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# PART 1740—RURAL ECONNECTIVITY PROGRAM

### Subpart A—General



AUTHORITY: 7 U.S.C. 1981(b)(4), 7 U.S.C. 901 *et seq.*, 7 U.S.C. 950aaa *et seq.*, and 7 U.S.C. 950cc.

SOURCE: 86 FR 11609, Feb. 26, 2021, unless otherwise noted.

## Subpart A—General

### § 1740.1 Overview.

(a) The Rural eConnectivity Program, hereinafter referred to as Program, provides funding in the form of loans, grants, and loan/grant combinations for the costs of construction, improvement, or acquisition of facilities and equipment needed to facilitate broadband deployment in rural areas. One of the essential goals of the Program is to expand broadband service to rural areas that do not have sufficient access to broadband. This part sets forth the general policies, eligibility requirements, types and terms of loans, grants, and loan/grant combinations and program requirements.

(b) Additional information and application materials regarding the Program can be found on the Rural Development website.

### § 1740.2 Definitions.

(a) The following definitions apply to this part:

*Administrator* means the Administrator of the Rural Utilities Service, or the Administrator's designee.

*Agency* means the Rural Utilities Service (RUS).

*Applicant* means an entity requesting funding under this part.

*Application* means the Applicant's request for federal funding, which may be approved in whole or in part by RUS.

*Award documents* mean, as applicable, all associated grant agreements, loan agreements, or loan/grant agreements.

*Award* means a grant, loan, or loan/grant combination made under this part.

*Awardee* means a grantee, borrower, or borrower/grantee that has applied and been awarded federal assistance under this part.

*Broadband loan* means, for purposes of this regulation, a loan that has been approved or is currently under review by RUS after the beginning of Fiscal Year 2000 in the Telecommunications Infrastructure Program, Farm Bill Broadband Program, Broadband Initiatives Program or this Program.

*Broadband loans* that were rescinded or defaulted on, or the terms and conditions of which were not met, are not included in this definition, so long as the entity under consideration for an award under this part has not previously defaulted on, or failed to meet the terms and conditions of, an RUS loan or had an RUS loan rescinded.

*Broadband service* means any fixed terrestrial technology, including fixed wireless, having the capacity to transmit data to enable a subscriber to the service to originate and receive high quality voice, data, graphics and video.

*CALEA* means the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1001 *et seq*.

*Composite economic life* means the weighted (by dollar amount of each class of facility) average economic life of all classes of facilities necessary to complete construction of the broadband facilities in the proposed funded service area.

*Current ratio means* the current assets divided by the current liabilities.

*Debt Service Coverage Ratio* (DSCR) means the ratio of the sum of the Awardee's total net income or margins, depreciation and amortization expense, and interest expense, minus an allowance for funds used during construction and amortized grant revenue, all divided by the sum of interest on funded debt, other interest and principal payment on debt and capital leases.

*Economic life* means the estimated useful service life of an asset as determined by RUS.

*Eligible service area* means any contiguous proposed funded service area where 90 percent of the households to be served do not have sufficient access to broadband service. For eligibility purposes, if an applicant is applying for multiple proposed funded service areas, each service area will be evaluated on a stand-alone basis.

*Equity* means total assets minus total liabilities as reflected on the Applicant's balance sheet.

*Fixed wireless service* means a wireless system between two fixed locations (*e.g.*, fixed transmitting tower to fixed customer premise equipment).

*Forecast period* means the five-year period of projections in an application, which shall be used by RUS to determine financial and technical feasibility of the application.

*GAAP* means accounting principles generally accepted in the United States of America.

*Grant* means any federal assistance in the form of a grant made under this part.

*Grant agreement* means the grant contract and security agreement between RUS and the Awardee securing the Grant awarded under this part, including any amendments thereto, available for review on the Agency's web page.

*Indefeasible Right to Use (IRU)* means the long-term agreement of the rights to capacity, or a portion thereof specified in the terms of a certain amount of bandwidth or number of fibers.

*Loan* means any federal assistance in the form of a loan made under this part.

*Loan agreement* means the loan contract and security agreement between RUS and the Awardee securing the Loan, including all amendments thereto, available for review on the Agency's web page.

*Loan/grant* means any federal assistance in the form of a loan/grant combination made under this part.

*Loan/grant agreement* means the loan/grant contract and security agreement between RUS and the Awardee securing the loan/grant, including all amendments thereto, available for review on the Agency's web page.

*Non-funded service area (NFSA)* means any area in which the applicant offers telecommunication/broadband service, or intends to offer telecommunication/broadband service, during the forecast period, but which is not part of its Proposed Funded Service Area.

*Pre-application expenses* means any reasonable expenses, as determined by RUS, incurred after the release of a FEDERAL REGISTER notice opening an application window to prepare an Application or to respond to RUS inquiries about the Application.

*Premises* means households, farms, and businesses.

*Project* means all of the work to be performed to bring broadband service to all premises in the proposed funded service area under the Application, including construction, the purchase and installation of equipment, and professional services including engineering and accountant/consultant fees, whether funded by federal assistance, matching, or other funds.

*Proposed funded service area (PFSA)* means the area (whether all or part of an existing or new service area) where the applicant is requesting funds to provide broadband service. Multiple service areas will be treated as separate standalone service areas for the purpose of determining how much of the PFSA does not have sufficient access to broadband. Each service area must meet the minimum requirements for the appropriate funding category to be an eligible area.

*RE Act* means the ''Rural Electrification Act of 1936,'' as amended (7 U.S.C. 901 *et seq.*).

*Rural area* means any area that is not located within:

(i)(A) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or

(B) An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants as defined in the Agency mapping tool.

(ii) In determining a rural area, all areas shall exclude certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I).

*RUS Accounting Requirements* shall mean compliance with GAAP, acceptable to RUS, the system of accounting prescribed by RUS Bulletin 1770B–1 and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at 2 CFR part 200. For all Awardees the term ''grant recipient'' in 2 CFR 200 shall also be read to encompass ''loan recipient'' and ''loan/grant recipient'', such that 2 CFR 200 shall be applicable to all Awardees under this part.

*Sufficient access to broadband* means a rural area in which households have *broadband service* at the minimum acceptable level of broadband, as set forth in the latest FEDERAL REGISTER notice announcing funding for the program. This definition will be used to determine the eligibility of a proposed service area and cannot be lower than 10 megabit per second (Mbps) downstream and 1 Mbps upstream. Mobile/Cellular and satellite services, which include systems that use satellite backbone facilities to connect to the internet, will not be considered in making the determination of sufficient access to broadband.

*TIER* means times interest earned ratio. TIER is the ratio of an Applicant's net income (after taxes) plus interest expense, all divided by interest expense and with all financial terms defined by GAAP.

(b) Unless otherwise provided in the award documents, all financial terms not defined herein shall have the meaning as defined by GAAP.

[86 FR 11609, Feb. 26, 2021, as amended at 87 FR 38642, June 29, 2022; 88 FR 5726, Jan. 30, 2023]

### § 1740.3 Funding parameters.

(a) For the purposes of this part:

(1) Ninety (90) percent of the PFSA must not have sufficient access to broadband service;

(2) Applicants must propose to build a network that is capable of providing broadband service to every premises located in the PFSA at the time the application is submitted at a speed defined in the latest FEDERAL REGISTER notice announcing funding for the Program; and

(3) The Agency reserves the right to make funding offers or seek consultations to resolve partially overlapping applications. RUS may contact the applicant for additional information during the review process. If additional information is requested, the applicant will have up to 30 calendar days to submit the information. If such information is not timely submitted, RUS may reject the application.

(b) The amount and types of funds available for assistance, as well as the maximum and minimum award amounts will be published in the FEDERAL REGISTER. Applicants may apply for grants, loans and loan/grant combinations.

**§ 1740.4 Certifications.**

The Applicant must certify to the following within the online application system:

(a) That it is authorized to submit the application on behalf of the eligible entity(ies) listed in the Application;

(b) That the Applicant has examined the Application;

(c) That all information in the Application, including certifications and forms submitted are, at the time furnished, true and correct in all material respects;

(d) That the entity requesting funding will comply with the terms, conditions, purposes, and federal requirements of the program;

(e) That a false, fictitious, or fraudulent statement or claim on the Application is grounds for denial or termination of an award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and civil violations of the False Claims Act (31 U.S.C. 3729 *et seq.*);

(f) That the Applicant will comply with all applicable federal, tribal, state, and local laws, rules, regulations, ordinances, codes, orders, and programmatic rules and requirements relating to the project, and acknowledges that failure to do so may result in rejection or de-obligation of the award, as well as civil liability or criminal prosecution, if applicable, by the appropriate law enforcement authorities.

**§§ 1740.5–1740.8 [Reserved]**

## Subpart B—Eligibility Requirements

**§ 1740.9 Eligible and ineligible entities.**

(a) To be eligible for funding, an Applicant may be either a nonprofit or for-profit organization, and must take one of the following forms:

(1) Corporation;

(2) Limited Liability Company and Limited Liability Partnership;

(3) Cooperative or mutual organization;

(4) States or local governments, including any agency, subdivision, instrumentality, or political subdivision thereof;

(5) A territory or possession of the United States; or

(6) An Indian tribe, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(b) Individuals and legal general partnerships that are formed with individuals are not eligible entities.

(c) Co-Applicants are not eligible entities. If two entities would like to partner with each other in delivering broadband to areas without sufficient access, then one entity must take the lead on submitting an application. Inter-company agreements can be used to account for revenues and expenses on the applicant's financial projections. However, based on the existing financial and security arrangements, the Agency may require that both, or other entities, be parties to the award documents, or guarantee the award.

**§ 1740.10 Eligible projects.**

To be eligible for funding assistance under the part, the Applicant must:

(a) Submit a complete application and provide all supporting documentation including unqualified, audited financial statements from the date the application is submitted as detailed in § 1740.63.

(b) Demonstrate that the project can be completely built out within five years from the date funds are first made available.

(c) Demonstrate that the project is technically feasible as detailed in § 1740.64.

(d) Demonstrate that all project costs can be fully funded or accounted for as detailed in § 1740.63.

(e) Submit documentation which enables RUS to determine that the project is financially feasible and sustainable as detailed in § 1740.61.

(f) Demonstrate that the following service requirements will be met:

(1) Facilities funded with grant funds will provide broadband service proposed in the application for the composite economic life of the facilities, as approved by RUS, or as provided in the Award Documents.

(2) Facilities funded with loan funds must provide broadband service through the amortization period of the loan.

[86 FR 11609, Feb. 26, 2021, as amended at 88 FR 5726, Jan. 30, 2023]

### § 1740.11 Eligible and ineligible service areas.

(a) *Eligible service areas.* (1) Applicants must propose to provide broadband service directly to all premises in the PFSA.

(2) If any part of the applicant's PFSA is ineligible, RUS, in its sole discretion, may request that an applicant modify its application, if RUS believes the modification is feasible. Otherwise, RUS will reject the application.

(b) *Ineligible service areas*—(1) *Overlapping service areas.* RUS will not fund more than one project that serves any one given geographic area. Invariably, however, applicants will propose service areas that overlap, varying from small *de minimis* areas of the territory, but which may be significant with respect to households involved, to larger areas of the service territory, but which may contain few households or businesses, if any. As a result, devising a procedure that will cover every overlap circumstance is not practicable. Nevertheless, it is the agency's intent to make as many eligible applications viable for consideration as possible. That may mean the agency may:

(i) Determine the overlap to be so insignificant that no agency action is necessary;

(ii) Request one or more applications to be revised to eliminate the overlapping territory;

(iii) Choose one application over another given the amount of assistance requested, the number of awards already chosen in the area or State, or the need for the project in the specific area due to other factors; or

(iv) Simply choose the project that scores higher or in the judgement of the agency is more financially feasible.

(2) *Prior funded service areas to include:* (i) RUS Broadband loans. Service areas of borrowers that have RUS Broadband loans, as defined in this part, are ineligible for all other applicants, and can be found on the Agency web page for the program. However, RUS Broadband Borrowers that have built out their service areas consistent with their application and award documents, but were not required to provide, and are currently not providing, sufficient access to broadband pursuant to this regulation are eligible to apply for funding for these service areas; provided that they have not defaulted on, and have materially complied with, in the sole discretion of RUS, their prior Broadband loan award requirements. Current RUS Broadband Borrowers that have received funding to provide sufficient access to broadband but have not yet built out their system are ineligible to apply for funding for these service areas.

(ii) RUS Community Connect Grants. Service areas that received grants under the RUS Community Connect Grant Program are eligible if they do not have sufficient access to broadband, except for those grants still under construction. Service areas still under construction can be found on the Agency's web page.

(iii) RUS BIP Grants. Service areas that received a 100 percent grant under the RUS Broadband Initiatives Program are eligible if they do not have sufficient access to broadband.

(c) *Service areas with other funding.* (1) Applicants are encouraged to work with the Governor's office for the states, and tribal governments for the tribal areas where they are proposing to provide broadband service and submit information detailing where state funding has been provided.

(2) Service areas that have received federal grant funds, or funds from the Federal Communications Commission, to provide broadband service will be restricted from funding, if such funding is principally to construct facilities throughout the service area that provide broadband service at the threshold level of service. If additional service areas are restricted from funding, these areas will be identified in the funding opportunity announcement that opens an application window.

### § 1740.12 Eligible and ineligible cost purposes.

Award and any matching funds must be used to pay only eligible costs incurred post award, except for approved pre-application expenses. Eligible costs must be consistent with the cost principles identified in 2 CFR 200, Subpart E, Cost Principles. In addition, costs must be reasonable, allocable, and necessary to the project. Any application that proposes to use any portion of the award or matching funds for any ineligible costs may be rejected.

(a) *Eligible award costs.* Award funds under this part may be used to pay for the following costs:

(1) To fund the construction or improvement of facilities, including buildings and land, required to provide fixed terrestrial broadband service, including fixed wireless service, and any other facilities required for providing other services over the same facilities, such as equipment required to comply with CALEA;

(2) To fund reasonable preapplication expenses in an amount not to exceed five percent of the award. Preapplication expenses must be included in the first request for advance of award funds and will be funded with either grant or loan funds. If the funding category applied for has a grant component, then grant funds will be used for this purpose. If preapplication expenses are not included in the first request for advance of award funds, they will become an ineligible purpose; and

(3) To fund the acquisition of an existing system that does not currently provide sufficient access to broadband for upgrading that system to meet the requirements of this regulation. The cost of the acquisition is limited to 40 percent of the award amount requested. Acquisitions can be considered for 100 percent loans.

(b) *Ineligible award costs.* Award funds under this part may not be used for any of the following purposes:

(1) To fund operating expenses of the Awardee;

(2) To fund costs incurred prior to the date on which the application was submitted other than eligible preapplication expenses;

(3) To fund an acquisition of an affiliate, or the purchase or acquisition of any facilities or equipment of an affiliate. Note that if affiliated transactions are contemplated in the application, approval of the application does not constitute approval to enter into affiliated transactions, nor acceptance of the affiliated arrangements that conflict with the obligations under the award documents;

(4) To fund the acquisition of a system previously funded by RUS without prior written approval of RUS before an application is submitted;

(5) To fund the purchase or lease of any vehicle other than those used primarily in construction or system improvements;

(6) To fund broadband facilities leased under the terms of an operating lease or an indefeasible right of use (IRU) agreement;

(7) To fund the merger or consolidation of entities;

(8) To fund costs incurred in acquiring spectrum as part of a Federal Communication Commission (FCC) auction or in a secondary market acquisition. Spectrum that is part of a system acquisition may be considered;

(9) To fund facilities that provide mobile services;

(10) To fund facilities that provide satellite service including satellite backbone services;

(11) To fund the acquisition of a system that is providing sufficient access to broadband; or

(12) To refinance outstanding debt.

**§§ 1740.13–1740.24 [Reserved]**

## Subpart C—Award Requirements

### § 1740.25 Substantially Underserved Trust Areas (SUTA).

Applicants seeking assistance may request consideration under the SUTA provisions in 7 U.S.C. 936f.

(a) If the Administrator determines that a community within ‘‘trust land’’ (as defined in 38 U.S.C. 3765) has a high need for the benefits of the Program, the Administrator may designate the community as a ‘‘substantially underserved trust area’’ (as defined in section 306F of the RE Act).

(b) To receive consideration under SUTA, the applicant must submit to the Agency a completed application that includes all information requested in 7 CFR part 1700, subpart D. In addition, the application must identify the discretionary authorities within subpart D that it seeks to have applied to its application. Note, however, the following:

(1) Given the prohibition on funding operating expenses in the Program, requests for waiver of the equity requirements cannot be considered; and

(2) Due to the statutory requirements that established the Program, waiver of the nonduplication requirements cannot be considered.

### § 1740.26 Public notice.

(a) To ensure transparency for the Program, the Agency's mapping tool will include the following information from each application, and be displayed for the public:

(1) The identity of the applicant;

(2) The areas to be served, including identification of the associated census blocks;

(3) The type of funding requested;

(4) The status of the application; and

(5) The number of households without sufficient access to broadband.

(b) The Agency will publish a public notice of each application requesting assistance under this part in accordance with the requirements of 7 U.S.C. 950cc. All applicants must provide the following information, which will be posted publicly on RUS' fully searchable website, in addition to the status of the application:

(1) A description of the proposed broadband project;

(2) A map of the PFSA;

(3) The amount and type of support requested by the applicant;

(4) The estimated number and proportion of service points in the proposed service territory without fixed broadband service, whether terrestrial or wireless; and

(5) Any other information required of the applicant in a funding notice.

(c) The public notice referenced under paragraph (b) of this section will be published after application submission and will remain available for 45 calendar days on the Agency's web page. During this period, existing service providers are requested to submit the following information through the Agency's mapping tool:

(1) The number of residential and business customers within the applicant's service area currently purchasing sufficient access to broadband, the rates of data transmission being offered, and the cost of each level of broadband service charged by the existing service provider;

(2) The number of residential and business customers within the applicant's service area receiving voice and video services and the associated rates for these other services;

(3) A map showing where the existing service provider's services coincide with the applicant's service area using the Agency's Mapping Tool; and

(4) Test results for the service area in question for a minimum of at least the prior three months demonstrating that sufficient access to broadband is being provided. The test results shall be for different times of the day.

(d) The Agency may contact service providers that respond under paragraph (b) of this section to validate their submission, and so responding service providers should be prepared to:

(1) Provide additional information supporting that the area in question has sufficient access to broadband service;

(2) Have a technician on site during the field validation by RUS staff;

(3) Run on site tests with RUS personnel being present, if requested; and

(4) Provide copies of any test results that have been conducted in the last six months and validate the information submitted in the public notice response months.

(e) If no broadband service provider submits information pursuant to a pending application or if the existing provider does not provide the information requested under paragraphs (b) and (c) of this section, RUS will consider the number of providers and extent of broadband service using any other data available through reasonable efforts, including utilizing the National Telecommunications and Information Administration National Broadband Availability Map and FCC broadband availability map. That may include the agency conducting field validations so as to locate facilities in the PFSA and determine, to the extent possible, if those facilities can provide sufficient access to broadband. Notwithstanding, conclusive evidence as to the existence of sufficient access to broadband will be taken only through the public notice process. As a result, the Agency highly recommends that existing service providers in a proposed funded service territory submit responses to the public notice to ensure that their service is considered in the determination of eligibility on an application.

(f) The Agency will notify respondents who are existing service providers whether their challenge was successful or not and allow for an opportunity to respond.

(g) The information submitted by an existing service provider under paragraph (c) of this section will be treated as proprietary and confidential and not subject to disclosure, pursuant to 7 U.S.C. 950cc(b)(3).

(h) For all applications that are approved, the following information will be made available to the public:

(1) The information provided in paragraph (a) of this section;

(2) Each annual report required under §1740.80(g) will be redacted to protect any proprietary information; and

(3) Such other information as the Administrator of the RUS deems sufficient to allow the public to understand the assistance provided.

### § 1740.27 Environmental and related reviews.

(a) Federal Agencies are required to analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for Applicant projects or proposals seeking funding. Please refer to 7 CFR part 1970 for all of Rural Development's environmental policies. All Applicants must follow the requirements in 7 CFR part 1970 and are required to complete an Environmental Questionnaire, to provide a description of program activities, and to submit all other required environmental documentation as requested in the application system or by the Agency after the application is submitted. It is the Applicant's responsibility to obtain all necessary federal, tribal, state, and local governmental permits and approvals necessary for the proposed work to be conducted.

(b) Applications will be reviewed to ensure that they contain sufficient information to allow Agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be submitted to the appropriate federal and state agencies, along with the recommendation that the proposal is in compliance with applicable environmental and historic preservation laws.

(c) Applicants proposing activities that cannot be covered by existing environmental compliance procedures will be informed whether NEPA requirements and other environmental requirements can otherwise be expeditiously met so that a project can proceed within the timeframes anticipated under the Program.

(d) If additional information is required after an application is accepted for funding, funds can be withheld by the agency under a special award condition requiring the Awardee to submit additional environmental compliance information sufficient for the Agency to assess any impacts that a project may have on the environment.

### § 1740.28 Civil rights procedures and requirements.

(a) *Equal opportunity and non-discrimination.* The agency will ensure that equal opportunity and non-discriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15. In accordance with federal civil rights law and USDA civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

(b) *Civil rights compliance.* Recipients of federal assistance under this part must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. In general, recipients should have available for the Agency, racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. The Agency will conduct compliance reviews in accordance with 7 CFR part 15. Awardees will be required to complete RD 400–4, ''Assurance Agreement,'' for each Federal Award received.

(c) *Discrimination complaints.* Persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250. A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or the Agency.

### §§ 1740.29–1740.41 [Reserved]

## Subpart D—Award Terms

### § 1740.42 Interest rates.

Interest rates for the different funding options that will become available will be included in the FEDERAL REGISTER as part of the funding announcement opening a funding window.

(a) Direct cost-of-money loans shall bear interest at a rate equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity.

(b) The agency may offer 100 percent loans at a reduced interest rate, and in such cases, the applicable interest rate will be stated in the FEDERAL REGISTER or applicable funding opportunity notice.

### § 1740.43 Terms and conditions.

Terms and conditions of loans, grants, or loan/grant combinations are set forth in the non-negotiable standard loan, grant, or loan/grant agreements and the corresponding note, and/or mortgage, if applicable, which may be found on the Agency's web page.

(a) Unless the Applicant requests a shorter repayment period, loans must be repaid with interest within a period that, rounded to the nearest whole year, is equal to the expected Composite Economic Life of the project assets, as determined by RUS based upon acceptable depreciation rates, plus three years. Acceptable depreciation rates can be found in the Program Construction Procedures found on the Agency's web page.

(b) Interest begins accruing on the date of each loan advance. Any deferral period for loans will be set in the FEDERAL REGISTER notice opening a funding window.

(c) All proposed construction (including construction with matching and other funds) and all advance of funds must be completed no later than five years from the time funds are made available.

(d) No funds will be disbursed under this program until all other sources of funding have been obtained and any other pre-award conditions have been met. Failure to obtain one or more sources of funding committed to in the Application or to fulfill any other pre-award condition within 90 days of award announcement may result in withdrawal of the award. The RUS may modify this requirement in the FEDERAL REGISTER or applicable funding opportunity notice.

### § 1740.44 Security.

(a) *Loans and loan/grant combinations.* The loan portion of the award must be adequately secured, as determined by RUS.

(1) For Corporations and limited liability entities, the loan and loan/grant combinations must be secured by all assets of the Awardee.

(i) RUS must be given an exclusive first lien, in form and substance satisfactory to RUS, on all assets of the Awardee, including all revenues.

(ii) RUS may share its first lien position with one or more lenders on a *pari passu* basis, except with respect to grant funds, if security arrangements are acceptable to RUS.

(iii) Applicants must submit a certification that their prior lender or lienholder on any Awardee assets has already agreed to sign the RUS' standard intercreditor agreement or co-mortgage found on the Agency's web page.

(iv) RUS will not share a lien position on assets with any related party or affiliate of the Awardee.

(2) For Tribal entities and municipalities, RUS will develop appropriate security arrangements.

(3) Unless otherwise approved by RUS in writing, all property and facilities purchased with award funds must be owned by the Awardee.

(b) *Grant security*. The grant portion of the award must also be adequately secured, as determined by RUS.

(1) The government must be provided an exclusive first lien on all grant funded assets during the service obligation of the grant, and thereafter any sale or disposition of grant assets must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR part 200. Note that this part will apply to ALL grant funds of an Awardee, regardless of the entity status or type of organization.

(2) All Awardees must repay the grant if the project is sold or transferred without receiving written approval from RUS during the service obligation of the grant.

(c) *Substitution of Collateral and Irrevocable Letter of Credit*—(1) *Loans and combination loan and grant*. The Agency's standard loan/grant documents require that applicants pledge all assets and revenues of their operations as collateral. Applicants may propose other forms of collateral as long as the amount of the collateral is equal to the full amount of the loan. The collateral must be pledged to the Agency. Acceptable forms of substitute collateral are limited to following: Certificates of Deposit, with the Agency named as the beneficiary on the certificate, or Bonds with a AAA rating from an accredited rating agency. All other conditions of the standard loan documents will apply. A copy of the Substitution Documents can be found on the Agency's web page.

(2) *Grants*. For grant-only applications, applicants may request that standard grant security arrangements be replaced with an Irrevocable Letter of Credit (ILOC), to ensure that the project is completed. The ILOC must be for the full amount of funding requested and must remain in place until project completion. If an ILOC is offered as security, applicants will not be required to provide financial projections, meet any financial ratios requirements as part of the application process, or submit the maps for their NFSAs. Although the ILOC will replace security for the grant security arrangements, all other requirements of the standard grant agreement will remain the same. A copy of the ILOC award documents can be found on the Agency's web page.

### § 1740.45 Advance of funds.

RUS loan and grant advances are made at the request of the Awardee according to the procedures stipulated in the Award Documents. All non-RUS funds, to include matching funds and cash provided in lieu of RUS loan funds, must be expended first, followed by loan funds and then grant funds, except for RUS-approved pre-application expenses. RUS may modify this requirement in the FEDERAL REGISTER or applicable funding opportunity notice. Grant funds, if any, will be used for eligible preapplication expenses only on the first advance request. Applications that do not account for such advance procedures in the pro forma five-year forecast may be rejected.

### § 1740.46 The Buy American preference and the Buy American requirement (Amended).

The domestic content preference under this Program applies differently to two classes of awardees: those that are defined as Non-Federal Entities under 2 CFR 200.1 and those that are not.

(a) *Non-Federal Entity awardees*. Funding to Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of section 70914 of the Build America, Buy America Act (BABA) within the Infrastructure Investment and Jobs Act (IIJA).

(b) *All other awardees*. Awardees shall use in connection with the expenditure of loan and grant funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or in any eligible country. For purposes of this section, an ''eligible country'' is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. The Buy American regulations may be found at, and any requests for waiver must be submitted pursuant to, 7 CFR part 1787.

[88 FR 5726, Jan. 30, 2023]

### §§ 1740.47–1740.58 [Reserved]

## Subpart E—Application Submission and Evaluation

### § 1740.59 Application submission.

(a) Applications must be submitted through the Agency's online application system.

(b) The Agency may publish additional application submission requirements in a notice in the FEDERAL REGISTER.

(c) Unless otherwise identified in the notice, applicants can only submit one application under any funding window.

### § 1740.60 Elements of a complete application.

(a) *Online application system.* All applications under this regulation must be submitted through the RUS Online Application System located on the Agency's web page. Additional information can be found in the Application Guide found on the Agency's web page.

(b) *System for Award Management (SAM).* Prior to submitting an application, the applicant must register in SAM and also obtain a unique entity identifier (UEI) as part of the registration process. Applicants can register and obtain the UEI at *https://www.sam.gov/content/home.* SAM registration must be active with current data at all times, from the application review throughout the active Federal award funding period. To maintain active SAM registration, the applicant must review and update the information in the SAM database annually from the date of initial registration or from the date of the last update or renewal. The applicant must ensure that the information in the database is current, accurate, and complete. The UEI of the applicant must be included in the application.

(c) *Contents of the application.* A complete application will include the following information as requested in the RUS Online Application System and application guide:

(1) General information on the applicant and the project including:

(i) A description of the project, that will be made public, consistent with the requirements herein; and

(ii) The estimated dollar amount of the funding request.

(2) An executive summary that includes, but is not be limited to, a detailed description of existing operations, discussion about key management, description of the workforce, description of interactions between any parent, affiliated or subsidiary operation, a detailed description of the proposed project, and the source of the matching and other funds;

(3) A description of the PFSA including the number of premises passed;

(4) Subscriber projections including the number of subscribers for broadband, video and voice services and any other service that may be offered. A description of the proposed service offerings and the associated pricing plan that the applicant proposes to offer;

(5) A map, utilizing the RUS mapping tool located on the Agency's web page, of the PFSAs identifying the areas without sufficient access to broadband and any NFSA of the applicant. If an applicant has multiple NFSAs, they can elect to submit each NFSA individually or they can submit them as a single file through the mapping tool;

(6) A description of the advertised prices of service offerings by competitors in the same area;

(7) A network design and all supporting information as detailed in § 1740.64.

(8) Resumes of key management personnel, a description of the organization's readiness to manage a broadband services network, and an organizational chart showing all parent organizations and/or holding companies (including parents of parents, etc.), and all subsidiaries and affiliates;

(9) A legal opinion that:

(i) Addresses the applicant's ability to enter into the award documents;

(ii) Describes all material pending litigation matters;

(iii) Addresses the applicant's ability to pledge security as required by the award documents; and

(iv) Addresses the applicant's ability to provide broadband service under state or tribal law.

(10) Summary and itemized budgets of the infrastructure costs of the proposed project, including if applicable, the ratio of loans to grants, and any other sources of outside funding. The summary must also detail the amount of matching and other funds and the source of these funds. If the matching and other funds are coming from a third party, a commitment letter and support that the funds are available must also be submitted. Matching and other funds must be deposited into the RUS Pledged Deposit Account at the closing of the award;

(11) A detailed description of working capital requirements and the sources of those funds;

(12) Unqualified, audited financial statements from the date the application is submitted as detailed in § 1740.63;

(13) The historical and projected financial information required in § 1740.63;

(14) All information and attachments required in the RUS Online application system;

(15) A scoring sheet, analyzing any scoring criteria set forth in the funding announcement opening the application window;

(16) A list of all the applicant's outstanding and contingent obligations as required in § 1740.63;

(17) All environmental information as required by § 1740.27;

(18) Certification from the applicant that agreements with, or obligations to, investors do not breach the obligations to the government under the standard Award Documents located on the Agency's web page, especially distribution requirements, and that any such agreements will be amended so that such obligations are made contingent to compliance with the Award Documents. Such certification should also specifically identify which, if any, provisions would need to be amended;

(19) If service is being proposed on or over Tribal Land, a Tribal Government Resolution of Consent from the Tribal Council of the Tribal Government with jurisdiction over the Tribal Lands at issue must be provided to show that they are in support of the project and will allow construction to take place on Tribal Land. The certification must:

(i) Include a description of the land proposed for use as part of the proposed project;

(ii) Identify whether the land is owned, held in Trust, land held in fee simple by the Tribe, or land under a long-term lease by the Tribe;

(iii) If owned, identify the landowner; and

(iv) Provide a commitment in writing from the landowner authorizing the applicant's use of that land for the proposed project; and

(20) Additional items that may be required by the Administrator through a notice in the FEDERAL REGISTER.

(d) *Material representations.* The application, including certifications, and all forms submitted as part of the application will be treated as material representations upon which RUS will rely in awarding grants and loans.

[86 FR 11609, Feb. 26, 2021, as amended at 88 FR 5726, Jan. 30, 2023]

**§ 1740.61 Evaluation for technical and financial feasibility.**

(a) A project is financially feasible when the applicant demonstrates to the satisfaction of RUS that it will be able to generate sufficient revenues to cover expenses; will have sufficient cash flow to service all debts and obligations as they come due; will have a positive ending cash balance as reflected on the cash flow statement for each year of the forecast period; and, by the end of the forecast period, will meet at least two of the following requirements: A minimum TIER requirement of 1.2, a minimum DSCR requirement of 1.2, and a minimum current ratio of 1.2. In addition, applicants must demonstrate positive cash flow from operations at the end of the forecast period.

(b) For any funding option that includes grant funds, evaluation criteria for scoring the application will be included in the FEDERAL REGISTER notice that opens an application window. Grant applications submitted for a certain category will be ranked and awarded based only on those applications included in that category.

(c) The Agency will determine technical feasibility by evaluating the Applicant's network design and other relevant information in the application.

### § 1740.62 Evaluation of Awardee operations.

(a) RUS may send a team to the awardee's facilities to complete a Management Analysis Profile (MAP) of the entire operation. MAPs are used by RUS as a means of evaluating an Awardee's strengths and weaknesses and ensuring that awardees are prepared to fulfil the terms of the award. Once an applicant accepts an award offer, RUS may schedule a site visit as soon as possible.

(b) RUS reserves the right not to advance funds until the MAP has been completed. If the MAP identifies issues that can affect the operation and completion of the project, those issues must be addressed to the satisfaction of RUS before funds can be advanced. Funding may be rescinded if following a MAP, the agency determines that the awardee will be unable to meet the requirements of the award.

### § 1740.63 Financial information.

(a) The Applicant must submit financial information acceptable to the Agency that demonstrates that the Applicant has the financial capacity to fulfill the grant, loan, and loan/grant combination requirements in this part and to successfully complete the proposed project.

(1) Applicants subject to 2 CFR part 200 must submit an audited financial statement for the previous year from the date the application is submitted. If an application is submitted and the most recent year-end audit has not been completed, the applicant can use the previous audit that has been completed.

(2) Applicants not subject to 2 CFR part 200 must submit unqualified, comparative, audited financial statements for the previous year from the date the application is submitted. If an application is submitted and the most recent year-end audit has not been completed, the applicant can submit the previous unqualified audit that has been completed. If qualified audits containing a disclaimer or adverse opinion are submitted, the application will not be considered.

(i) An applicant can use the consolidated audit of a parent as long as the parent fully guarantees the loan, or in the case of a grant, guarantees that construction will be completed as approved in the application or will repay the grant to RUS.

(ii) If the applicant has more than one parent, then each parent's audits must be submitted, and each parent must fully guarantee the award.

(iii) For governmental entities, financial statements must be accompanied with certifications as to unrestricted cash that may be available on a yearly basis to the applicant.

(3) Applicants must provide detailed information for all outstanding and contingent obligations. Copies of existing notes, loan and security agreements, guarantees, any existing management or service agreements, and any other agreements with parents, subsidiaries and affiliates, including but not limited to debt instruments that use the applicant's assets, revenues or stock as collateral must be included in the application.

(4) Applicants must provide evidence of all funding, other than the RUS award, necessary to support the project, such as bank account statements, firm letters of commitment from equity participants, or outside loans, which must evidence the timely availability of funds. If outside loans are used to cover any matching requirement, they may only be secured

by assets other than those used for collateral under this regulation. Equity partners that are not specifically identified by name will not be considered in the financial analysis of the application. If the application states that other funds are required for the broadband project in addition to the Program funding requested, evidence must be included in the application identifying the source of funds and when the funds will be available. If the additional funding is not clearly identified, the application may not be considered for an award. If the applicant is providing non-telecommunication services and is proposing expansion to those services and states that additional funds are required to support sustainability of the overall operation of the applicant, then evidence must be submitted supporting the availability of these funds or the application may not be considered for funding.

(5) Historical financial statements for the last four years consisting of a balance sheet, income statement, and cash flow statement must be provided. If an entity has not been operating for four years, historical statements for the period of time the entity has been operating are acceptable.

(6) Pro Forma financial analysis prepared in conformity with GAAP and the Agency's guidance on grant accounting can be found at *https://www.rd.usda.gov/files/AccountingGuidance10.pdf*. The Pro Forma should validate the sustainability of the project by including subscriber estimates related to all proposed service offerings; annual financial projections with balance sheets, income statements, and cash flow statements; supporting assumptions for a five-year forecast period and a depreciation schedule for existing facilities, those facilities funded with federal assistance, matching funds, and other funds. This pro forma should indicate the committed sources of capital funding and include a bridge year prior to the start of the forecast period. This bridge year shall be used as a buffer between the historical financial information and the forecast period and is the year in which the application is submitted.

(i) The financial projections must demonstrate that by the end of the forecast period, the project will meet at least two of the requirements described in § 1740.61(a).

(ii) The financial projections must also demonstrate positive cash flow from operations at the end of the forecast period.

(iii) Based on the financial evaluation, additional conditions may be added to the Award documents to ensure financial feasibility and security on the award.

(b) Publicly traded companies that have a bond rating from Moody's, Standard and Poor's, or Fitch of Investment Grade at the time an application is submitted do not have to complete the pro forma financial projections. In addition, applicants with this classification that elect not to submit financial projections do not need to submit NFSAs.

[86 FR 11609, Feb. 26, 2021, as amended at 88 FR 5727, Jan. 30, 2023]

### § 1740.64 Network design.

(a) Only projects that RUS determines to be technically feasible will be eligible for an award.

(b) The network design must include a description of the proposed technology used to deliver the broadband service, demonstrating that all premises in the PFSA can be offered broadband service; a network diagram, identifying cable routes, wireless access points, and any other equipment required to operate the network; a buildout timeline and milestones for implementation of the project; and a capital investment schedule showing that the system can be built within five years. All of these items must be certified by a professional engineer who is certified in at least one of the states where there is or will be project construction. The certification from the professional engineer must clearly state that the proposed network can deliver the broadband service to all premises in the PFSA at the minimum required service level. In addition, a list of all required licenses and regulatory approvals needed for the proposed project and how much the applicant will rely on contractors or vendors to deploy the network facilities must be submitted. Note that in preparing budget costs for equipment and materials, RUS' Buy American requirements apply, as referenced in § 1740.46.

**§§ 1740.65–1740.76 [Reserved]**

## Subpart F—Closing, Servicing, and Reporting

**§ 1740.77 Offer and closing.**

Successful applicants will receive an offer letter and award documents from RUS following award notification. Applicants may view sample award documents on the Agency's web page.

**§ 1740.78 Construction.**

(a) All project assets must comply with 7 CFR part 1788 and 7 CFR part 1970, the Program Construction Procedures located on the Agency's web page, any successor regulations found on the agency's website, and any other guidance from the Agency.

(b) The build-out of the project must be completed within five years from the date funds are made available. Build-out is considered complete when the network design has been fully implemented, the service operations and management systems infrastructure is operational, and the awardee is ready to support the activation and commissioning of individual customers to the new system.

**§ 1740.79 Servicing of grants, loans and loan/grant combinations.**

(a) Awardees must make payments on the loan as required in the note and Award Documents.

(b) Awardees must comply with all terms, conditions, affirmative covenants, and negative covenants contained in the Award Documents.

(c) The sale or lease of any portion of the Awardee's facilities must be approved in writing by RUS prior to initiating the sale or lease.

**§ 1740.80 Accounting, monitoring, and reporting requirements.**

(a) Awardees must adopt a system of accounts for maintaining financial records acceptable to the Agency, as described in 7 CFR part 1770, subpart B.

(b) Awardees subject to 2 CFR part 200 must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting, in accordance with 2 CFR part 200, subpart F.

(c) Awardees not subject to 2 CFR part 200 must submit annual comparable audited financial statements along with a report on compliance and on internal control over financial reporting in accordance with the requirements of 7 CFR part 1773 using the RUS' online reporting system. The Certified Public Accountant (CPA) conducting the annual audit is selected by the borrower and must be satisfactory to RUS as set forth in 7 CFR 1773, subpart B, ''RUS Audit Requirements.''

(d) Thirty (30) calendar days after the end of each calendar year quarter, Awardees must submit to RUS, balance sheets, income statements, statements of cash flow, rate package summaries, and the number of customers taking broadband service on a per community basis utilizing RUS' on-line reporting system. These reports must be submitted throughout the loan amortization period or for the economic life of the facilities funded with a grant.

(e) Awardees will be required to submit annually updated service area maps through the RUS mapping tool showing the areas where construction has been completed and premises are receiving service until the entire PFSA can receive the broadband service. At the end of the project, Awardees must submit a service area map indicating that all construction has been completed as proposed in the application. If parts of the PFSA have not been constructed, RUS may require a portion of the award to be rescinded or paid back.

(f) Awardees must comply with all reasonable Agency requests to support ongoing monitoring efforts. The Awardee shall afford RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect: The Broadband System, any other property encumbered by the Award Documents, any and all books, records, accounts, invoices, contracts, leases, payrolls, timesheets, cancelled checks, statements, and other documents (electronic or paper, of every kind) belonging to or in the possession of the

Awardee or in any way pertaining to its property or business, including its subsidiaries, if any, and to make copies or extracts thereof.

(g) Awardee records shall be retained and preserved in accordance with the provisions of 7 CFR part 1770, subpart A.

(h) Awardees receiving assistance under this part will be required to submit annual reports for three (3) years after the completion of construction. The reports must include the following information:

(1) Existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;

(2) The estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure;

(3) The progress towards fulfilling the objectives for which the assistance was granted;

(4) The number and geospatial location of residences and businesses that will receive new broadband service;

(5) The speed and price of the Awardee's broadband service offerings; and

(6) The average price of broadband service in the Project's service area.

[86 FR 11609, Feb. 26, 2021, as amended at 88 FR 5727, Jan. 30, 2023]

### § 1740.81 Default and de-obligation.

RUS reserves the right to deobligate awards to Awardees under this part that demonstrate an insufficient level of performance, wasteful or fraudulent spending, or noncompliance with environmental and historic preservation requirements.

### §§ 1740.82–1740.93 [Reserved]

## Subpart G—Other Information and Federal Requirements

### § 1740.94 Confidentiality of Applicant information.

Applicants are encouraged to identify and label any confidential and proprietary information contained in their applications. The Agency will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. 552), the Trade Secrets Act, as amended (18 U.S.C. 1905), the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*), and CALEA (47 U.S.C. 1001 *et seq.*). Applicants should be aware, however, that this program requires substantial transparency. For example, RUS is required to make publicly available on the internet a list of each entity that has applied for a loan or grant, a description of each application, the status of each application, the name of each entity receiving funds, and the purpose for which the entity is receiving the funds.

### § 1740.95 Compliance with applicable laws.

Any recipient of funds under this regulation shall be required to comply with all applicable federal, tribal and state laws, including but not limited to:

(a) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*);

(b) The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6); and

(c) All applicable federal, tribal and state communications laws and regulations, including, for example, the Communications Act of 1934, as amended, (47 U.S.C. 151 *et seq.*) the Telecommunications Act of 1996, as amended (Pub. L. 104–104, 110 Stat. 56 (1996), and CALEA. For further information, *see http://www.fcc.gov.*

### §§ 1740.96–1740.99 [Reserved]

### § 1740.100 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0572–0152.

# PART 1741—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED TELEPHONE LOANS [RESERVED]