



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1738 and 1739

[Docket No. RUS-19-Telecom-0003]

RIN 0572-AC46

Rural Broadband Loans, Loan/Grant Combinations, and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture, hereinafter referred to as the Agency, is amending its regulation for the Rural Broadband Program, previously referred to as the Rural Broadband Access Loan and Loan Guarantee Program, to implement the Agricultural Act of 2018 (the 2018 Farm Bill). The Agency is publishing this regulation as an interim final rule, which will take effect upon publication in the *Federal Register*. In addition, the Agency is seeking comments regarding this interim final rule to guide its efforts in drafting the final rule for the Rural Broadband Program and Community Connect Grant Program.

DATES: *Effective date:* This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comment date: Comments due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments by utilizing the *Federal eRulemaking*

Portal: <https://www.regulations.gov>. The rule can be identified by docket number RUS-19-Telecom-0003 and RIN number 0572-AC46. Please follow the instructions for submitting comments.

RUS will post all comments received without change, including any personal information that is included with the comment, on <https://www.regulations.gov>.

Comments will be available for inspection online at <https://www.regulations.gov>.

Additional information about RUS Telecommunication programs is available at <https://www.rd.usda.gov/programs-services/all-programs/telecom-programs>.

FOR FURTHER INFORMATION CONTACT: For information about this document or to view supplemental materials call or email Laurel Leverrier, Acting Assistant Administrator; Telecommunication Program; Rural Development; U.S. Department of Agriculture; 1400 Independence Avenue, SW; Room 5153-S; Washington, DC 20250; telephone 202-720-3416, email laurel.leverrier@usda.gov. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at 202-720-2600.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

- I. Definition and Abbreviations
- II. Background
- III. Discussion of Rule Changes
- IV. Procedural Matters

I. Definitions and Abbreviations

2014 Farm Bill	Agricultural Act of 2014
2018 Farm Bill	Agricultural Improvement Act of 2018
CFDA	Catalog of Federal Domestic Assistance
CFR	Code of Federal Regulations
FTTH	Fiber-to-the-home
FR	<i>Federal Register</i>
GPO	Government Publishing Office
GSA	General Services Administration
OMB	Office of Management and Budget
RE Act	Rural Electrification Act of 1936
RUS	Rural Utilities Services
§	Section
U.S.C.	United States Code
USDA	U.S. Department of Agriculture

II. Background

A. *Introduction*

The Agency improves the quality of life in rural America by providing investment capital for deployment of rural telecommunications infrastructure. In order to achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nationwide telecommunications network. With access to the same advanced telecommunications networks as its urban counterparts, especially those designed to accommodate distance learning, telework, and telemedicine, rural America will eventually see improving educational opportunities,

health care, economies, safety and security, and ultimately higher employment. The Agency shares the assessment of Congress, State and local officials, industry representatives, and rural residents that broadband service is a critical component to the future of rural America. The Agency is committed to ensuring that rural America will have access to affordable, reliable, broadband services and to provide a healthy, safe, and prosperous place to live and work.

B. Regulatory History

On May 13, 2002, the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171 (2002 Farm Bill), was signed into law. The 2002 Farm Bill amended the Rural Electrification Act of 1936 to include Title VI, the Rural Broadband Access Loan and Loan Guarantee Program, to be administered by the Agency. Title VI authorized the Agency to approve loans and loan guarantees for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities. Under the 2002 Farm Bill, the Agency was directed to promulgate regulations without notice and comment. Implementing the program required a different lending approach for the Agency than it employed in its earlier telephone program because of the unregulated, highly competitive, and technologically diverse nature of the broadband market. Those regulations were published on January 30, 2003, at 68 FR 4684.

In an attempt to enhance the Broadband Loan Program and to acknowledge growing criticism of funding competitive areas, the Agency proposed to amend the program's regulations on May 11, 2007, at 72 FR 26742 to make eligibility of certain service areas more restrictive than set out in the 2002 Farm Bill. In addition to eligibility

changes, the proposed rule included, among others, changes to persistent problems the Agency had encountered while implementing the program over the years, especially regarding equity requirements, the market survey, and the legal notice requirements. As the Agency began analysis of the public comments it received on the proposed regulations, the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) was working its way through Congress. The proposed rule and key aspects of the public comments were shared with Congress during its deliberations, and the majority of the proposed changes in the Agency's proposed rule were incorporated into the legislation, with and without modification. On March 14, 2011 (76 FR 13770), the Agency published an interim rule implementing the requirements of the 2008 Farm Bill. The Agency did not receive any significant comments to the interim rule and published a final rule on February 6, 2013 (78 FR 8353).

With the passage of the Agricultural Act of 2014, Public Law 113-79 (2014 Farm Bill), Congress made additional changes to the program, and the Agency again published a final rule on July 30, 2015 (80 FR 45397). Those changes included the prioritization of approving applications, a minimum benchmark of broadband service, a more transparent public notice requirement, and the first statutorily required reporting standards.

Again, on December 20, 2018, under the Agricultural Improvement Act of 2018, Pub. L. 115-334 (2018 Farm Bill), Congress made even more significant improvements to the program, most notably by furnishing grant assistance to reach the most underserved rural areas lacking broadband access. This regulation implements those required statutory changes.

III. Discussion of Rule Changes

Below is a table showing each updated section and subpart and its previous location.

Updated 7 CFR Part 1738 Sections and Subparts

New section number and title	New subpart	Previous section number and title	Previous subpart
§ 1738.1 Overview.	A	§ 1738.1 Overview.	Unchanged
§ 1738.2 Definitions.	A	§ 1738.2 Definitions.	Unchanged
§ 1738.3 Funding Parameters.	A	New	New
§ 1738.51 Eligible Entities.	B	§ 1738.101 Eligible Applicants.	C
§ 1738.52 Eligible Projects.	B	New	New
§ 1738.53 Eligible Service Area.	B	§ 1738.102 Eligible service area.	C
§ 1738.54 Eligible Service Area Exceptions for Broadband Facility Upgrades.	B	§ 1738.103 Eligible service area exceptions for broadband facility upgrades.	C
§ 1738.55 Broadband Lending Speed Requirements.	B	New	New
§ 1738.56 Eligible Assistance Purposes	B	§ 1738.51 Eligible loan purposes	Unchanged
§ 1738.57 Ineligible Assistance Purposes.	B	§ 1738.52 Ineligible loan purposes.	B
§ 1738.101 Grant Assistance.	C	New	New
§ 1738.102 Payment Assistance for loans.	C	New	New
§ 1738.103 Substantially underserved trust areas.	C	§ 1738.3 Substantially underserved trust areas.	A
§ 1738.104 Technical Assistance	C	New	New
§ 1738.105 Priorities for	C	§ 1738.203 Priority for approving loan	E

New section number and title	New subpart	Previous section number and title	Previous subpart
approving assistance.		applications.	
§ 1738.106 Public Notice	C	§ 1738.204 Public notice.	E
§ 1738.107 Additional Reporting for Awardees.	C	New	New
§ 1738.108 Environmental Reviews.	C	New	New
§ 1738.109 Civil Rights procedures and requirements.	C	New	New
§ 1738.151 General.	D	New	New
§ 1738.152 Interest rates.	D	Unchanged	Unchanged
§ 1738.153 Terms and conditions.	D	Unchanged	Unchanged
§ 1738.154 Security.	D	§ 1738.154 Loan security.	Unchanged
§ 1738.155 Advance of Funds	D	New	New
§ 1738.156 Buy American Requirement.	D	New	New
§ 1738.201 Application submission.	E	Unchanged	Unchanged
§ 1738.202 Elements of a complete application.	E	Unchanged	Unchanged
§ 1738.203 Notification of completeness.	E	§ 1738.205 Notification of completeness.	Unchanged
§ 1738.204 Evaluation for feasibility.	E	§ 1738.206 Evaluation for feasibility.	Unchanged
§ 1738.205 Competitive Analysis.	E	§ 1738.210 Competitive Analysis.	Unchanged
§ 1738.206	E	§ 1738.211 Financial	Unchanged

New section number and title	New subpart	Previous section number and title	Previous subpart
Financial information.		information.	
§ 1738.207 Network design.	E	§ 1738.212 Network design.	Unchanged
§ 1738.208 Award determinations.	E	§ 1738.213 Loan determination.	Unchanged
§ 1738.251 Offer and Closing.	F	§ 1738.251 Loan offer and loan closing.	Unchanged
§ 1738.252 Construction.	F	Unchanged	Unchanged
§ 1738.253 Servicing of loan and loan/grant combinations.	F	Unchanged	Unchanged
§ 1738.254 Accounting, reporting, and monitoring requirements.	F	Unchanged	Unchanged
§ 1738.255 Default and de-obligation.	F	Unchanged	Unchanged
§ 1738.301 General.	G	Unchanged	Unchanged
§ 1738.302 Fees.	G	New	New
§ 1738.350 OMB control number.	G	Unchanged	Unchanged

The following summarizes the substantive changes introduced in this rule. The changes are presented in the order in which they appear within the interim rule.

Subpart A

Section 1738.1 – Overview.

In this section, the Agency simplified the title of the “Rural Broadband Access Loan and Loan Guarantee Program” to the “Rural Broadband Program,” and added “loan/grant combinations” as an eligible Award category. The Agency anticipates that the addition of grant funding will help the financial feasibility of projects in rural areas with low density.

Section 1738.2 – Definitions.

The Agency amended the definition section to add additional terms to comply with changes to the 2018 Farm Bill and to clarify and standardize definitions.

Subpart B

Section 1738.52 – Eligible Projects.

The Agency revised the required time to complete the build-out of the broadband system described in the application from 3 years to 5 years from the day the Applicant is notified that loan funds are available and revised the commencement period from 120 days after the date of the contract to begin from the date that the legal documents are cleared and funds are made available to the Awardee. Also, the Agency removed the required equity position percentage for Applicants.

Section 1738.53 – Eligible Service Area.

As per the 2018 Farm Bill, the Agency revised eligible service areas to open up, starting after October 1, 2020, those service areas of grantees that are not providing service at least 10 Mbps downstream or 1 Mbps upstream. This ensures that certain rural communities that received prior, older grants are not excluded from receiving Federal assistance to modernize their facilities. Additionally, as required by the 2018 Farm Bill, this section specifies that mobile and satellite services will not be considered when determining the number of households in the proposed service area that do not have access to broadband service.

Section 1738.55 – Broadband Lending Speed Requirements.

This section outlines the required broadband lending speeds, which are now tied to the term of the Award, as required by the 2018 Farm Bill. This is to ensure, for

example, that projects with 20-year loan terms will be capable of providing broadband service at the necessary projected speeds during the entire term of the loan.

Subpart C

Section 1738.101 – Grant Assistance.

This section outlines the requirements of receiving grant assistance, the correlation between the levels of grant assistance and the density of the rural areas to be served, as well as lays out the requirement to receive additional grant funding for development costs. This new authority is intended to assist the neediest of rural areas that lack sufficient levels of broadband service in recovering costs associated with putting together a broadband application. These costs are often a bar to applying to the program for such areas. As a result, the Agency anticipates that funding will be better directed to those areas that are in most need of broadband service.

Section 1738.102 – Payment Assistance for Loans.

The 2018 Farm Bill not only provided newly available grant assistance, but authorized significant assistance to loans. This section outlines the conditions under which Applicants would be eligible to receive loans with subsidized interest rates.

Section 1738.104 Technical Assistance.

This section outlines the conditions under which RUS will provide technical assistance and training through grant funding. This new authority is intended to help the most rural areas without sufficient access to broadband actually prepare applications for submission. As with the assistance for development costs, this should direct funding to where it is most needed.

Section 1738.105 – Priorities for Approving Assistance.

The 2018 Farm Bill extensively revised the criteria for prioritizing applications. Most significantly, however, the Agency will now prioritize applications for rural areas that do not have access to service of at least 10 Mbps upstream and 1 Mbps downstream.

Subpart D

Section 1738.156 - Buy American Requirement.

Executive Order 13858 directs Federal agencies to encourage recipients of Federal funds on infrastructure projects to use those funds, to the greatest extent practicable, to purchase goods and products that are produced in the United States. As a result, RUS will apply its Buy American requirement, promulgated under 7 CFR part 1787, to grants funds under the Broadband Program and Community Connect Programs. The Buy American requirement is already a statutory requirement for loan funds.

Subpart G

Section 1738.301 – General.

The Agency revised this section to outline loan guarantee application requirements and conditions for Agency approval of loan guarantees. Applicants are also directed to the applicable guarantee regulations in 7 CFR parts 4279 and 4287.

Section 1738.302 – Fees.

This section was added pursuant to the 2018 Farm Bill, which now requires that fees be collected from the lender when issuing loan guarantees, in order to lower the costs of such guarantees to the Federal Government.

7 CFR Part 1739 Community Connect Program

Subpart A

Section 1739.3 – Definitions.

The Agency updated the definition of Critical Community Facilities to be in alignment with 7 U.S.C 1926(a).

The Agency updated the definition of Broadband Service to remove mobile and satellite service from being included in the definition.

Section 1739.8 - Buy American Requirement.

Executive Order 13858 directs Federal agencies to encourage recipients of Federal funds on infrastructure projects to use those funds, to the greatest extent practicable, to purchase goods and products that are produced in the United States. As a result, RUS will apply its Buy American requirement, promulgated under 7 CFR part 1787, to grants funds under the Broadband Program and Community Connect Programs. The Buy American requirement is already a statutory requirement for loan funds.

Section 1739.15 – Completed Application.

The Agency added a requirement to publish a public notice requirement for each application.

IV. Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866. In accordance with Executive Order 12866, a Regulatory Impact Analysis was completed, outlining the costs and benefits of implementing this program in rural America. A brief summary can be found below or for the complete analysis please see Regulations.gov with the Docket number RUS-19-Telecom-0003.

Regulatory Impact Analysis

USDA's RUS programs improve the quality of life in rural America by providing investment capital for deployment of rural telecommunications infrastructure in a financially responsible manner. Financial assistance is provided to corporations, limited liability companies, cooperative or mutual organizations, Indian tribes or tribal organizations, or state and local governments.

Unfortunately, too many rural Americans still lack access to broadband service today. The Federal Communications Commission's (FCC) 2019 Broadband Deployment Report (<https://docs.fcc.gov/public/attachments/FCC-19-44A1.pdf>), which was issued in May, noted that over 21 million Americans lack access to broadband service of 25 Mbps download and 3 Mbps upload. More than 26 percent of Americans in rural areas and 32 percent of Americans in Tribal lands lack broadband service.

Remoteness, mountainous and difficult terrain, and sparsely populated areas can make it difficult for service providers to make a business case to extend broadband service. As noted in a report by the National League of Cities regarding bridging the

urban-rural divide, “broadband access tends to cluster in urban areas because it is a guaranteed market for private providers, unlike less densely populated rural areas.” Furthermore, the report noted that rural communities have 37 percent more residents without broadband access when compared to their urban counterparts. Alaska has the most significant divide, with a gap of 62 percent.

<https://www.nlc.org/sites/default/files/2018-03/nlc-bridging-the-urban-rural-divide.pdf>).

There are numerous technologies and network configurations that service providers can utilize to extend broadband service. The Rural Broadband Program is technology neutral, meaning that any technology that can meet RUS’ broadband lending speed threshold (currently set at 25 Mbps download and 3 Mbps upload) is eligible for program funding. The current broadband lending speed standard of 25 Mbps download and 3 Mbps upload was first established in 2017. The standard for the 2016 fiscal year was 10 Mbps download and 1 Mbps upload. The table below identifies the type of technology deployed for the Rural Broadband Program projects which have been funded since 2016.

The Rural Broadband Program provides important funding to help address these issues and enable rural service providers to make the business case to build-out broadband service in rural communities across the nation. Through this program, the number of subscribers that are expected to benefit from each project can vary greatly between projects, depending on the density, remoteness, and topography of the communities being served. Additionally, RUS expects the number of households and businesses benefiting from these projects to grow over time.

Rural communities benefit tremendously from the availability of broadband service that results from the awards from RUS' Rural Broadband Program. Some of these benefits have can clearly be observed with the previous Broadband program. These benefits include more service to underserved areas, more consistent technology and speed of service.

The following table summarizes the benefits and costs of this rule, as required by OMB's Circular A-4. Given that future appropriations will dictate the size of this program going forward, RUS has elected to conduct an annual analysis based on the current best estimate of program size, with the implicit assumption of a constant program size in the absence of more reasonable assumptions. The costs of this rule are estimated as the annual information collection burden and occur in the year of application/award. Because of the significant changes to program operation, any estimate of the benefits would be speculative, and based on the projected increase in the number of applications. Thus, the benefits of this rule qualitatively described, in Section C. The benefits from each year's awards likely accrue over a number of years, although RUS can only describe this time frame qualitatively. The main economic impact of this rule is the potential annual transfer associated with the \$350 million of authorized funding. Given the speculative nature of assumptions about the future time stream of costs, benefits and transfer other than these amounts as constant annual levels, applying the 3% and 7% discount rates would produce results equivalent to the annual estimates reported here.

Category	Annual Estimate (2019 \$)
Costs	\$2,189,350
Benefits	Qualitative

Transfers	\$350,000,000
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RUS has not presented an in-depth alternatives analysis with this rule, because the 2018 Farm Bill is fairly prescriptive regarding this rule. That being said, one possible option would be for RUS to forgo the loan/grant opportunities and provide broadband services directly. There are a few issues with this option, however, which include the lack of resources within RUS to manage these types of projects. This option would also lead to the choice of technology being dictated by the Government. The costs of this option would be significantly higher, the transfers would be significantly lower, and the benefits could be similar or lower, depending on the technology choice.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372 (Intergovernmental Consultation), which may require a consultation with State and local officials. See the final rule related notice entitled, “Department Programs and Activities Excluded from Executive Order 12372” (50 FR 47034).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.886, Rural Broadband Program. The Catalog is available on the Internet at <https://beta.sam.gov>. The SAM.gov website also contains a PDF file version of the

Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's online bookstore at <http://bookstore.gpo.gov>.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the RUS invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. These requirements have been approved by emergency clearance under OMB Control Number 0572-0154.

Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Title: 7 CFR 1738, Rural Broadband Program.

OMB Control Number: 0572-0154.

Type of Request: Extension of an existing collection.

Abstract: The Rural Utilities Service is authorized under Title VI of the Rural Electrification Act of 1936, as amended (RE Act), to provide loans, loan/grant combinations and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural areas in States and Territories of the United States. In conjunction with this interim final rulemaking, RUS is submitting an information collection package to OMB as required by the Paperwork Reduction Act of 1995. The information collection package for 7 CFR part 1738 includes the estimated burden related to the application process for the Rural Broadband Program. Since the inception of the program in 2003, the Agency has tried to accurately determine the burden to respondents applying for assistance, including soliciting comments from the public. The items covered by this collection include forms and related documentation to support an application for financial assistance, including all information required by RUS' online application system.

The 2018 Farm Bill added a new type of loan mechanism that included a grant portion to that loan. This provides a new opportunity for entities to apply with the hope of minimizing the loan portion based on how much of the service area is provided to underserved locations.

The Agency has addressed these issues as follows:

(1) Adding additional respondents based on the new loan/grant combination opportunity. The increase is based on an estimate of how it is believed this new opportunity will impact how new applications are received. Since this is a new

opportunity for this program, other similar programs were reviewed to help provide a realistic number.

(2) The Rural Broadband Program, currently, has the public notice aspect accounted for, however, there were two programs impacted by the program notice supplement under the 2018 Farm Bill. The Telecommunication Infrastructure Program and the Community Connect Program were impacted by the changes to the public notice item and were incorporated into this Paperwork reduction Act package, thus increasing the overall burden of the program.

The Agency seeks comments on its estimate of burden related to the application process for the Rural Broadband Program and welcomes comments related to further reducing application paperwork and costs. Comments may be submitted by, identified by docket number RUS-19-Telecom-0003 and RIN number 0572-AC46, through the *Federal eRulemaking Portal: <https://www.regulations.gov>*.

Estimate of Burden: Public reporting for this collection of information is estimated to average 134 hours per response.

Respondents: Businesses and Not-for-profit institutions.

Estimated Number of Respondents: 156.

Estimated Total Annual Burden on Respondents: 20,942 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Rural Development Innovation Center - Regulations Support Branch – 1, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250-1522. Telephone: (202) 692-0040 or via email: Jeanne.Jacobs@usda.gov.
Regulation Management Division.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Agency is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effort will be given to this rule.

Unfunded Mandates Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Rural Development has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. However, since deploying broadband infrastructure throughout Indian Country presents unique challenges, the Agency commits to provide at least one Tribal listening session focused on those unique challenges (and potential solutions) prior to the implementation of this rule. If a Tribe requests government-to-government consultation, Rural Development will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes,

additions and modifications identified herein are not expressly mandated by Congress. If a tribe would like to engage in government-to-government consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544-2911 or AIAN@wdc.usda.gov.

E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The Agency is updating its online system for submitting applications.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that implementation of the rule will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian tribes or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status. No major civil rights impact is likely to result from this rule.

List of Subjects

7 CFR Part 1738

Loan programs-communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1739

Grant programs-communications, Rural areas, Telecommunications, Telephone.

For the reasons discussed in the preamble, the Agency amends 7 CFR parts 1738 and 1739 as follows:

1. Revise part 1738 to read as follows:

PART 1738 – RURAL BROADBAND LOANS, LOAN/GRANT COMBINATIONS, AND LOAN GUARANTEES

Subpart A - General

Sec.

1738.1 Overview.

1738.2 Definitions.

1738.3 Funding parameters.

1738.4 – 1738.50 [Reserved]

Subpart B - Eligibility Requirements

Sec.

1738.51 Eligible entities.

1738.52 Eligible projects.

1738.53 Eligible service area.

1738.54 Eligible service area exceptions for broadband facility upgrades.

1738.55 Broadband lending speed requirements.

1738.56 Eligible assistance purposes.

1738.57 Ineligible assistance purposes.

1738.58 – 1738.100 [Reserved]

Subpart C – Award Requirements

Sec.

1738.101 Grant assistance.

1738.102 Payment assistance for loans.

1738.103 Substantially Underserved Trust Areas (SUTA).

1738.104 Technical assistance.

1738.105 Priorities for approving assistance.

1738.106 Public notice.

1738.107 Additional reporting requirements for Awardees.

1738.108 Environmental reviews.

1738.109 Civil rights procedures and requirements.

1738.110 – 1738.150 [Reserved]

Subpart D – Loan and Loan/Grant Combination Award Terms

Sec.

- 1738.151 General.
- 1738.152 Interest rates.
- 1738.153 Terms and conditions.
- 1738.154 Security.
- 1738.155 Advance of funds.
- 1738.156 Buy American requirement.
- 1738.157– 1738.200 [Reserved]

Subpart E – Loan and Loan/Grant Combination Application Review and Underwriting

Sec.

- 1738.201 Application submission.
- 1738.202 Elements of a complete application.
- 1738.203 Notification of completeness.
- 1738.204 Evaluation for feasibility.
- 1738.205 Competitive analysis.
- 1738.206 Financial information.
- 1738.207 Network design.
- 1738.208 Award determinations.
- 1738.209 – 1738.250 [Reserved]

Subpart F – Closing, Servicing, and Reporting for Loan and Loan/Grant

Combination Awards

Sec.

- 1738.251 Offer and closing.
- 1738.252 Construction.
- 1738.253 Servicing of loan and loan/grant combinations.
- 1738.254 Accounting, reporting, and monitoring requirements.
- 1738.255 Default and deobligation.
- 1738.256 – 1738.300 [Reserved]

Subpart G – Loan Guarantee

Sec.

- 1738.301 General.
- 1738.302 Fees.
- 1738.303 – 1738.349 [Reserved]
- 1738.350 OMB control number.

Authority: 7 U.S.C. 901 *et seq.*

Subpart A - General

§ 1738.1 Overview.

(a) The Rural Broadband Program furnishes loans, loan/grant combinations, and loan guarantees for the costs of construction, improvement, or acquisition of facilities and equipment needed to provide service at the broadband lending speed in eligible rural areas. This part sets forth the general policies, eligibility requirements, types and terms of loans, loan/grant combinations and loan guarantees, and program requirements under 7 U.S.C. 901 et seq.

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

§ 1738.2 Definitions.

(a) The following definitions apply to this part:

Acquisition means the purchase of assets by an eligible entity as defined in § 1738.51 to acquire facilities, equipment, operations, licenses, or majority stock interest of one or more organizations. Stock acquisitions must be arm's-length transactions.

Administrator means the Administrator of the Rural Utilities Service (RUS).

Advance means the transfer of loan or grant funds from the Agency to the Awardee.

Affiliate or affiliated company of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. For the purpose of this definition, "control"

means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, or holding trusts (other than money exchanged) for property or services.

Agency means the Rural Utilities Service (RUS).

Applicant means an entity requesting approval of assistance under this part.

Assistance means a request for a loan, loan/grant combination, or loan guarantee.

Associated loan means any loan that is granted in association with a grant. Every grant will have an associated loan.

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

Award documents means, as applicable, all associated loan agreements, loan/grant combination agreements, or loan guarantee documents.

Award term means the term of the loan as defined in the Award documents. The Award term shall be equal to the composite economic life of the facilities being financed with RUS loan or grant funding plus 3 years.

Awardee means an entity that has applied for and been awarded assistance under this part.

Borrower means an entity that has applied for and been awarded loan funding under this part.

Broadband grant means a Community Connect, Broadband Initiatives Program, ReConnect Program, or Rural Broadband Program grant approved by the Agency.

Broadband lending speed means the minimum bandwidth requirements, as published by the Agency in its latest notice in the *Federal Register* that Applicants must propose to deliver to every customer in the proposed funded service area in order for the Agency to approve a broadband Award. Broadband lending speeds will vary depending on the technology proposed and the term of the average composite economic life of the facilities. Initially, the broadband lending speed for terrestrial service, whether fixed or wireless, as well as mobile broadband serving ranches and farmland is 25 megabits per second (Mbps) downstream and 3 Mbps upstream, until further amended by notice. If a new broadband lending speed is published in the *Federal Register* while an application is pending, the pending application will be processed based on the broadband lending speed that was in effect when the application was submitted.

Broadband loan means any loan approved under Title VI of the Rural Electrification Act of 1936, as amended (RE Act).

Broadband service means any technology identified by the Administrator as having the capacity to provide transmission facilities that enable the subscriber to receive a minimum level of service equal to at least a downstream transmission capacity of 25 Mbps and an upstream transmission capacity of 3 Mbps. The Agency will publish the minimum transmission capacity with respect to terrestrial service that will qualify as broadband service in a notice in the *Federal Register*. If a new minimum transmission capacity is published in the *Federal Register* while an application is pending, broadband service for the purpose of reviewing the application will be defined by the minimum

transmission capacity that was required at the time the application was received by the Agency.

Build-out means the construction, improvement, or acquisition of facilities and equipment, except for customer premises equipment (CPE).

Competitive analysis means a study that identifies service providers and products in the service area that will compete with the Applicant's operations.

Composite economic life means the weighted (by dollar amount of each class of facility in the requested assistance) average economic life as determined by the Agency of all classes of facilities financed by the award.

Current Ratio (CR) means the current assets divided by the current liabilities.

Customer premises equipment (CPE) means any network-related equipment used by a customer to connect to a service provider's network.

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.

Density means the total population to be served by the project divided by the total number of square miles to be served by the project. If multiple service areas are proposed, the density calculation will be made on the combined areas as if they were a single area, and not the average densities.

Development costs mean the pre-application costs associated with construction, design of the system, and other professional labor, as approved by the Agency. Further

guidance on what constitutes approved development costs will be outlined in the Agency's application guide.

Economic life means the estimated useful service life of an asset financed by the loan or grant, as determined by the Agency.

Feasibility study means the pro forma financial analysis performed by the Agency, based on the financial projections prepared by the Applicant, to determine the financial feasibility of a loan or loan/grant combination request.

Financial feasibility means the Applicant's ability to generate sufficient revenues to cover its expenses, sufficient cash flow to service its debts and obligations as they become due and meet the Net worth and minimum Times Interest Earned Ratio (TIER), CR, or DSCR requirements of § 1738.206(b)(2)(i) by the end of the forecast period. Financial feasibility of an application is based on a projection that spans the forecast period and the entire operation of the Applicant, not just the proposed project.

Fiscal year refers to the Applicant or awardee's fiscal year, unless otherwise indicated.

Forecast period means the time period used in the feasibility study to determine if an application is financially feasible.

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

Grant documents means the grant contract and security agreement between the Agency and the Awardee securing the grant.

Grantee means an entity that has an outstanding broadband grant made by the Agency, with outstanding obligations under the Award documents.

Incumbent service provider means a service provider that provides terrestrial broadband service to at least 5 percent of the households in the proposed funded service area at the time of application submission. Resellers are not considered incumbent service providers. If an Applicant proposes an acquisition, the Applicant will be considered a service provider for that area. The Agency will not consider mobile or satellite providers when determining the incumbent service providers in the area.

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

Interim financing means funds used for eligible Award purposes after an Award offer has been extended to the Applicant by the Agency. Such funds may be eligible for reimbursement from Award funds if an Award is made.

Loan guarantee means Federal assistance in the form of a guarantee of a loan, or a portion thereof, made by another lender.

Loan funds means funds provided pursuant to a broadband loan made or guaranteed under this part by the Agency.

Market survey means the collection of information on the supply, demand, usage, and rates for proposed services to be offered by an Applicant in support of the Applicant's financial projections.

Net worth means the difference between an entity's total assets and total liabilities.

Project means all work to be performed to bring broadband service to all premises in the proposed funded service area under the Application that is approved for assistance.

This includes the construction, purchase and installation of equipment, and professional services including engineering and accountant/consultant fees. A project may be funded with Federal assistance or other funds.

Project completion means that all Award funds for construction of the broadband system, excluding those funds for subscriber connections and CPE, have been advanced to the Awardee by RUS.

Proposed funded service area means the geographic service territory within which the Applicant is proposing to offer service at the broadband lending speed.

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

Reseller means a company that purchases network services from service providers in bulk and resells them to commercial businesses and residential households. Resellers are not considered incumbent service providers.

Rural area(s) means any area which is not located within:

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

(ii) An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of this definition, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau; and

(iii) Which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13), or as otherwise provided by law.

RUS Borrower or *RUS Grantee* means any recipient of a loan or grant administered by the RUS Telecommunications Program that has a loan outstanding, or a grant which still has unadvanced funds available.

Security documents means any mortgage, deed of trust, security agreement, financing statement, or other document which grants or perfects to the Agency a security interest in collateral given as security for the assistance under this part.

Service area or *Service territory* means the geographic area within which a service provider offers broadband service.

Service provider means an entity providing broadband service.

System of accounts means the Agency's system of accounts for maintaining financial records as described in 7 CFR part 1770, subpart B.

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 customarily-required by GAAP or by the Uniform System of Accounts (USOA).

Total project cost means all eligible costs associated with the project that are laid out in the application budget schedule, including RUS loan and grant funding and non-RUS funds, as approved by the Agency.

(b) Accounting terms not otherwise defined in this part shall have the commonly-accepted meaning under GAAP and shall be recorded using the Agency's system of accounts.

§ 1738.3 Funding parameters.

(a) The amount 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 loans, loan/grant combinations, and loan guarantees.

(b) An Applicant that provides telecommunications or broadband service to at least 20 percent of the households in the United States is limited to an Award amount that is no more than 15 percent of the funds available to the Rural Broadband Program for the Federal fiscal year.

§§ 1738.4 – 1738.50 [Reserved]

Subpart B – Eligibility Requirements

§ 1738.51 Eligible 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 (LLC);
- (3) Cooperative or mutual organization;
- (4) Indian tribe or tribal organization as defined in 25 U.S.C. 5304; or
- (5) State or local government, including any agency, subdivision, or

instrumentality thereof.

(b) For loan guarantees, the underlying loan must be issued to an entity that meets the requirements in this part.

§ 1738.52 Eligible projects.

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

(a) Agree to complete the build-out of the broadband system described in the application within 5 years from the day the Applicant is notified that funds are available. Under the terms of the Award documents, this 5-year period will commence from the date that the legal documents are cleared, and funds are made available to the Awardee. The application must demonstrate that all proposed construction can be completed within this 5-year period with the exception of CPE;

(b) Demonstrate an ability to provide service at the broadband lending speed to all premises in the proposed funded service area; and

(c) Provide additional equity, if necessary, to ensure financial feasibility (see § 1738.204) as determined by the Administrator.

(d) For loan guarantees, the underlying loan must be issued on a project that meets all eligibility requirements required in this part.

§ 1738.53 Eligible service area.

(a) A service area may be eligible for assistance as follows:

(1) For loan and loan/grant combinations, the proposed funded service area is completely contained within a rural area. For loan guarantee applications, the proposed funded service area must be contained within an area with a population of 50,000 or less, as defined in 7 U.S.C. 1991(a)(13);

(2) For loan/grant combinations, at least 90 percent of the households in the proposed service area must not have access to broadband service. For loans and loan guarantees, at least 50 percent of the households in the proposed service area must not have access to broadband service;

(3) No part of the proposed funded service area has three or more incumbent service providers; and

(4) No part of the proposed funded service area overlaps with the service area of current RUS borrowers or grantees with outstanding obligations. Notwithstanding, after October 1, 2020, the service areas of grantees that are providing service that is less than 10 Mbps downstream or less than 1 Mbps upstream will be considered unserved unless, at the time of the proposed application, the grantee has begun to construct broadband facilities that will meet the minimum acceptable level of service established in § 1738.55.

(b) Non-contiguous areas in the same application will be considered separate service areas and must be treated separately for the purpose of determining service area eligibility. If one or more non-contiguous areas within an application are is determined to be ineligible, the Agency may consider the remaining areas in the application for eligibility.

(c) When determining the eligibility of a proposed funded service area, the Agency will use the information submitted through the public notice response (see § 1738.106) as well as all available information collected through various means by the Agency, including but not limited to consultation with other Federal and State agencies and RUS' own site-specific assessment of the level of service in an area.

(d) Mobile and satellite services will not be considered in making the determination that households in the proposed service area do not have access to broadband service.

§ 1738.54 Eligible service area exceptions for broadband facility upgrades.

(a) Applicants upgrading existing broadband facilities in their existing service area are exempt from the requirement concerning the limit of incumbent service providers in § 1738.53(a)(3). Additionally, applicants for loans or loan guarantee funding that have received a broadband loan under Section 601 of the RE Act are exempt from the requirement concerning the number of households in § 1738.53(a)(2) without access to broadband service.

(b) Applicants submitting one application to upgrade existing broadband facilities and to expand service beyond their existing service area must segregate the upgrade and expansion into two service areas, even if the upgrade and expansion areas are contiguous. The expansion service area will not be subject to any exemptions.

(c) Applicants will be asked to remove areas determined to be ineligible from their proposed funded service area. The application will then be evaluated based on what remains if the resultant service territory is *de minimis* in change. Otherwise, the Applicant will be requested to provide additional information to the Agency relating to the ineligible areas, such as updated pro forma financials. If the Applicant fails to respond, the application may be returned.

§ 1738.55 Broadband lending speed requirements.

(a) Projects must meet the broadband build-out standards in paragraphs (a)(1) through (5) of this section in order to be considered for assistance.

(1) Projects with an Award term of less than 5 years must provide service at the broadband lending speed;

(2) Projects with an Award term of 5 to 10 years must provide service at four times the broadband lending speed;

(3) Projects with an Award term of 11 to 15 years must provide service at six times the broadband lending speed;

(4) Projects with an Award term of 16 to 20 years must provide service at eight times the broadband lending speed; and

(5) Projects with an Award term over 20 years must provide service at ten times the broadband lending speed.

(b) If an Applicant demonstrates that it would be cost prohibitive to meet the broadband lending speed in paragraph (a) of this section in the proposed funded service area due to the unique characteristics of the service territory, the Administrator may agree to utilize substitute service standards. In such cases, Applicants must document in their application why the unique characteristics of such an area make it cost prohibitive to provide service at the broadband lending speed. Note that the proof of burden on Applicants will be extremely high.

§ 1738.56 Eligible assistance purposes.

Assistance under this part may be used to pay for any of the following expenses:

(a) To fund the construction, improvement, or acquisition of all facilities required to provide service at the broadband lending speed to rural areas, including facilities required for providing other services over the same facilities.

(b) To fund the cost of leasing facilities required to provide service at the broadband lending speed if such lease qualifies as a capital/finance lease under GAAP. Notwithstanding, assistance can only be used to fund the cost of the capital/finance lease for no more than the first three years of the lease period. If an IRU qualifies as a

capital/finance lease, the entire cost of the lease will be amortized over the life of the lease and only the first 3 years of the amortized cost can be funded.

(c) To fund an acquisition, provided that:

(1) The acquisition is necessary for furnishing or improving service at the broadband lending speed;

(2) The acquired service area, if any, meets the eligibility requirements set forth in § 1738.53;

(3) The acquisition cost does not exceed 50 percent of the broadband assistance; and

(4) For the acquisition of another entity, the purchase provides the Applicant with a controlling majority interest in the entity acquired.

(d) To refinance an outstanding obligation of the Applicant on another telecommunications loan made under the RE Act or on a non-RUS loan if that loan would have been for an eligible purpose under the Rural Broadband Program provided that:

(1) No more than 50 percent of the broadband assistance amount is used to refinance a non-RUS loan;

(2) The Applicant is current with its payments on the RUS telecommunications loan(s) to be refinanced; and

(3) The amortization period for that portion of the broadband loan that will be needed for refinancing will not exceed the remaining amortization period for the loan(s) to be refinanced. If multiple notes are being refinanced, an average remaining

amortization period will be calculated based on the weighted dollar average of the notes being refinanced.

(e) To fund development costs in an amount not to exceed 5 percent of the total Award amount excluding amounts requested to refinance outstanding telecommunications loans. Development costs may be reimbursed only if they are incurred prior to the date on which notification of a complete application is issued (see § 1738.203) and a loan contract is entered into with RUS. Entities that meet the requirements in § 1738.101(d) may request this funding be provided as a grant. Otherwise, the funding will be provided in the form of a loan.

§ 1738.57 Ineligible assistance purposes.

Assistance under this part must not be used for any of the following purposes:

(a) To fund operating expenses of the Applicant except for eligible development costs under § 1738.56(e).

(b) To fund any costs associated with the project incurred prior to the date on which notification of a complete application is issued (see § 1738.203), except for eligible development costs under § 1738.56(e).

(c) To fund the acquisition of the stock of an affiliate.

(d) To fund the purchase or acquisition of any facilities or equipment of an affiliate.

(e) To fund the purchase of CPE and the installation of associated inside wiring, unless the CPE will be owned by the Applicant throughout its economic life.

(f) To fund the purchase or lease of any vehicle unless it is used primarily in construction or system improvements.

(g) To fund the cost of systems or facilities that have not been designed and constructed in accordance with the Award contract and other applicable requirements.

(h) To fund broadband facilities leased under the terms of an operating lease, a short-term lease, or more than 3 years of a capital/finance lease.

(i) To fund merger or consolidation of entities.

(j) To fund non-capitalized labor in accordance with 2 CFR part 200 except for eligible development costs under § 1738.56(e).

(k) To provide grant funding, a subsidized loan or payment assistance to cover the costs to refinance an outstanding loan.

§§ 1738.58 – 1738.100 [Reserved]

Subpart C –Award Requirements

§ 1738.101 Grant assistance.

(a) To be eligible for grant funding, the Applicant must:

(1) Submit an application for an associated loan component under Title I, Title II, or Title VI of the RE Act; and

(2) Not be the recipient of any other broadband grant from RUS with unadvanced grant funds.

(b) The amount of grant funding on any project shall not exceed:

(1) 75 percent of the total project cost when the proposed funded service area has a density of fewer than 7 people per square mile;

(2) 50 percent of the total project cost when the proposed funded service area has a density of 7 or more and fewer than 12 people per square mile; and

(3) 25 percent of the total project cost with respect to an area with a density of 12 or more and 20 or fewer people per square mile.

(c) Subsequent density determinations, as well as density requirements for projects on tribal lands will be set by notice in the *Federal Register*.

(d) The Agency may provide additional grant funding of up to 75 percent of the development costs of projects requesting funding under Title VI that serve rural areas that:

(1) Lack access to broadband service with speeds of at least 10 Mbps downstream and 1 Mbps upstream; and

(2) Meet any one of the priorities set forth in § 1738.105(a)(3)(i).

§ 1738.102 Payment assistance for loans.

(a) Grant funding may also be used to provide assistance to Title VI Awardees in the form of subsidized loans at such rates as the Agency will issue from time to time by notice in the *Federal Register*, or in the form of a payment assistance loan, which shall require no interest and principal payments or require nominal periodic payments as determined by the Agency and published in the *Federal Register*.

(b) Subsidized loans shall only be available to projects which will serve rural areas lacking access to service with speeds of at least 10 Mbps downstream and 1 Mbps upstream and meets any one of the priorities set forth in § 1738.105(a)(3)(i).

(c) The Agency may determine, at its sole discretion, to provide a payment assistance loan which shall require no interest and principal payments or such nominal payments as the Secretary determines to be appropriate. Such loans will only be provided to projects which will serve rural areas lacking access to service of speeds of 10

Mbps downstream and 1 Mbps upstream and meets any two of the priorities set forth in § 1738.105(a)(3)(i). When considering the authority to provide a payment assistance loan, the Agency will consider how such assistance will:

(1) Improve the Applicant's compliance with the commitments of the Agency's standard Award agreement, in addition to any additional requirements imposed by the Agency specific to the project;

(2) Promote the completion of the broadband project;

(3) Protect taxpayer resources; and

(4) Support the integrity of the Agency's broadband programs.

(d) The Agency and recipients of payment assistance loans must agree to specific milestones and objectives for the project which must be met, in addition to the other requirements of this part. Such terms may be amended by mutual agreement for good cause. Failure to meet the agreed upon terms, upon the Agency's determination that such failure was a direct result of the Awardee's own actions, may result in the Agency's request to the return of all, or any portion, of the grant funds used for the payment assistance loan.

(e) Additionally, Applicants with an associated loan under Title I and Title II of the RE Act and which are seeking any grant assistance under this part, are not eligible for a subsidized loan or payment assistance loans.

§ 1738.103 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 Rural Broadband Program, he/she 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 of the information requested in 7 CFR part 1700, subpart D. In addition, the Applicant must notify the Agency in writing that it seeks consideration under SUTA and identify the discretionary authorities of 7 CFR part 1700, subpart D, it seeks to have applied to its application. Note, however, that the two years of historical audited financial statements and Net worth requirement for loan and loan/grant combination Applicants in § 1738.206(b)(2)(i) cannot be waived.

§ 1738.104 Technical assistance.

Projects which will serve communities that meet, at least, three of the priorities as identified in § 1738.105(a)(3)(i) may request technical assistance and training from the Agency to:

(a) Prepare reports and surveys necessary to request grants, loans, and loan guarantees for broadband deployment;

(b) Improve management, including financial management, relating to the proposed broadband deployment;

(c) Prepare applications for grants, loans, and loan guarantees; and

(d) Assist with other areas of need as identified by the Agency through a notice in the *Federal Register*.

§ 1738.105 Priorities for approving assistance.

(a) The Agency will compare and evaluate all applications for assistance and shall give priority to applications in the manner set out in paragraphs (a)(1) through (4) of this section, which shall be scored as outlined in a notice published in the *Federal Register*. (Note that for applications containing multiple proposed funded service areas, the percentage will be calculated combining all proposed funded service areas.)

(1) Applicant's providing broadband service to rural areas that do not have access to service of at least 10 Mbps upstream and 1 Mbps downstream.

(2) Projects that provide the maximum level of broadband service to the greatest proportion of rural households.

(3) Projects that:

(i) Serve rural areas:

(A) With a population of less than 10,000 permanent residents;

(B) Are experiencing outmigration and have adopted a strategic community investment plan under section 379H(d) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008v) that includes considerations for improving and expanding broadband service;

(C) With a high percentage of low-income families or persons (as defined in section 501(b) of the Housing Act of 1949 (42 U.S.C. 1471(b)));

(D) That are isolated from other significant population centers; or

(E) That provide rapid and expanded deployment of fixed and mobile broadband on cropland and rangeland within a service territory for use in various applications of precision agriculture; and

(ii) Were developed with the participation of, and will receive a substantial portion of the funding for the project from two or more stakeholders, including:

(A) State, local, and tribal governments;

(B) Nonprofit institutions; and

(C) Community anchor institutions, such public libraries, schools, institutions of higher education, health care facilities, private entities, philanthropic organizations and cooperatives.

(4) New construction projects requesting no refinancing.

(b) The Agency may assign special consideration priority points that will be issued in a notice in the *Federal Register* with respect to any funding opportunity.

(c) With respect to two or more applications that have the same priority, as outlined in paragraphs (a) and (b) of this section, the Agency shall give priority to the application that requests the least amount of grant funding as calculated based on the total amount of grant funds requested.

§ 1738.106 Public notice.

(a) The Agency will publish a public notice of each application requesting assistance under this part. The application must provide a summary of the information required for such public notice including all of the following information:

(1) The identity of the Applicant;

(2) A map of each proposed funded service area showing the rural area boundaries and the areas without broadband service using the Agency's mapping tool;

(3) The amount and type of support requested;

(4) The estimated number of households in each proposed funded service area without broadband service, excluding mobile and satellite service; and

(5) A description of all the types of services that the Applicant proposes to offer in each proposed funded service area.

(b) The public notice will remain available for 45 calendar days on the Agency's website, and will request existing service providers to submit to the Agency, within the same period, the following information:

(1) The number of residential and business customers within the Applicant's proposed funded service area that are currently offered, and that are purchasing, broadband service by the existing service provider, 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 proposed funded service area that receive non-broadband services from the existing service provider, and the associated rates for these other services; and

(3) A map showing where the existing service provider's services coincide with the Applicant's proposed funded service area using the Agency's mapping tool.

(c) For purposes of 5 U.S.C. 552, information received from existing service providers under paragraph (b) of this section shall be exempt from disclosure.

(d) If an application is approved, an additional notice will be published on the Agency's website that will include the following information:

(1) The name of the entity receiving the financial assistance;

(2) The amount and type of assistance being received;

(3) The purpose of the assistance; and

(4) Each annual report submitted under § 1738.107, redacted as appropriate to protect any proprietary information in the report.

§ 1738.107 Additional reporting requirements for Awardees.

(a) Entities receiving assistance from the USDA to provide retail broadband service must submit annual reports for 3 years after project completion. The reports must include the following information:

(1) The purpose of the financing, including new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers (including the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure); and

(2) The progress towards fulfilling the objectives for which the assistance was granted, including:

(i) The number of service points that will receive new broadband service, existing network service improvements, and facility upgrades resulting from the Federal assistance;

(ii) The speed of broadband services;

(iii) The average price of the most subscribed tier of broadband service in each proposed service area; and

(iv) The number of new subscribers generated from the project.

(b) Awardees must provide complete, reliable, and precise geolocation information that indicates the location of new broadband service that is being provided or

upgraded within the service territory supported by the assistance no later than 30 days after the earlier of the date of:

(1) Completion of the project milestone established in the applicable assistance contract; or

(2) Project completion.

(c) Any other reporting requirements established by the Administrator by notice in the *Federal Register* before an application is submitted.

§ 1738.108 Environmental reviews.

(a) Federal agencies are required to analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) for Applicant projects or proposals seeking funding. Please refer to 7 CFR part 1970 for all of Rural Development's environmental policies. All Applicants are required to provide environmental review documents, 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. Applicants are expected to design their projects so that they minimize the potential for adverse impacts to the environment. Applicants also will be required to cooperate with the granting agencies in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed projects. The failure to do so may be grounds for not making an Award.

(b) The Agency may obligate, but not disperse, funds under Title VI of the Rural Electrification Act of 1936, before the completion of the otherwise required environmental historical, or other types of reviews if the Secretary determines that subsequent site-specific review shall be adequate and easily accomplished for the location of towers, poles, or other broadband facilities in the service area of the awardee without compromising the project or the required reviews.

§ 1738.109 Civil rights procedures and requirements.

(a) Equal opportunity and nondiscrimination. The agency will ensure that equal opportunity and nondiscriminatory 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 Form 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.

§§ 1738.110 – 1738.150 [Reserved]

Subpart D – Loan and Loan/Grant Combination Award Terms

§ 1738.151 General.

Direct loans shall be in the form of a cost-of-money loan except as detailed in § 1738.152.

§ 1738.152 Interest rates.

(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 unless the project qualifies for a reduced interest rate as detailed in § 1738.102. The applicable interest rate will be set at the time of each advance.

(b) The interest rate for Applicants receiving payment assistance or Substantially Underserved Trust Areas (SUTA) consideration will be set at the time of the Award.

§ 1738.153 Terms and conditions.

Terms and conditions of the loan and loan/grant combinations are set forth in a mortgage, note, and loan contract. Samples of the mortgage, note, and loan contract can be found on the Agency's website.

(a) Unless requested to be shorter by the Applicant, 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 assets to be financed, as determined by the Agency based upon acceptable depreciation rates. Expected composite economic life means the weighted average economic life of all classes of facilities necessary to complete construction of the broadband facilities plus 3 years.

(b) Principal payments for each advance are amortized over the remaining term of the loan and are due monthly. Principal payments will be deferred until 3 years after the date of the first advance of loan funds. Interest begins accruing when the first advance of loan funding is made and interest payments are due monthly, with no deferral period.

(c) Awardees are required to carry fidelity bond coverage. Generally, this amount will be 15 percent of the loan or loan/grant combination Award amount, not to exceed \$5 million. The Agency may reduce the percentage required if it determines that the amount is not commensurate with the risk involved.

§ 1738.154 Security.

(a) The broadband loan or loan/grant combination must be secured by the assets purchased with the loan or loan/grant combination funds, as well as all other assets of the Applicant and any other cosigner of the Award documents except as allowed under section 601(h)(2) of the RE Act. With respect to loan/grant combinations, all grant assets

must also be covered by a security interest in favor of the Government for the average composite economic life of all project assets financed with assistance, regardless of whether the loan is paid off before the maturity date. Additionally, the sale of all such grant assets shall be governed by 2 CFR part 200, regardless of the entity type of the Awardee.

(b) The Agency must be given an exclusive first lien, in form and substance satisfactory to the Agency, on all of the Applicant's property and revenues and such additional security as the Agency may require. The Agency may share its first lien position with another lender on a *pari passu*, prorated basis if security arrangements are acceptable to the Agency.

(c) Unless otherwise designated by the Agency, all property purchased with loan and loan/grant combination funds must be owned by the Applicant.

(d) In the case of loan and loan/grant combinations that include financing of facilities that do not constitute self-contained operating systems, the Applicant shall furnish assurance, satisfactory to the Agency, that continuous and efficient service that meets the broadband build-out requirements as noted in § 1738.55 will be rendered.

(e) The Agency will require adequate financial, investment, operational, reporting, and managerial controls in the Award documents.

§ 1738.155 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. For loan and loan/grant combination Awards, all non-RUS funds must be expended first, followed by loan funds and then

grant funds, except for RUS approved development costs. Grant funds for eligible development costs, if any, will be used only on the first advance request.

§ 1738.156 Buy American requirement.

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.

§§ 1738.155 – 1739.200 [Reserved]

Subpart E – Loan and Loan/Grant Combination Application Review and Underwriting

§ 1738.201 Application submission.

(a) Loan and loan/grant combination applications must be submitted through the Agency’s online application system.

(b) The Agency may publish additional application submission requirements in the *Federal Register*.

§ 1738.202 Elements of a complete application.

(a) Online application system. Loan and loan/grant combination applications must be submitted through RUS' online application system and include all information as required by that system and detailed in the Rural Broadband Program Application Guide (the Application Guide), available on the Agency's website, so that applications can be uniformly evaluated and compared.

(b) DUNS registration. All Applicants must register for a Dun and Bradstreet Universal Numbering System (DUNS) number as part of the application. The Applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Go to <http://fedgov.dnb.com/webform> for more information on assignment of a DUNS number or confirmation.

(c) SAM registration. Prior to submitting an application, all Applicants requesting loan/grant combination funds must register in the System for Award Management (SAM) at <https://www.sam.gov/SAM/> and supply a Commercial and Government Entity (CAGE) code number as part of the application. 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. The Applicant must ensure that the information in the database is current, accurate, and complete.

(d) 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 in this part; and

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

(2) An executive summary of the proposed project. The summary shall include, but not be limited to, a detailed description of the existing operations, discussion of key management, description of the workforce and a detailed description of the proposed project.

(3) A description of the proposed funded service area 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, and an explanation showing that the proposed service offerings are affordable.

(5) A map, utilizing the RUS mapping tool, of the proposed funded service areas identifying the areas lacking access to broadband service and the areas lacking access to service of speeds of at least 10 Mbps downstream and 1 Mbps upstream and any non-funded service areas of the Applicant

(6) A competitive analysis of the entire proposed service territory(ies) as required by § 1738.205.

(7) A network design which includes a description of the proposed technology used to deliver service at the required broadband lending speed (see § 1738.55) to all premises in the proposed funded service area, a network diagram, a build-out timeline and milestones for implementation of the project, and a capital investment schedule

showing that the system can be built within 5 years from the date funds are made available to the Awardee. All of which must be certified by a professional engineer who is certified in at least one of the states where the project is to be constructed. The certification from the professional engineer must clearly state that the proposed network can deliver service at the required broadband lending speed (see § 1738.55) to all premises in the proposed funded service area.

(8) All environmental information as required by § 1738.108.

(9) 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.

(10) A legal opinion that addresses the Applicant's ability to enter into loan or loan/grant combination as requested in the application for financial assistance, to pledge security as required by the Agency, to describe all pending litigation matters, and such other requirements as are detailed in the Application Guide.

(11) A 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.

(12) A detailed description of working capital requirements and the sources of those funds.

(13) Complete copies of audited financial statements for the two years preceding the application submission as detailed in § 1738.206.

(14) The historical and projected financial information required in § 1738.206.

(15) Documentation proving that all required licenses and regulatory approvals for the proposed operation have been obtained, or the status of obtaining such licenses or approvals.

(16) If service is being proposed on tribal land, a certification from the proper tribal official 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 land owner; and

(iv) Provide a commitment in writing from the land owner authorizing the Applicant's use of that land for the proposed project.

(17) Scoring sheet, analyzing the scoring criteria set forth in this part and most recent funding opportunity announcement.

(18) Additional items that may be required by the Administrator through a notice in the *Federal Register*.

(e) 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 loans and loan/grant combinations.

§ 1738.203 Notification of completeness.

If all proposed funded service areas in a loan or loan/grant combination application are eligible, the Agency will review the application for completeness. The completeness

review will include an assessment of whether all required documents and information have been submitted and whether the information provided is of adequate quality to allow further analysis.

(a) If the application contains all documents and information required by this part and is sufficient, in form and substance acceptable to the Agency, the Agency will notify the Applicant, in writing, that the application is complete. A notification of completeness is not a commitment that assistance will be approved. By submitting an application, the Applicant acknowledges that no obligation to enter into an agreement exists until the actual Award documents have been executed.

(b) If the application is considered to be incomplete or inadequate, the Agency will notify the Applicant, in writing, with detailed information regarding the reasons the applications was found to be incomplete or inadequate.

§ 1738.204 Evaluation for feasibility.

After a loan or loan/grant combination Applicant is notified that the application is complete, the Agency will evaluate the application's financial and technical feasibility. Only applications that, as determined by the Agency, are technically and financially feasible will be considered for funding.

(a) The Agency will determine financial feasibility by evaluating the impact of the facilities financed with the proceeds of the loan and the associated debt, the Applicant's equity, competitive analysis, financial information—including the Applicant's ability to meet the Agency's Net worth and TIER, DSCR, or CR requirements in § 1738.206(b)(2)(i)—and other relevant information in the application.

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

§ 1738.205 Competitive analysis.

The Applicant must submit a competitive market analysis for each service area regardless of projected penetration rates. Each analysis must identify all existing service providers and all resellers in each service area regardless of the provider's market share, for each type of service the Applicant proposes to provide. The analysis must compare the rates, services, and the quality of that service being offered by competitors against those that will be offered by the Applicant. The analysis must also discuss strategies the Applicant will use to compete, as well as the impacts of the competitors on the projected penetration rates for the project.

§ 1738.206 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 loan or loan/grant combination requirements in this part and to successfully complete the proposed project.

(1) Applicants must provide complete copies of audited financial statements (opinion letter, balance sheet, income statement, statement of changes in financial position, and notes to the financial statement) for the two years preceding the application submission. For governmental entities financial statements must be accompanied with certifications identifying unrestricted cash that will be available on a yearly basis to the Applicant. Subsidiary operations formed from existing utility providers may provide audited financial statements for the two previous years from the parent company, as long

as the parent will be a cosigner of the loan or loan/grant documents, pledging its assets in accordance with § 1738.154(a), or will guarantee the debt.

(2) If the Applicant relies on services provided by a parent or affiliated operation, it must also provide complete copies of audited financial statements for those entities for the fiscal year preceding the application submission. If audited statements are not available, unaudited statements and tax returns for the previous year must be submitted.

(3) Applicants must provide detailed information for all outstanding obligations. Copies of existing notes, loan agreements, security agreement, or other legal documents covering loans, grants, leases, or other loan guarantees must be included in the application.

(4) Applicants must provide a detailed description of working capital requirements and the source of these funds, if internally generated funds are insufficient.

(b) Applicants must submit the following documents that demonstrate the proposed project's financial viability and ability to repay the requested loan.

(1) Customer projections for the 5-year forecast period that substantiate the projected revenues for each service that is to be provided. The projections must be provided on at least an annual basis and must be developed separately for each service area and must be clearly supported by evidence such as market surveys or current company take rates.

(2) Pro forma financial forecast, including a balance sheet, income statement, and statement of cash flows. For non-regulated entities, the pro forma should be prepared in conformity with U.S. GAAP and the Agency's guidance on grant accounting found at <https://www.rd.usda.gov/files/AccountingGuidance10.pdf>. Regulated telecommunications providers may follow the USOA and RUS accounting standards for their pro forma, including accounting for grant-funded assets as a contribution, in accordance with 47 CFR 32.2, if the project assets will be treated as regulated plant. 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 5-year forecast period and a depreciation schedule for existing facilities and those funded with Federal assistance, 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 is the year in which the application is submitted and serves as a buffer between the historical financial information and the forecast period. Including the bridge year, the pro forma statements span a 6-year period.

(i) The financial projections submitted by Applicants must demonstrate that their entire operation will be able to meet two of the following three ratio requirements: a minimum TIER, CR, or DSCR equal to 1.25 by the end of the 5-year forecast period. Additionally, the projections must demonstrate the Applicant's ability to maintain a Net worth of at least 20 percent throughout the forecast period. Demonstrating that the operation can achieve a projected Net worth of 20 percent and TIER, CR, or DSCR of 1.25 does not ensure that the Agency will approve the loan or loan/grant combination.

(ii) If the financial analysis suggests that the operation will not be able to achieve the Net worth requirement or two of the required TIER, CR, or DSCR in paragraph (b)(2)(i) of this section, the Agency will not approve the loan or loan/grant combination Award without additional capital, additional cash, additional security, and/or a change in the Award terms.

(c) Based on the financial evaluation, the Award documents will specify the Net worth and TIER, CR, or DSCR requirements in paragraph (b)(2)(i) of this section that must be met throughout the amortization period.

§ 1738.207 Network design.

(a) Applications for loan or loan/grant combinations must include a network design that demonstrates the project's technical feasibility. The network design must fully support the delivery of service to meet the broadband build-out requirements specified in § 1738.55, together with any other services to be provided. In measuring speed, the Agency will take into account industry and regulatory standards. The design must demonstrate that the project will be complete within the 5-year forecast period and must include the following items:

(1) A detailed description of the proposed technology that will be used to provide service at the broadband lending speed. This description must clearly demonstrate that all premises in the proposed funded service area will be able to receive service at the broadband lending speed;

(2) A detailed description of the existing network. This description should provide a synopsis of the current network infrastructure;

- (3) A detailed description of the proposed network. This description should provide a synopsis of the proposed network infrastructure;
 - (4) A description of the approach and methodology for monitoring ongoing service delivery and service quality for the services being deployed;
 - (5) Estimated project costs detailing all facilities that are required to complete the project. These estimated costs must be broken down to indicate costs associated with each proposed service area and must specify how Agency and non-Agency funds will be used to complete the project;
 - (6) A construction build-out schedule of the proposed facilities by service area on an annual basis. The build-out schedule must include:
 - (i) A description of the workforce that will be required to complete the proposed construction;
 - (ii) A timeline demonstrating project completion within the forecast period; and
 - (iii) Detailed information showing that all premises within the proposed funded service area will be offered service at the broadband lending speed when the system is complete;
 - (7) A depreciation schedule for all facilities financed with loan and loan/grant combination funds;
 - (8) An environmental report prepared in accordance with 7 CFR part 1970; and
 - (9) Any other system requirements required by the Administrator through a notice published in the *Federal Register*.
- (b) The network design must be prepared by a registered Professional Engineer with telecommunications experience who is certified in at least one of the states where a

project is to be constructed or by qualified personnel on the Applicant's staff. If the network design is prepared by the Applicant's staff, the application must clearly demonstrate the staff's qualifications, experience, and ability to complete the network design. To be considered qualified, staff must have at least 3 years of experience in designing the type of broadband system proposed in the application.

§ 1738.208 Award determinations.

(a) If the loan or loan/grant combination application meets all statutory and regulatory requirements and the feasibility study demonstrates that the Net worth and TIER, CR, or DSCR requirements in § 1738.206(b)(2)(i) can be satisfied and the business plan is sustainable, the application will be submitted to the Agency's credit committees for consideration according to the priorities in § 1738.105. Such submission of an application to the Agency's credit committees does not guarantee that a loan or loan/grant combination will be approved. In making a loan and/or loan/grant combination Award determination, the Administrator shall consider the recommendations of the credit committees.

(b) The Applicant will be notified of the Agency's decision in writing. If the Agency does not approve the loan or loan/grant combination, a rejection letter will be sent to the Applicant, and the application will be returned with an explanation of the reasons for the rejection.

§§ 1738.209 – 1738.250 [Reserved]

Subpart F - Closing, Servicing, and Reporting for Loan and Loan/Grant Combination Awards

§ 1738.251 Offer and closing.

The Agency will notify the Applicant of the loan or loan/grant combination offer in writing, and the date by which the Applicant must accept the offer. If the Applicant accepts the terms of the offer, a loan or loan/grant combination contract, note, security agreement, and any other necessary documents will be executed by the Agency and sent to the Applicant. The Applicant must execute the Award documents and satisfy all conditions precedent to closing within the timeframe specified by the Agency. If the conditions are not met within this timeframe, the loan or loan/grant combination offer may be terminated, unless the Applicant requests and the Agency approves, an extension. The Agency may approve such a request if the Applicant has diligently sought to meet the conditions required for closing and has been unable to do so for reasons outside its control.

§ 1738.252 Construction.

(a) Construction paid for with loan or loan/grant combination funds must comply with 7 CFR parts 1787, 1788, and 1970, the RUS Broadband Construction Procedures located at <https://reconnect.usda.gov>, and any other guidance from the Agency.

(b) Once the Agency has extended a loan or loan/grant combination offer, the Applicant, at its own risk, may start construction that is included in the application on an interim financing basis. For this construction to be eligible for reimbursement with loan or loan/grant combination funds, all construction procedures contained in this part must be followed. Note, however, that the Agency's extension of a loan or loan/grant combination offer is not a guarantee that a loan or loan/grant combination will be made, unless and until a contract has been entered into between the Applicant and RUS.

(c) All Awardees must complete build-out within 5 years from the date that funds have been 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.

§ 1738.253 Servicing of loan and loan/grant combinations.

(a) Borrowers must make payments on the broadband loan as required in the note.

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

(c) In the event of default of any required payment or other term or condition:

(1) The Agency may exercise the default remedies provided in the Award documents and any remedy permitted by law but is not required to do so.

(2) If the Agency chooses not to exercise its default remedies, it does not waive its right to do so in the future.

§ 1738.254 Accounting, reporting, and monitoring requirements.

(a) Loan and loan/grant combination 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) Loan and loan/grant combination Awardees must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting and management letter in accordance with the requirements of 7 CFR

part 1773. The Certified Public Accountant (CPA) conducting the annual audit is selected by the awardee and must be approved by RUS as set forth in 7 CFR 1773.4.

(c) Loan and loan/grant combination Awardees must submit to RUS 30 calendar days after the end of each calendar year quarter, balance sheets, income statements, statements of cash flow, rate package summaries, and the number of customers subscribing to broadband service from the Awardee utilizing RUS' online reporting system. These reports must be submitted throughout the loan amortization period.

(d) Loan and loan/grant combination Awardees must 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 proposed funded service area can receive service at the broadband lending speed. 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 proposed funded service area have not been constructed, RUS may require a portion of the Award to be rescinded and/or paid back.

(e) Loan and loan/grant combination 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, and any other property encumbered by the mortgage or security agreement, and any or 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 therefore.

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

§ 1738.255 Default and deobligation.

If a default under the loan or loan/grant combination documents occurs and such default has not been cured within the timeframes established in the Award documents, the Applicant acknowledges that the Agency may, depending on the seriousness of the default, take any of the following actions:

(a) To the greatest extent possible recover the maximum amount of grant and loan funds;

(b) De-obligate all funds that have not been advanced or demonstrate an insufficient level of performance or fraudulent spending; and

(c) Reallocate recovered funds to the extent possible.

§§ 1738.256 – 1738.300 [Reserved]

Subpart G - Loan Guarantee

§ 1738.301 General.

(a) To be eligible for a loan guarantee, the Applicant must submit an application that meets the requirements in this part along with the requirements as stated in 7 CFR part 4279, subparts A and B, as well as any additional requirements published in the *Federal Register*.

(b) The Agency may approve Rural Broadband Program loan guarantees in excess of \$10 million but less than \$25 million when the project meets one of the priorities in § 1738.105(a)(3)(i).

(c) The lender will service the loan in accordance with 7 CFR part 4287, subpart B.

(d) Any reference to priorities in 7 CFR part 4279 or 4287 shall have the meaning as stated in § 1738.105 and any reference to Administrator or Agency shall have the meaning as defined in § 1738.2.

§ 1738.302 Fees.

The Agency shall charge and collect from the lender fees in such amounts as to bring down the costs of subsidies for guaranteed loans, except that such fees shall not act as a bar to participation in the programs nor be inconsistent with current practices in the marketplace.

§§ 1738.303 – 1738.349 [Reserved]

§ 1738.350 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 0572-0154.

PART 1739 – BROADBAND GRANT PROGRAM

2. The authority citation for part 1739 continues to read as follows:

Authority: Title III, Pub. L. 108-199, 118 Stat. 3.

Subpart A – Community Connect Grant Program

3. In § 1739.3, revise the definition of “Broadband service” and “Critical Community Facilities” to read as follows:

§ 1739.3 Definitions.

* * * * *

Broadband service means any terrestrial technology having the capacity to provide transmission facilities that enable subscribers of the service to originate and receive high-quality voice, data, graphics, and video at the minimum rate of data transmission described in the funding opportunity. Satellite and mobile services are not considered broadband service. The broadband service speed may be different from the broadband grant speed for the Community Connect program.

* * *

Critical Community Facilities means an essential community facility as defined pursuant to section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)).

* * * * *

4. Add § 1739.8 to read as follows:

§ 1739.8 Buy American requirement.

Awardees shall use in connection with the expenditure of 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.

5. Amend § 1739.15 as follows:

a. In paragraph (d) introductory text, after the text “in accordance with 7 CFR part 1970” add the text “and as supplemented by 7 CFR 1738.108”;

b. Redesignate paragraph (l) as paragraph (m);

c. In newly redesignated paragraph (m)(8), after the text “in accordance with 7 CFR part 1970” add the text “and as supplemented by 7 CFR 1738.108”; and

d. Add a new paragraph (l).

The addition reads as follows:

§ 1739.15 Completed application.

* * * * *

(l) *Public notice.* The Agency will publish a public notice of each application requesting assistance under this part. The application must provide a summary of the information required for such public notice. The information required can be found in 7 CFR 1738.106.

* * * * *

6. Amend § 1739.19 by adding paragraph (f) to read as follows:

§ 1739.19 Reporting and oversight requirements.

* * * * *

(f) Entities that receive assistance from the Agency under this part to provide retail broadband service must submit annual reports for 3 years after project completion. The information required can be found in 7 CFR 1738.107(a) and (c).

Chad Rupe,
Administrator,
Rural Utilities Service.

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