the reliability of the applicant's financial statements and management's underlying assumptions. The examination opinion provides a high level of assurance.

A financial feasibility study with a compilation report or examination opinion will be prepared by a CPA with the necessary expertise to perform the study. Examination opinions must be backed by professional liability insurance. The RD processing office will verify that the CPA firm has the required insurance coverage in place.

Application Process and Underwriting

Financial Feasibility Evaluations Requirements

To assist you with determining which financial feasibility is required for your project, please use the [Attachment E Decision Tree 1 to Determine the Level of Financial Feasibility Evaluation For a Community Facilities Direct Loan or Guarantee](#). The level of evaluation will be dependent on several factors including the security for the loan, the size of the loan request, the longevity of the applicant's operation and its financial history. For direct loan requests where the security for the loan will be real estate, chattel and/or assignment of income, contact the processing office first to determine if the applicant meets the criteria established in either [7 CFR 1942.17\(g\)\(2\)\(iii\)\(A\)\(6\)](#) for public bodies, or [7 CFR 1942.17\(g\)\(3\)\(iii\)\(A\)\(2\)](#) for nonprofit organizations. These criteria are sometimes referred to as the "5/5 criteria". Applicants that do not meet the 5/5 criteria must be referred to the National Office for concurrence to proceed with an application and obtain guidance on the level of financial feasibility evaluation required during the preapplication stage or prior to proceeding with the application.



The financial feasibility study with compilation report or examination opinion will typically include the following:

1. Signed and dated compilation or opinion letter.
2. Five-years of historic and forecasted financial statements.
3. Schedule of ratios pertinent to the industry.
4. Summary of significant financial forecast assumptions and accounting policies.
5. Summary of significant demand forecast assumptions (market assessment; not provided with a compilation but can be provided by the applicant).
6. Sensitivity analysis.
7. Other information deemed appropriate by the preparer.
8. Information regarding the Governing Body and Management Team (not required to be included in the compilation or examination opinion but can be provided by the applicant).

Application Process and Underwriting

Security Requirements by Eligible Entity Type

(See CFR 1942.17(g))

Public Bodies

(See 7 CFR 1942.17(g)(2))

1. Bonds

- a. General Obligation (GO). (GO bonds generally require a specific majority vote to pass. This could vary by State. State statute may limit the amount of GO bonds outstanding at any one time). Please be sure to work with your local RD CP Specialist and the RD Regional Office of General Counsel on issues involving GO bonds.
- b. Revenue bonds. (Typically, revenue bonds do not require approval by two-thirds vote since they are not payable from taxes nor from the general fund. However, State statutes vary). Please be sure to work with your local RD CP Specialist and the RD Regional Office of General Counsel on issues involving revenue bonds.

2. When bonds are not used:

- a. Promissory Notes;
- b. Real Estate Mortgages or Deeds of Trust;
- c. Financing Statements;
- d. Security Agreements.

Nonprofits

(See RD Instruction 1942.17(g)(3))

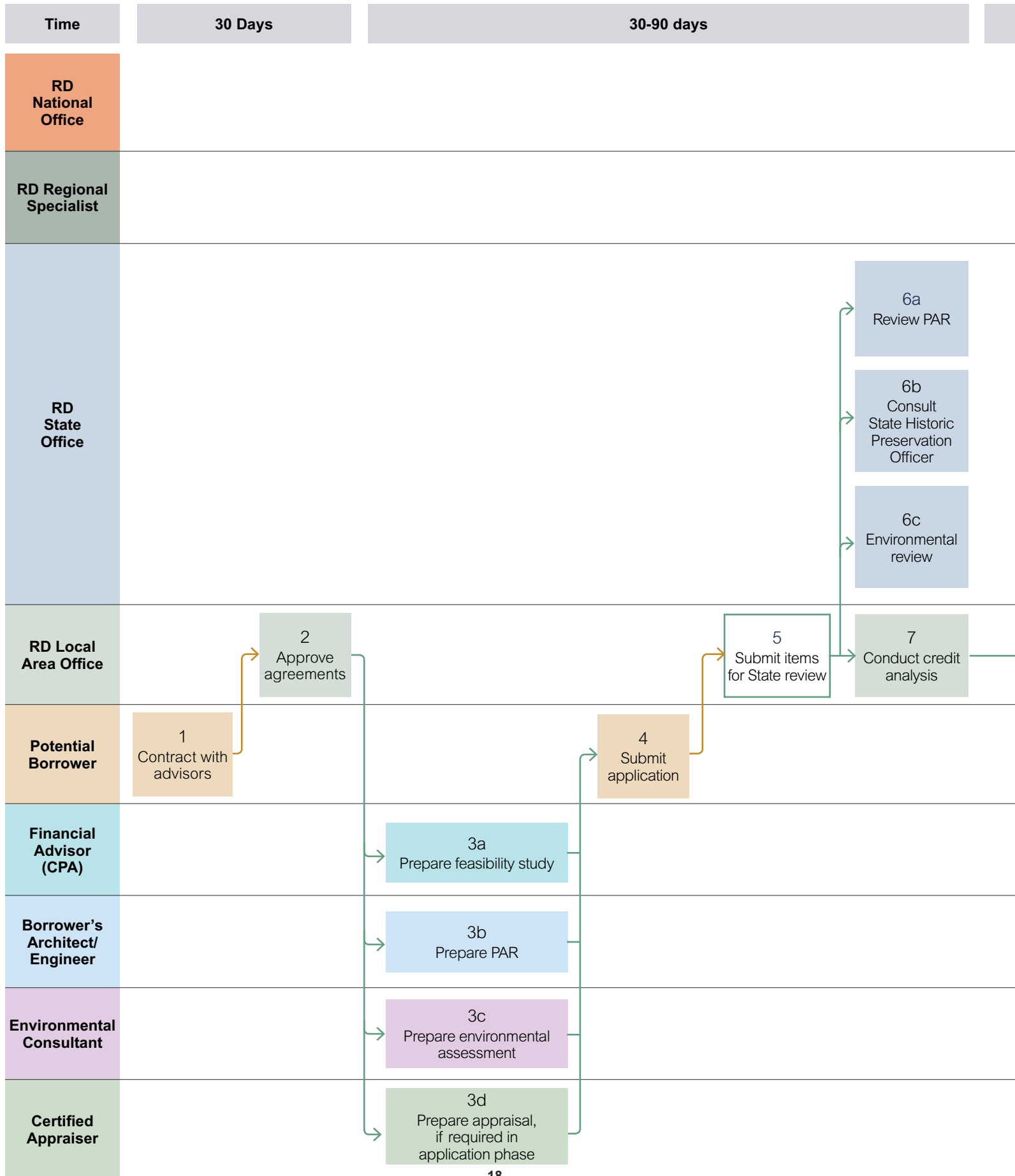
1. Promissory Notes (Form RD 440-22);
2. Real Estate Mortgages or Deeds of Trust;
3. Financing Statements (Form UCC-1);
4. Security Agreements (Form RD 1942-9);
 - a. Deposit Agreements;
 - b. Unconditional Guarantees.

Tribes

(See 7 CFR 1942.17(g)(3))

1. Assignment of general Tribal income in the form of a Tribal Resolution;
2. Lien on specific revenue source generated by the Tribe; i.e., sales tax, fuel tax, gaming revenue (casino);
3. Tribal General Obligation Bond.

Community Facilities Direct Loan: Recommended Application Process

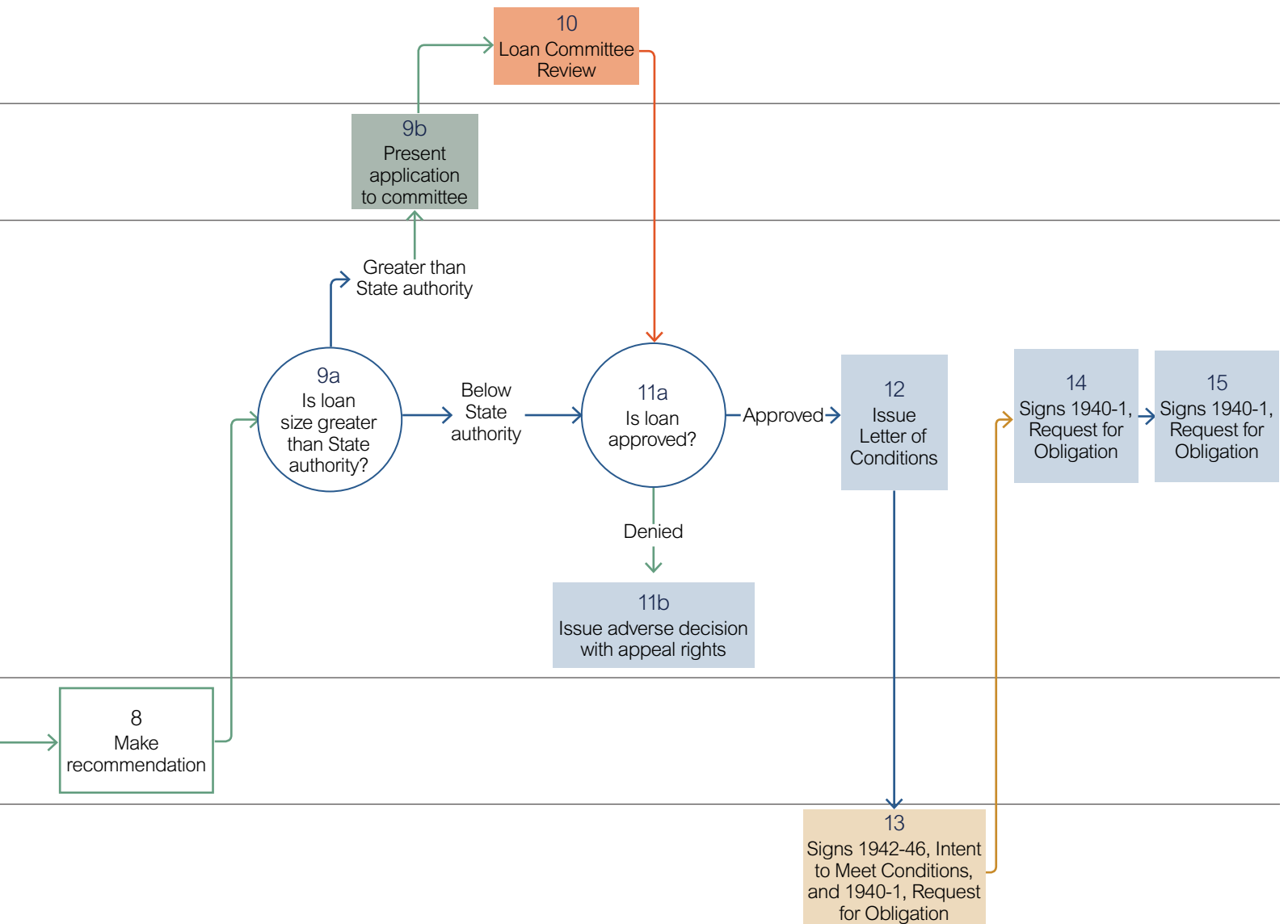


Up to 30 days for National Office review

1 Day

1 Day

1 Day



Closings and Construction

STEP

4

Closings and Construction

The last phase of the direct loan application process involves preparation and approval of construction plans, specifications, and the procurement of construction contractor(s) through free and open bidding. RD must concur with the bidding documentation, concur with the bid award, and approval of the construction method and contracts proposed by the construction contractor.

For all construction projects above \$50,000, the applicant must use interim financing. The interim financing agreement must be submitted to RD for review and concurrence.

Finally, a pre-construction conference between the borrower, RD, and the construction contractor is strongly recommended to discuss key RD requirements during construction, such as daily inspections, payouts, and schedules.

Procurement

(See 7 CFR 1942.18(j)(2))

All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition.

Construction

Prior to the approval of your plans and specifications, the applicant must submit the following items to RD for review and approval:

1. Construction contract documents must be prepared in accordance with RD Instruction 1942-A, Guide 27;
2. Final plans, specifications, and all addenda;
3. Request for proposal (RFP);
4. Other contracts covering the purchase of equipment.

The following information and records must also be established and maintained:

1. Copy of successful offer;
2. Summary of all offers and a narrative summary of all negotiations;
3. Revised project budget based on successful offer;
4. Engineer/Architect recommendation of award;
5. Resolution (owner's) of tentative award;
6. Notice to unsuccessful offeror(s).

Please contact the RD Local CP Area Specialist to ensure that the appropriate American Institute of Architects (AIA) documents are being used as construction documents for this project.

Closings and Construction

The RD Area Office will issue the [RD 1942-A, Guide 1](#) (Guide Letter for Use in Informing Private Lender of Rural Development's Commitment) or Guide 1a (Guide Letter for Use in Informing Other Lenders of Rural Development's Commitment), whichever is appropriate, when your project has met all of the requirements needed to start construction.

Other Pre-Closing and Pre-Construction Requirements

1. Environmental Mitigation

[\(7 CFR part 1970\)](#)

For all construction projects, an environmental review is required in accordance with 7 CFR part 1970.

As a result of the environmental review performed, all environmental mitigation requirements must be considered as the applicant selects the final site and final plans and specifications for the facility.

2. Interim Financing

[\(See 7 CFR 1942.17\(n\)\(3\)\)](#)

In all loans exceeding \$50,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of RD funds.

The applicant must provide RD with a copy of the tentative agreement reached in connection with the interim financing. The Rural Development loan should be closed as soon as possible after the disbursement of all interim funds.

3. Appraisal Requirements

[\(See 7 CFR 1942.17\(g\)\(2\)\(iii\)\(B\)\(2\) and 1942.17\(g\)\(3\)\(iii\)\(B\)\(2\)\)](#)

If real estate is taken as the primary security for the project then an "as-developed" real estate appraisal, performed by a qualified licensed appraiser, that shows the value of the property serving as security for the loan is equal to, or greater than, the proposed RD loan(s).

Additionally, your attorney must provide RD with a description of the real property, including a plat, which will be included in the mortgage (deed of trust), and a title insurance binder (as applicable by your State).

4. Leases

[\(See 7 CFR 1942.17\(j\)\(5\)\)](#)

- a. No restrictions on use of the site or the facility;
- b. No reverter clause;
- c. Term must be equal to term of loan;
- d. All leases must be reviewed and concurred by the RD OGC;
- e. Leasehold interest can be your security if it is demonstrated that RD is collaterally secured in the event of default;
- f. If borrower fails, we can lease facility to another entity;

Closings and Construction

5. Insurance and Bonding Requirements

(See 7 CFR 1942.17(j)(3))

- a. Liability and Property Damage Insurance;
- b. Workers' Compensation;
- c. Position Fidelity Bond Coverage;
- d. Property Insurance;
- e. Real Property Insurance; and
- f. National Flood Insurance;
 - i. If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
 - ii. Applicants whose buildings, machinery, or equipment are to be located in an area which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

6. Documentation of All Funds Needed

(See 7 CFR 1942.17(n)(6))

Prior to advertisement for construction bids, you must provide evidence showing the availability of all other funds committed to this project.

7. Disbursement of Rural Development Funds

All contributions by the applicant and other non-RD funds will be the first funds expended on the project followed by the RD loan funds committed to this project. If RD grant funds are associated with this financing package, then these funds will be the last funds advanced. RD funds will be advanced on an as needed basis in the amount necessary to cover RD's proportionate share of obligations. If all grants are not needed for the project, then these grant funds will be de-obligated.

8. Debt Service Requirements

A debt service reserve is required and must be accumulated at the rate of 10 percent of the annual debt payments until a sum equal to no less than one annual installment is accumulated. Some transactions may require full funding of this account (one year of debt service) at the time of loan closing.

9. Pre-authorized Debit Payments (PAD)

You will be required to participate in the Pre-authorized Debit (PAD) payment process. This will allow for your payment to be electronically debited from your account on the day that the payment is due.

Closings and Construction

10. Audit or Financial Statement Requirements

(See 2 CFR 200.501)

Non-Federal entities will provide an Audit or Financial Statement in accordance with 2 CFR 200.500-517 and as follows:

- a. A non-Federal entity expending \$750,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with 2 CFR Chapter 1 and Chapter II, Parts 200, 215, 220, 225, 230 and 400, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- b. A non-Federal entity expending less than \$750,000 will provide annual financial statements covering the loan period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the applicant's fiscal year.

11. Code of Conduct

(See 7 CFR 1942.18(j)(1))

All applicants must adopt and maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by RD funds. No employee, officer, or agent of the owner shall participate in the selection, award, or administration of a contract supported by RD funds if a conflict of interest, real or apparent, would be involved.

12. Other Agency Forms

Additionally, the applicant may be required to execute certain other Agency forms to obtain financial assistance from RD. By resolution, these forms must be adopted and properly executed, and minutes showing the adoption must be provided.

13. Changes to RD Forms

No changes to any RD forms, no matter how insignificant the change, are allowed without prior approval of the RD Regional OGC Attorney.

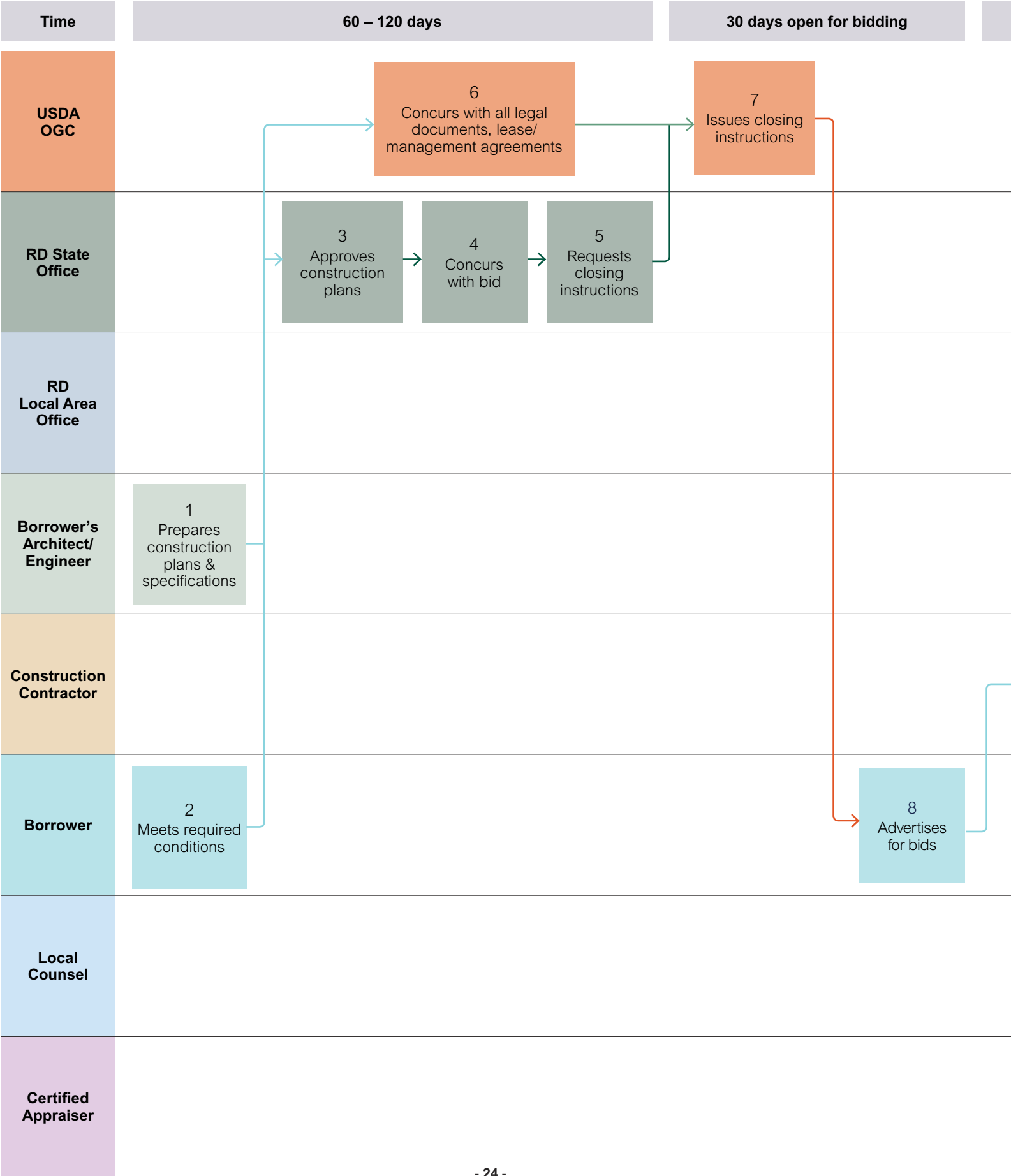
14. Applicable State Requirements

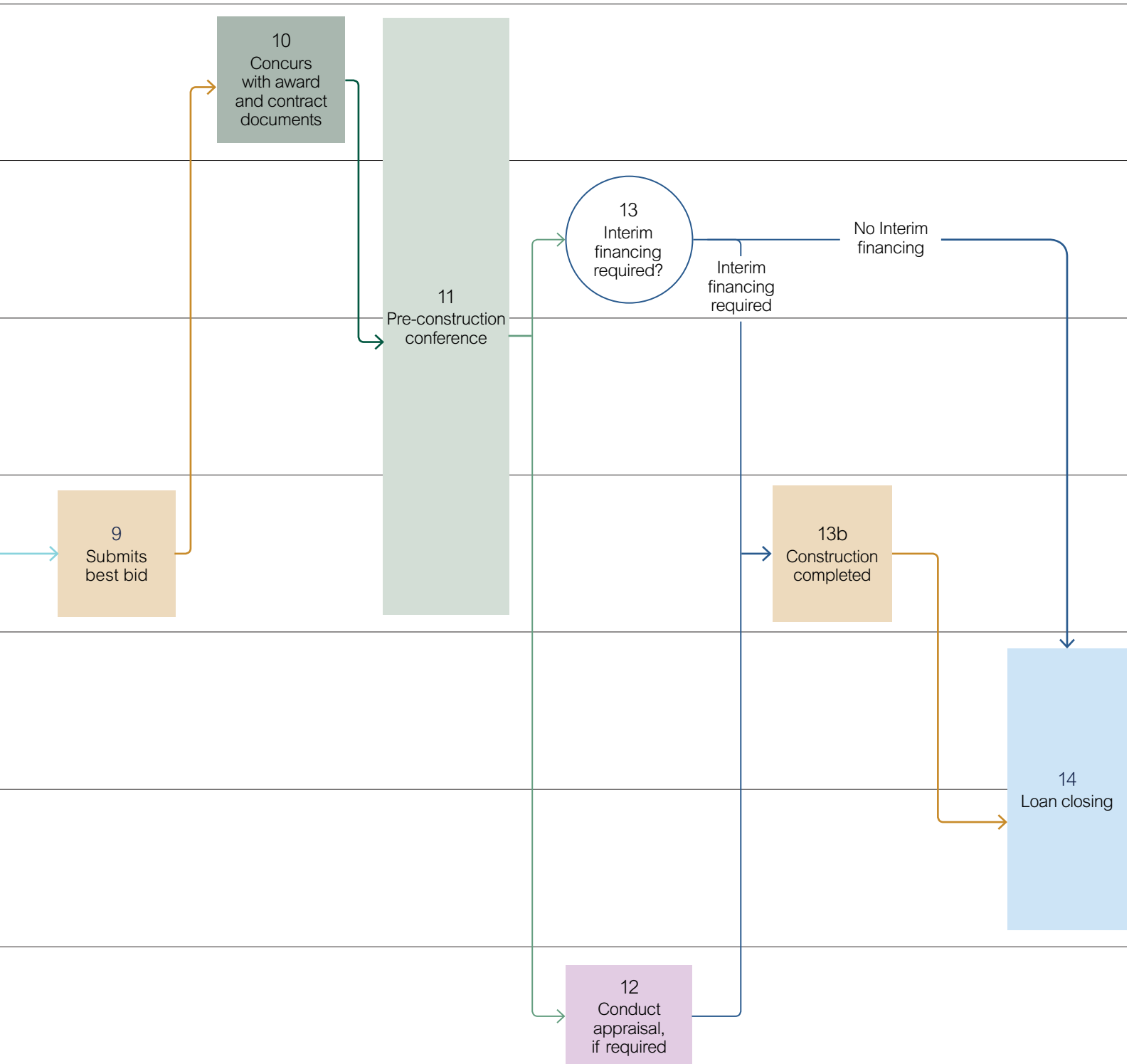
Please consult with your local RD CP Area Specialist or the Community Program Director to ensure that your application submission includes all of the necessary documents to meet the applicable State requirements for the project requesting Federal financial assistance.

15. Error and Omissions Statement

As a recipient of Federal financial assistance, all borrowers must comply with all applicable Federal, State, and local statutes, ordinances, regulations, and codes. The major portion of existing Rural Development rules and regulations which must be met are included in RD Instruction 1942-A. No modifications or waiver of any portion of these regulations is authorized. Such regulations shall govern regardless of any misinterpretation, omission, misunderstanding, or statements made by any RD employee.

Community Facilities Direct Loan: Recommended Closing and Construction Process





Appendix: RD Guidance and Forms

Attachment A

Community Facilities Program: Initial Potential Borrower Meeting Checklist.

Attachment B

Community Facilities Program: Direct Loan Pre-Application Checklist.

Attachment C

Community Facilities Program: Direct Loan Application Checklist.

Attachment D

Community Facilities Program: Direct Loan Closing and Construction Checklist.

Attachment E

Decision Tree 1 to Determine the Level of Financial Feasibility Evaluation For a Community Facilities Direct Loan or Guarantee

Attachment F

Decision Tree For Determining When Projects Need Section 106 Review.

ATTACHMENT A

Community Facilities Program: Initial Potential Borrower Meeting Checklist

Learn about the community, need for the project, and existing project plans.

Discuss project eligibility:

1. Site location (< 20,000 population in census designated places, or in unincorporated rural areas).
2. Community facility definition (no primarily commercial or recreational projects).
3. Borrower must have legal authority to construct, own, operate, maintain, manage, borrow funds, and pledge collateral.
4. Public use requirement:
 - a. Impact must be broad-based (not benefit only small part of community).
 - b. 51 percent population served must be in eligible rural area.
5. Project must be based on assured income for operation, maintenance, and debt repayment.
6. <25 percent floor space may be leased for ineligible activity (e.g., commercial enterprise).
 - a. Management and lease agreements must be approved.
7. Eligible costs:
 - a. Refinancing < 50 percent of loan; must be debt incurred for facility.
 - b. Costs incurred prior to CF loan approval (conditions apply).

Discuss rates and terms:

1. Rate determined by area median income,
2. Term of useful life of the asset, 40 years or State statute limitations (whichever is less).
3. No prepayment penalty.

Discuss key requirements:

1. Five years successful operating history.
2. Competitive bid process for construction.
3. Approval of alternative construction methods.
4. Security requirements.
5. Test for other credit.
6. Interim financing.
7. Environmental Assessment or Report.
8. Evidence of community support.
9. Certificate of Need (if required).
10. Graduation/repayment requirement.

ATTACHMENT A (CONTINUED)

Community Facilities Program: Initial Potential Borrower Meeting Checklist

Discuss annual funding availability and the priority scoring system.

Discuss loan application timeline:

1. Loan is not approved until Request for Obligation and Letter of Intent to Meet Conditions are signed.

Discuss next steps:

1. Submit organization documents for the RD OGC review.
2. Obtain letters from banks stating rates and terms they would offer.
3. Hire advisors: architectural, legal, financial, environmental and have RD approve agreements.
 - a. Borrower must compile pre-application documents.
 - b. Architect/engineer must produce Preliminary Architectural Report (PAR).
 - i. Should consult with State Historic Preservation Officer.
 - c. Financial advisor must produce feasibility report and CPA-backed examination opinion.
 - d. Environmental consultant must produce environmental assessment.

ATTACHMENT B

Community Facilities Program: Direct Loan Pre-application Checklist

Pre-applications not necessary for fire/rescue projects, or projects < \$300,000

Nonprofit

1. Organizational documents must be reviewed by RD OGC:
 - a. Original articles of incorporation and all amendments.
 - b. Most current by-laws.
 - c. Certificate of good standing.
 - d. List of board of directors, including title, address, term expiration date.
2. SF-424, Application for Federal Assistance requires:
 - a. Dun & Bradstreet Data Universal Numbering System (DUNS).
 - b. Tax Identification Number (TIN).
 - c. System Award Management (SAM).
3. Five years of financial records to include:
 - a. Tax returns (IRS 990).
 - b. Audited financial statements. (preferred).
 - c. Can alternatively use [Form RD 442-7](#), Operating Budget (if revenues > \$100,000) or [Form RD 1942-53](#), Cash Flow report (if revenues < \$100,000).
 - d. Must have five successful years of operations or requires exception from the RD National Office.
 - i. State Office can issue exceptions for loans < \$250,000.
4. Copies of all existing debt instruments.
5. Evidence of no other credit being available:
 - a. Letters from banks must be from lenders that typically make similar loans, stating what rates and terms would be.
 - b. Applicant statement on why rates and terms offered aren't acceptable.
6. RD Instruction 1900-D, Section 1900.153(a), Identifying and Reporting Assistance to Rural Development Employees, Relatives and Associates Certification.
7. OMB Control Number 1890-0014, Survey on Ensuring Equal Opportunity for Applicants; (Must be provided by RD, applicant not required to complete).

Public Body

1. Organizational documents typically not required (except for special purpose districts).
2. SF-424, Application for Federal Assistance:
 - a. Requires DUNS, TIN, SAM.
3. One-year historical financial statements:
 - a. Five years if security is a revenue bond. One year projected financial statements:
 - b. Five years if security is a revenue bond. Copies of all existing debt instruments. Evidence of other credit being available.
4. RD Instruction 1900-D, Section 1900.153(a), Identifying and Reporting Assistance to Rural Development Employees, Relatives and Associates Certification.

ATTACHMENT C

Community Facilities Program: Direct Loan Application Checklist

1. Applicant selects **professional service providers** (architect/engineer, legal, financial, environmental) and RD approves agreements:
 - a. [See RD Instruction 1942-A, Guide 14](#), on legal services agreement.
 - b. [See Form RD 1942-19](#), Architectural/Engineering Agreement.
 - c. CPA-backed examination opinion of financial feasibility report required; please refer to the latest [RD UL](#) on this topic to ensure your project meets all financial feasibility requirements.
 - d. RD, applicant, and service providers hold **application conference** to discuss:
 - i. Site visit.
 - ii. Construction.
 - iii. Free and open bidding required.
 - iv. RD approval of bid award, construction contracts, and of alternative construction methods required.
 - v. Interim financing requirement.
 - e. Coordination of funds:
 - i. RD last-in funds.
 - ii. Management agreements and leases (if applicable).
 - iii. 25 percent of the floor space may be used by ineligible organizations if services enhance primary services offered.
 - iv. Environmental review process (if not completed during the pre-application process);
 - v. Certificate of Need, (if required).
 - f. Public meeting must be held after pre-application is filed and before closing:
 - i. Must have public notice of meeting at least 10 days prior.
 - ii. Must provide RD with copy of the notice and of meeting minutes.
 - iii. Draft Lease Agreement (If applicable) (all lease agreements ground, space, etc.).
 - iv. Draft Management Agreement (if applicable).
2. Submit **complete application**:
Required for Nonprofits and Public Bodies
 - a. Updated historical financial statements; updated SF-424 (if necessary).
 - b. Preliminary Architectural/Engineering Report (PAR/PER):
 - i. Site plan, working plans, and specifications required.
 - c. Evidence of contact with State Historic Preservation Officer;
 - d. Financial Feasibility Report:
 - i. Please refer to the latest [RD UL](#) on Financial Feasibility Report requirements.
 - ii. Financial Advisor Agreement.
 - iii. Legal Services Agreement ([see RD Instruction 1942-A, Guide 14](#)).
 - e. [Form RD 1942-19](#), Architectural/Engineering Agreement, or AIA Documents.
 - f. Revenue contracts (if applicable):
 - i. Not needed from public bodies if operating income is based on tax assessments.
 - g. [Form RD 442-3](#), Balance Sheet:
 - i. Can use own format if provides same information.

ATTACHMENT C (CONTINUED)

Community Facilities Program: Direct Loan Application Checklist

- h. [Form RD 442-7](#), Operating Budget (if revenues > \$100k) or [Form RD 1942-52](#), Cash Flow Projections (if revenues <\$100k):
 - i. Can use own format for five-year projections if provides same information.
 - i. Project budget and cost estimates.
 - ii. Other Agency funding status (if applicable).
 - iii. [Form RD 400-1](#), Equal Opportunity Agreement. [Form RD 400-4](#), Assurance Agreement.
 - iv. Certification of Non-Lobbying Activities ([RD Instruction 1940-Q, Exhibit A](#)).
 - v. Form HUD 935.2, Affirmative Fair Housing Marketing Plan (AFHMP) (if applicable, for housing projects).
 - vi. Certificate of Need (CON) (if applicable, for healthcare projects).
 - vii. [Form AD 3030](#) Representation Regarding of Felony Conviction.

3. Additional Items

Nonprofit Corporations

- a. [Form RD 1942-8](#), Resolution of Members (if applicable):
 - i. Not necessary if only members are board of directors.

Public Bodies (if bonds are being used)

- a. Bond resolution.
- b. Official notice of sale with affidavit of publication (when required by State statute). Documentation of favorable bond vote.
- c. Bond counsel agreement.

4. RD issues **Letter of Conditions (LOC)**

- a. State Office can generally approve loans < \$3-5 million; RD National Office reviews and approves all loans > \$5 million.
- b. LOC must be delivered in person to discuss LOC conditions.
 - i. Any changes to project cost, source of funds, scope of services, or other significant changes must be approved by written amendment to LOC.

5. The RD loan is not **approved** until applicant signs:

- a. [Form RD 1940-1](#), Request for Obligation.
- b. [Form RD 1942-46](#), Letter of Intent to Meet Conditions.
 - i. Should only be signed by those authorized by the entity's organizational documents.
- c. [Form RD 1910-11](#), Applicant Certification Federal Collection Policies for Consumer or Commercial Debts.
- d. [Form AD-1047](#), Certification Regarding Debarment Primary Covered Transactions.
- e. [Form AD-1048](#), Certification Regarding Debarment Lower Tier Covered Transactions:
 - i. For use with borrower's contractors on contracts over \$25,000, e.g., architects, attorneys.
Form SF 3881, Electronic Funds Transfer Payment Enrollment Form.
- f. [Form RD 3550-28](#), Agreement for Preauthorized Payments.
- g. [Form AD 3031](#) Assurance Regarding Felony Conviction or Tax Delinquent Status of Corporate Applicants.

6. **Compliance review** must be completed within one year of loan closing or signing of the [RD Form 400-4](#), Assurance Agreement.

ATTACHMENT D

Community Facilities Program: Direct Loan Closing and Construction Checklist

1. RD must approve all **construction contract documents** and plans and specifications.

2. Owner **prepares for loan closing**

Must obtain closing instructions from RD prior to start of construction, or loan closing, whichever is earlier.

Nonprofits:

- a. Authorized Official of the Organization signs [Form RD 1942-9](#), Loan Resolution Security Agreement, after loan approval.
- b. Attorney prepares the draft closing documents.

Public Bodies: (if Bonds are being used)

- a. Complete [Form RD 1942-47](#), Loan Resolution.
- b. Obtain preliminary bond transcript from bond counsel.
 - i. Please ensure that the bond information is accurate: Number of days is 365.
 - ii. Interest rate, payment amount, and period are correct. Loan amount is included.
 - iii. Registered owner (payee) is "United States of America acting through Rural Housing Service, USDA."
 - iv. Place of payment is address for RD office. Arbitrage.

3. RD obtains **closing instructions** from RD OGC (Office of General Counsel)

RD provides closing documents, but borrower's legal counsel does the closing.

Nonprofits:

- a. For loans < \$300,000 to nonprofits, RD State Office rather than OGC issues closing instructions in most States.
- b. Submit draft documents for issuance of closing instructions: Loan agreement.
 - i. Real estate mortgage / deed of trust.
 - ii. Form UCC-1, Financing Statement.
 - iii. Form UCC-1Ad, Financing Statement Addendum. Legal description of real estate.
 - iv. Title insurance binder.

Public Bodies:

- a. For fire/rescue loans, RD State Office rather than OGC issues closing instructions in most states.
- b. Submit draft documents for issuance of closing instructions:
 - i. Preliminary bond counsel opinion.
 - ii. Draft form of bond.
 - iii. Bond resolution with all amending resolutions and final form of bond counsel opinion.

ATTACHMENT D (CONTINUED)

Community Facilities Program: Direct Loan Closing and Construction Checklist

4. Interim Financing

For all construction projects above \$50,000, the applicant must use interim financing. The interim financing agreement must be submitted to RD for review and concurrence.

5. Loan Closing

Nonprofit closing documents:

- a. Legal opinion of local counsel.
- b. Real estate mortgage / deed of trust.
- c. Form UCC-1, Financing Statement.
- d. Form UCC-1Ad, Financing Statement Addendum.
- e. Loan agreement.
- f. [Form RD 440-22](#), Promissory Note.
- g. [Form RD 400-1](#), Equal Opportunity Agreement. Form RD 400-4, Assurance Agreement.
- h. Nonprofit Board Secretary complies certification on [RD Form 1942-9](#), Loan Resolution Security Agreement.
 - i. Resolution amending [Form RD 1942-9](#), Loan Resolution Security Agreement, if applicable.
 - j. Notice of lien with Department of Motor Vehicles, if title is issued for vehicle.

Post-closing submit executed closing documents to OGC (or State Office for loans < \$300,000 in some States) for review:

- a. Legal opinion of local counsel.
- b. Loan agreement.
- c. Real estate mortgage / deed of trust.
- d. Filed UCC-1 or receipt for filed UCC-1.
- e. Title insurance policy.
- f. Deed of Trust properly recorded.

OGC issues post-closing review opinion; RD updates in loan file.

Public body closing documents:

Submit following to RD State office for authorization to close:

- a. Final form of bond.
- b. Final form of bond counsel opinion.
- c. Maturity schedule.

Post-closing submit to OGC (or State Office for fire/rescue loans in some States) for review:

- a. Copy of bond.
- b. Bond counsel opinion.
- c. "No Litigation Certificate."
- d. Any other items required by OGC.

OGC issues post-closing review opinion; RD updates in loan file.

ATTACHMENT D (CONTINUED)

Community Facilities Program: Direct Loan Closing and Construction Checklist

6. Owner prepares for **bid process**

- a. State regulatory approvals.
- b. Easements and right-of-way.
- c. Plan for soliciting small, minority, and women-owned businesses.

7. Owner authorizes **advertisement for bids**

- a. RD must concur with bid advertisement.
- b. Advertisement must clearly State location and time.
- c. Must be advertised prior to bid opening long enough to allow bidders to prepare, avoid impression of insider knowledge, and meet any State law requirements.
- d. Any agent, person, or entity representing the owner in development, construction, financial/ design decisions, or having any financial interest in the firm selected is ineligible to bid, or be party to any part of the construction contract:
 - i. This includes owner's representative, project coordinator, project manager, construction manager, construction advisor, or any individual entity that performs similar services using different terminology.
 - ii. RD will observe these requirements in approving bids.
 - iii. Agents are Unacceptable Bidders. See [CFR 1942.18\(j\)\(7\)](#)

8. Owner **opens bid process**, assisted by architect/engineer, including RD representation

- a. Establish clock for official time and do not accept late bids.
- b. Bids read aloud.
- c. No announcement of low bidder.
- d. All bids to be reviewed by RD with owner and architect/engineer.
 - i. Confirm math.
 - ii. Confirm lowest bidder is responsive (in compliance with all Instruction to Bidders provisions, complete documentation, all required signatures, etc.).
 - iii. Confirm lowest bidder is responsible (has financial, equipment, and knowledge capacity, and has completed similar work successfully).

9. Owner issues **Notice of Award**

- a. RD must concur prior to issuing award.

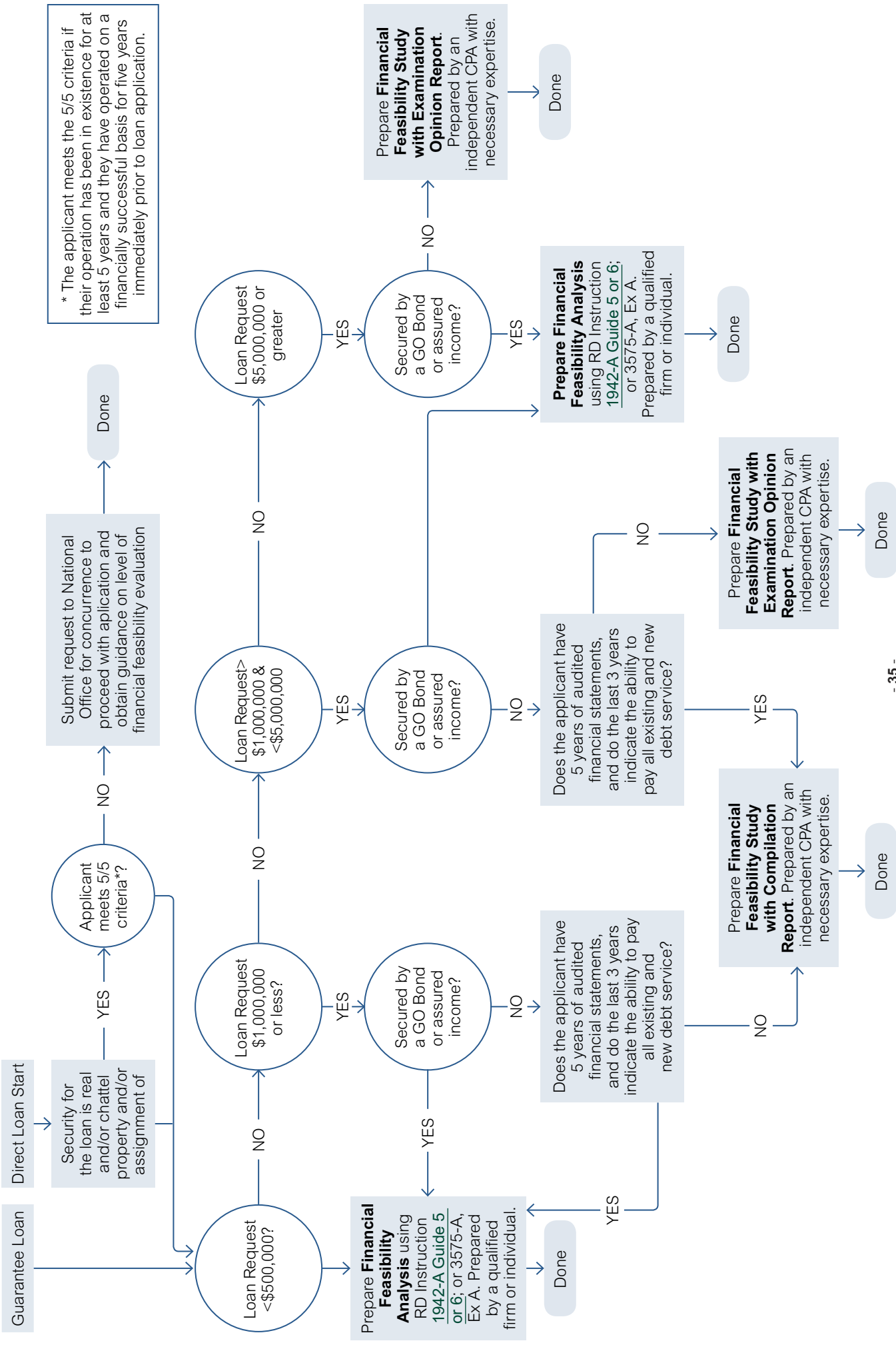
10. **Pre-construction conference** chaired by architect/engineer to discuss:

- a. Roles and responsibilities;
- b. Inspections;
- c. Payments;
- d. Notice to proceed: Issued by owner, after contracts are signed and concurred by RD.

11. **Construction begins**

ATTACHMENT E

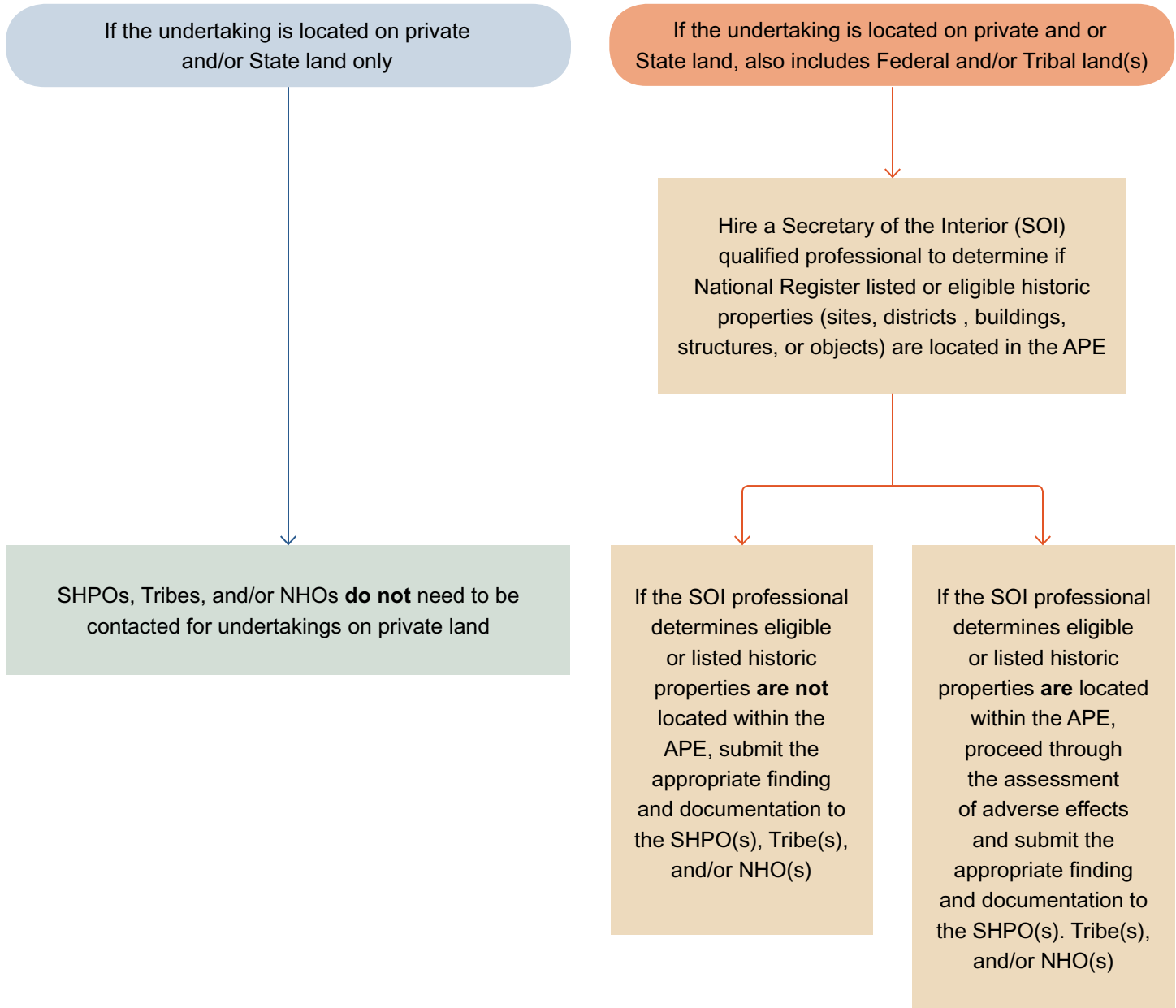
Decision Tree 1 to Determine the Level of Financial Feasibility Evaluation For a Community Facilities Direct Loan or Guarantee



ATTACHMENT F

Decision Tree 2 For Determining When Projects Need Section 106 Review

After the RD Federal preservation officer (FPO) has determined that the 7 CFR 1970.53 project has no potential to cause effects pursuant to 36 CFR 800.3(a)(1).





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