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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### Project Financing Loans, Grants, and Loan Guarantees

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Request for Information and Notice of Listening Session.

**SUMMARY:** The Rural Utilities Service (RUS) seeks public comments on implementing the provisions of Section 6019 of the Agricultural Act of 2014 (2014 Farm Bill) relating to water and waste disposal direct and guaranteed loans. RUS is requesting written comments regarding the Section 6019 provisions and their relation to project financing requirements. This public input will allow all affected stakeholders to contribute to the development of agency procedures for implementing these provisions that will continue to support the agency's mission of facilitating the development of affordable, reliable utility infrastructure to improve the quality of life and promote economic development in rural America.

As part of our implementation of the 2014 Farm Bill, RUS will be hosting a listening session. The listening session will provide an opportunity for stakeholders and other interested parties to offer their comments, concerns or requests regarding the implementation of these provisions.

Instructions regarding registering for and attending the listening session are in the

**SUPPLEMENTARY INFORMATION** of this notice.

**DATES:** *Written Comments:* Interested parties must submit written comments on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Listening Session:* The listening session will be on Wednesday, December 10, 2014, and will begin at 1:00 p.m. and is scheduled to end by 3:00 p.m. All Participants must register by Monday, December 8, 2014. See the SUPPLEMENTAL INFORMATION section for additional guidance and information on the listening session.

**ADDRESSES:** Submit comments in either paper or electronic format by the following methods:

- Federal eRulemaking Portal at <http://www.regulations.gov>. Follow instructions for submitting comments.
- Postal Mail/Commercial Delivery: Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250– 1522.

*Listening Session:* The listening session will be held in Room 5141-S of the South Agriculture Building at 14<sup>th</sup> and Independence Avenue, SW., Wing 1, Washington, DC 20250. We invite you to participate in the listening session. The listening session is open to all members of the public who register.

**FOR FURTHER INFORMATION CONTACT:** Pamela Bennett, USDA-Rural Utilities Service, 1400 Independence Avenue SW., Stop 1570, Washington, DC 20250–1570, telephone (202)720–9639 or email to [WEPFarmBill@wdc.usda.gov](mailto:WEPFarmBill@wdc.usda.gov)

## **SUPPLEMENTARY INFORMATION:**

### **Background:**

RUS provides long term financing to rural communities for the development of water and waste disposal infrastructure under the Water and Waste Disposal (WWD) program. The WWD program is authorized under Section 306 of the Consolidated Farm and Rural Development Act 7 U.S.C. 1926 et seq. (CONACT), to provide financing in the form of loans, grants, and loan guarantees to eligible applicants, including cities, towns, and unincorporated areas with no more than 10,000 inhabitants. This financial assistance is intended to reach communities in greatest need and to provide reasonable user costs for rural residents, businesses and other rural users.

Section 6019 of the 2014 Farm Bill (Public Law 113-79) amended Section 333 of the CONACT to require RUS to encourage, to the maximum extent practicable, private or cooperative lenders to finance rural water and waste disposal facilities. The section directs the agency to achieve this requirement through the following five provisions: (A) maximizing the use of loan guarantees to finance eligible projects in rural communities in which the population exceeds 5,500; (B) maximizing the use of direct loans to finance eligible projects if there is a material impact on the rate payers when compared to a loan guarantee; (C) establishing and applying a “materiality standard” to determine when to maximize direct loans as directed in (B); (D) requiring projects that require interim financing in excess of \$500,000 to initially seek financing from private or cooperative lenders; and (E) determining if an existing direct loan borrower can refinance with a private or cooperative lender prior to RUS providing a new direct loan.

RUS regulations for Water and Waste Disposal Programs guaranteed loans, direct loans and loan servicing are found in 7 CFR Parts 1779, 1780, and 1782, respectively. These regulations currently address topics discussed in Section 6019 of the 2014 Farm Bill provisions, including but not limited to requirements for documenting need for RUS financing in lieu of credit elsewhere, graduation of loans, and interim financing. RUS is analyzing the Section 6019 provisions and identifying how current regulations may need to be revised. The agency is also considering how to minimize the impact to rural end users of the implementation of the 2014 Farm Bill Section 6019 provisions.

RUS invites interested parties including but not limited to rural water systems, trade associations, consumer groups, financing and lending institutions, and individuals to comment on the questions and potential requirements proposed herein. RUS requests that stakeholders provide, in writing, any information or analysis they believe to be relevant to the implementation of the 2014 Farm Bill provisions. By further notice in the Federal Register, RUS may terminate, limit, or otherwise modify the process of obtaining information from interested parties. RUS encourages interested parties to review the 2014 Farm Bill in its entirety.

**Request for Comment:**

Stakeholder input is vital to ensure that implementation of the provisions of Section 6019 of the 2014 Farm Bill continue to support the agency's mission, including ensuring that new regulations and policies do not overly burden the agency's borrowers and their customers. The

following questions and discussion items are posed to guide stakeholder comments. RUS welcomes pertinent comments that are beyond the scope of these questions. RUS is requesting comment and discussion on the following topics:

***Maximizing Loan Guarantees.*** Provision A of Section 6019 of the 2014 Farm Bill directs the agency to “maximize the use of” loan guarantees for projects that will serve rural communities with populations greater than 5,500. RUS has an existing regulation for loan guarantees where the Agency guarantees quality loans for the construction or improvement of water and waste projects serving the financially needy communities in rural areas (7 CFR §1779). In addition, RUS has an existing regulatory requirement that applicants must certify in writing, and the Agency shall determine and document, that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms (7 CFR §1780.7(d)). The agency currently does not limit its guaranteed program or test for credit to those communities with populations of greater than 5,500. The agency requests responses and comments on the following questions:

1. To what degree do the agency’s existing regulations fulfill the requirements of this section? What, if any, modifications are needed to fully address the requirements of Provision A?
2. Should RUS require all eligible applicants with a population exceeding 5,500 to apply for a guaranteed loan prior to applying for a direct loan or grant?
3. If not, what criteria should the agency apply in determining whether applicants should be required to first apply through the guaranteed program?

4. How should the agency handle applicants that do not want to seek commercial credit or guaranteed loans when they are eligible for the agency's direct loan and grant program?
5. Are there any other limiting factors or conditions (financial ratios, minimum loan amounts or other), beyond the 5,500 population required by Provision A of Section 6019, that the agency should screen for prior to referring borrowers to cooperative and commercial lenders for guaranteed loans?
6. What barrier(s), if any, to participation in the Water and Waste Disposal Guaranteed Loan Program exist for eligible rural entities? Can they be addressed through implementation of Section 6019?
7. Are there any other issues not mentioned in items 1 through 6 that should be considered in implementing this provision of Section 6019?

***Materiality Standard.*** Provisions B and C of Section 6019 of the 2014 Farm Bill directs RUS to establish a materiality standard for assessing the impact on ratepayers in determining when the agency should use direct loans or loan guarantees. WWD Program regulations, 7 CFR Part 1780, require the agency to provide loan and grant funds for water and waste projects serving the most financially needy communities. The existing regulations further require the agency to provide financial assistance that results in reasonable user costs for rural residents, rural businesses, and other rural users. The agency presently uses the median household income of the service area as well as a comparison of at least 3 similar systems cost to ensure reasonable user costs to the ratepayers. The agency requests comment on the following topics:

8. To what degree do the agency's existing regulations fulfill the requirements of this section? What, if any, modifications are needed to fully address the requirements of Provisions B and C?
9. Should the agency apply Provisions B and C only for eligible projects in rural communities in which the population exceeds 5,500 to ensure a standard approach in assessing the impact on rate payers?
10. What factors should be considered in determining the materiality standard described in Section 6019? For those factors, what is to be considered a material difference in cost to rate payers?
11. How should RUS define the level of impact to ratepayers at which the agency will use a direct loan rather than loan guarantee? Should it be based on a set dollar increase, a percentage of median household income, or some other approach? If an applicant qualifies for the agency's grant, should this exclude the applicant from this provision?
12. Under what circumstances should an applicant that is eligible for the direct loan program be allowed to seek a direct agency loan if they meet or exceed the materiality threshold?
13. What is the best way to ensure the availability of accurate and timely information regarding rates and terms of lenders participating in the guaranteed program so that the impact on rate payers of direct versus guaranteed loans can be assessed?
14. Are there any other issues not mentioned in items 8 through 13 that should be considered in implementing this provision of Section 6019?

***Interim Financing:*** Provision D of Section 6019 of the 2014 Farm Bill directs the agency to require potential borrowers to seek financing from private or cooperative lenders for projects

requiring greater than \$500,000 in interim financing. RUS's existing regulation allows for interim financing for all loans exceeding \$500,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period (7 CFR §1780.39(d)). The agency requests comment on the following topics:

15. To what degree do the agency's existing regulations fulfill the requirements of this section? What, if any, modifications are needed to fully address the requirements of Provision D?
16. In your opinion what constitutes "reasonable interest rates?"
17. Should the impact on rate payers be considered in determining what is reasonable?
18. In cases where an applicant initially seeks interim financing from private or cooperative lenders and those lenders indicate a willingness to provide financing, does this provision of 6019 prevent the applicant from seeking and obtaining other non-private or non-cooperative lenders interim financing when doing so would result in a reduction in the overall project cost?
19. Provision D requires the applicant to seek interim financing from private or cooperative lenders. Should applicants/borrowers still have the option to decline offers for interim financing? In what instances should this be allowed?
20. Are there any other issues not mentioned in items 15 through 19 that should be considered in implementing this provision of Section 6019?

***Referral to Private or Cooperative Lenders.*** Provision E of Section 6019 of the 2014 Farm Bill directs the Agency to determine if an existing direct loan borrower can refinance their direct loan

with a private or cooperative lender, including with a loan guarantee, prior to RUS providing a new direct loan. This language is consistent with RUS's existing regulatory and servicing requirements. Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms (7 CFR §1780.8(d)). In addition, if at any time, it appears to the Government that the borrower is able to refinance the amount of indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms, the borrower will, upon request of the Government, apply for and accept such loan (7 CFR §1782.11). The agency requests comment on the following topics:

21. To what degree do the agency's existing regulations fulfill the requirements of this section? What, if any, modifications are needed to fully address the requirements of Provision E?
22. What process should be used by the agency to refer eligible applicants to other lenders?
23. What minimum information should be required of the applicant to ensure that the costs of the referral are not overly burdensome on rural communities?
24. What should the agency do if a potential borrower, who is eligible for the program, does not want to refinance older loans or use an outside lender?
25. Does Provision E exclude those existing borrowers who are seeking a new loan that would qualify for an agency grant?

26. What documentation should the agency require of the borrower if they claim they are unable to refinance with a private or cooperative lender, including with a loan guarantee?
27. How should the agency handle cases where a private or cooperative lender indicates a willingness to refinance agency loans, but the applicant believes that refinancing would be detrimental to their operations and cause an undue burden on their rate payers?
28. Do commercial and cooperative banks have a threshold (population, dollars, financial ratios or other) at which they would not consider projects as candidates for refinancing?
29. Are there any other issues not mentioned in items 21 through 28 that should be considered in implementing this provision of Section 6019?

**Listening Session:**

The RUS will hold the Section 6019 Listening Session on Wednesday, December 10, 2014, to receive comments from stakeholders and the public. Oral comments received from this listening session will be documented. All attendees of this listening session who submit oral comments are requested to submit a written copy to help RUS accurately capture public input. In addition, stakeholders and the public who do not wish to attend or speak at the listening session are invited to submit written comments which must be received by the date indicated in the DATE section above.

At the listening session, the focus is for RUS to hear from the public. This is not a discussion with RUS officials or a question and answer session. As noted above, the purpose is to receive public input that RUS can consider in order to implement the provisions of Section 6019 of the 2014 Farm Bill. RUS is interested in receiving input on all aspects of the implementation of these provisions.

The listening session will begin with brief opening remarks from Agency leadership in Rural Development. Individual speakers providing oral comments are requested to be succinct (no more than five minutes) as we do not know at this time how many participants there will be. We request that speakers providing oral comments also provide a written copy of their comments. See the ADDRESSES section above for information about submitting written comments. All stakeholders and interested members of the public are welcome to register to provide oral comments; however, if necessary due to time constraints, a limited number will be selected on a first come, first serve basis.

**Instructions for Attending the Listening Session:**

Space for attendance at the listening session is limited. Due to USDA headquarters security and space requirements, all persons wishing to attend the listening session in person or via phone must send an email to [WEPFarmBill@wdc.usda.gov](mailto:WEPFarmBill@wdc.usda.gov) by Monday, December 8, 2014, to register. Registrations will be accepted until maximum capacity is reached. Once registered, you will receive an email on how to access the listening session remotely. To register, provide the following information:

- First Name
- Last Name
- Organization
- Title
- Email
- Phone Number
- City
- State

- Indicate if you will attend in person and if you wish to provide oral comments.

Upon arrival at the USDA South Building, registered persons must provide valid photo identification in order to enter the building. Visitors must enter the South Building on the Independence Side, 4<sup>th</sup> Wing. Please allow extra time to get through security. Additional information about the listening session, agenda, and directions to get to the listening session, will be available at the USDA Farm Bill website

<http://www.usda.gov/wps/portal/usda/usdahome?navid=farbill>.

Dated: November 4, 2014

Jasper Schneider  
Acting Administrator  
Rural Utilities Service

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