



Reporting Requirements

USDA RUS ReConnect Program



Rural Development



Albert Chang, Ph.D.

Chief of Post-Loan Servicing
Financial Operations Branch

Objective

- To help you access the funds earmarked for your project without delay

Agenda

- Closing Documents
- Release of funds procedure
- Advance of ReConnect Funds
- Financial Requirements
- Reporting Requirements

Closing Documents



Closing Documents

- Security Documents
- Closing Instructions
- DACA General Terms
- DACA Specific Terms
- Opinion of Counsel Template
- UCC
- ACH Form (All awards)
- CIP Form (Loan and Loan/Grant Combo)

Security Documentation

1. Grants

- a) For Grant and Security Agreement – UCC filing
- b) For Grant and Security Agreement – UCC filing and Intercreditor Agreement where necessary (normally with after-acquired clause of prior lender)

2. Loans

- a) For Loan Agreement – UCC filing with Mortgage or Intercreditor Agreement
- b) For Loan and Security Agreement – UCC filing without Mortgage or Intercreditor Agreement

3. Loan/Grant

- a) For Loan/Grant Agreement – UCC filing with Mortgage or Intercreditor Agreement
- b) For Loan/Grant Agreement and Security Agreement– UCC filing without Mortgage or Intercreditor Agreement

UCC Filing

- A UCC filing is a notice when a business owner takes a loan against an asset. A UCC filing gives lenders, i.e. RUS, a claim on assets a debtor pledges as collateral.
- A UCC is filed when a business owes the lender money and the lender wants to reserve its spot in line for the assets the business pledges. There are two common types of UCC filings a specific collateral lien and a blanket lien. A specific collateral lien gives the lender rights to a specific business asset like a piece of equipment. A blanket lien gives the lender rights to all business assets.

Special Conditions – NEPA Condition

- For all types of awards:
- *Pursuant to 7 CFR 1970.11(b), the Agency has determined that assurance of funding for this Project is necessary for economic rural development. As a result, this Agreement is subject to the completion of all necessary environmental procedures required by Federal law, and funds may not be disbursed until successful completion of such procedures. The Awardee acknowledges that it may not engage in any work on the Project until Awardee has received written notice from the Agency, except for work required to finalize the environmental reviews. Such environmental work, however, shall be done at the Awardee's own risk and may not be reimbursed if the environmental reviews cannot be completed as required by 7 CFR 1970.11(b). Awardee understands and acknowledges that unauthorized work will result in the termination of this Agreement. Awardee also acknowledges that any findings in the environmental reviews requiring significant changes to the Project will constitute an immediate deobligation of funding and termination of this Agreement, and will not result in an amended agreement until revised terms are agreed upon and funding is determined to be still available.*

Special Conditions – Service Obligations

Grants:

- “Service Obligation” shall mean the period in which grant assets must be placed into service to carry out the purposes of the ReConnect Program, and the time period in which grant assets must be secured as an exclusive, first lien on behalf of the government.
- Section 5.7 Service Obligation
 - The Awardee shall provide the level of broadband service described in the RUS approved Application commencing from the date of Project Completion until the end of the Composite Economic Life of the facilities financed by the Award as specified on Schedule 1. Awardee acknowledges that given the significant amount of government contribution to the Project in the form of a grant, the Service Obligation is a significant portion of the public benefit of the Award, and that a material breach of the Service Obligation shall be an Event of Default. Awardee also acknowledges that grant assets must be secured as an exclusive, first lien on behalf of the government, as required by the ReConnect Program.

Special Conditions – Service Obligations

Loans

- “Service Obligation” shall mean the period in which assets purchased with federal assistance and subsidized by a federal grant to lower the interest rate, must be placed into service to carry out the purposes of the ReConnect Program.
- Section 5.10 Service Obligation
 - The Awardee shall provide the level of broadband service described in the RUS approved Application commencing from the date of Project Completion until the longer of: (i) the Composite Economic Life of the facilities financed by the Award as specified on Schedule 1; or (ii) as long as the Note(s) is outstanding. Awardee acknowledges that given the significant amount of government contribution to the Project in the form of a subsidized interest rate through a federal grant, the Service Obligation is a significant portion of the public benefit of the Award, and that a material breach of the Service Obligation shall be an Event of Default.

Special Conditions – Service Obligations

Loan/Grant

- “Service Obligation” shall mean the period in which grant assets must be placed into service to carry out the purposes of the ReConnect Program, and the time period in which grant assets must be secured as an exclusive, first lien on behalf of the government.
- Section 5.10 Service Obligation
 - The Awardee shall provide the level of broadband service described in the RUS approved Application commencing from the date of Project Completion until the longer of (i) the Composite Economic Life of the facilities financed by the Award as specified on Schedule 1 or (ii) as long as the Note(s) is outstanding. The Awardee acknowledges that given the significant amount of government contribution to the Project in the form of a federal grant, the Service Obligation is a significant portion of the public benefit of the Award, and that a material breach of the Service Obligation shall be an Event of Default. The Awardee acknowledges and agrees that failure to provide the full Service Obligation shall give rise to the government’s claim for the return of all or part of the federal Grant, proportionate to number of years the grant assets were in service, as determined by RUS. Awardee also acknowledges that grant assets must be secured as an exclusive, first lien on behalf of the government, as required by the ReConnect Program.

Closing Documents

- Make sure you have received the correct type of security instruments.
- Make sure you have received the complete closing documents.
- Contact RUS right away if you are unsure.

Release of Funds Procedure



Release of Funds

- The Release of Funds means that the awardee has entered into the legal agreement with the government by properly executing the legal documents and related forms sent to the awardee
- This also means that the awardee has met ALL of the conditions precedent to closing and release of funds(refer to Article IV Schedule 1 of the Agreement)
- The Release of Funds process is handled by the Operations Branches of the Portfolio Management and Risk Assessment Division
- Processing the Financial Requirement Statements (Form 481) advances and contract approvals are handled by the Engineering Branches of the Portfolio Management and Risk Assessment Division after confirmation of financial compliance by the Operation Branches

Release of Funds

- Return the properly executed documents to RUS within specified days from the date of the transmittal letter.
- The following documents must include original signatures:
 - Security Document(s)
 - Deposit Account Control Agreement (3 originals signed by Awardee and Bank)
 - Certificate of Authority
 - Legal Opinion (on legal firm's letterhead and includes an original signature)
 - Certified Public Accountant Information form completed
 - Certificate of Resolutions
 - Borrower Automated Clearing House ("ACH") Form. The section for the Financial Institution Information ("Bank") must be signed by an authorized official from the bank .
 - For loans, submit the Customer Initiated Payment Form to St. Louis
- In addition to the legal documents, the awardee must also provide evidence that all of the conditions listed on the Schedule 1 to the agreement have been met

Common Errors to Avoid

- The agreement must be executed by the authorized official. Make sure you print his/her name and title.
- The ACH Form must be signed by a bank officer
- The original ACH Form must be returned (digital signature is acceptable).
- Return only one copy of the agreement to RUS. RUS will not accept a photo copy of the agreement. It must be the original.
- On the Certificate of Authority, the individuals listed must be the individuals authorized to requisition funds associated with the award and sign on the signature line of the form
- Do not send documents separately
- All of the documents should be sent as one complete package to avoid delays in releasing the funds

Conditions of Award Documents



- Pursuant to 7 CFR 1970.11(b), the agency has determined that assurance of funding for this project is necessary for economic rural development. As a result, this agreement is subject to the completion of all necessary environmental procedures required by federal law, and funds may not be disbursed until successful completion of such procedures. The awardee acknowledges that it may not engage in any work on the project until awardee has received written notice from the agency, except for work required to finalize the environmental reviews. Such environmental work, however, shall be done at the awardee's own risk and may not be reimbursed if the environmental reviews cannot be completed as required by 7 CFR 1970.11(b). Awardee understands and acknowledges that unauthorized work will result in the termination of this agreement. Awardee also acknowledges that any findings in the environmental reviews requiring significant changes to the project will constitute an immediate de-obligation of funding and termination of this agreement, and will not result in an amended agreement until revised terms are agreed upon and funding is determined to be still available.
- If your agreement contains this Condition Precedent to Closing, you may execute the legal documents **BUT** the funds will not be released until environmental clearance is provided. Also, the awardee may not engage in any work on the project until notification is received from RUS.

Advance of ReConnect Funds



Conditions of Award Documents

- In accordance with Article IV – Conditions of Financial Assistance, Section 4.1 Conditions Precedent to Closing:
 - The awardee must meet all the additional conditions specified on Schedule 1 hereto
 - Please refer to Articles IV, V and VII for additional conditions that must be met prior to the release and/or advance of loan and/or grant funds. The awardee must provide evidence satisfactory to RUS demonstrating that each of these conditions have been met
 - Additional conditions are unique to each awardee's project
 - Some awardees may not have any additional conditions to be met

Conditions of Award Documents

- **Section 4.3 Conditions to Individual Advances**

- Continuing Representations and Warranties
- Expenditure of Funds
- Material Adverse Affect
- Event of Default
- Requisitions and Supporting Documentation
- Flood Insurance
- Current Financial Information
- Compliance with Buildout Timeline and Reporting Requirements
- Compliance with Loan/Grant Agreement
- Permits, Licenses and Franchises
- Deposited Funds
- Additional Documents
- Additional Conditions

Advance of ReConnect Funds

Pledged Deposit Account

- Award Documents (Section 5.4 Deposit of Advances into Pledged Deposit Account)
 - Must open and maintain a deposit account pledged to RUS
 - Insured by FDIC or other federal agency acceptable to RUS
 - Identified by RUS' designation of the Awardee followed by "Pledged Deposit Account"
 - Promptly deposit all advances of award funds
 - Promptly deposit any previous disbursements that have been disallowed by RUS
 - Matching funds as well as other funds must be maintained on deposit in the Pledged Deposit Account unless expended and withdrawn as authorized by RUS
 - RUS has first and prior lien on Pledged Deposit Account
 - Awardee consents ACH electronic payments directly into the Pledged Deposit Account

Advance of ReConnect Funds

Pledged Deposit Account

- ReConnect Construction Procedures
 - Must open and maintain a deposit account pledged to RUS
 - Insured by FDIC or other federal agency acceptable to RUS
 - All advances will be electronically deposited into the Pledged Deposit Account
 - All matching and/or funds required for project completion as stated in the award documents must be deposited into the Pledged Deposit Account at award closing
 - RUS may require that other funds be deposited into the Pledged Deposit Account
 - Match, equity or general fund contributions for project completion
 - Proceeds from the sale of property
 - Interest received on award funds and similar types of receipts
- FOA
 - No funds will be disbursed until all other sources of funding have been obtained and any other pre-award conditions have been met

Advance of ReConnect Funds

General

- FOA
 - All matching funds or cash provided in lieu of loan funds must be expended first, followed by loan funds, and then by grant funds
 - Except approved pre-application expenses
 - Grant funds will be used for approved pre-application expenses
 - First advance request only
- Award Documents
 - Section 4.3 Conditions to Individual Advances: All approved matching funds are to be expended before a request of loan or grant funds
 - Except approved pre-application expenses
 - Section 4.4 First Advance to Pay Off Pre-Application Expenses: Grant Funds will be used to pay off approved pre-application expenses included on the first advance

Advance of ReConnect Funds

RUS Form 481 – Financial Requirement Statement (FRS)

- Award Documents (Section 4.3 Conditions to Individual Advances)
 - Requests for award funds must be made on an FRS
 - Requests should not be submitted more frequently than once per month
 - Advance requests are to be limited to immediate disbursement needs
 - Award advances are on a reimbursement basis, or based on unpaid 3rd party invoices
- ReConnect Construction Procedures
 - To request advances, awardee must submit FRS
 - All matching funds will be treated as award funds and recorded appropriately on the FRS
 - Shall request funds in the first advance request to pay eligible pre-application expenses
 - Request advances as needed to meet obligations promptly (<60 days)

Disbursement of ReConnect Funds

Award Documents

- Section 5.2 – Use of Advances:
 - Expend award funds only for eligible purposes in accordance with the RUS approved line item project budget and FRS submitted prior to the advance of funds
- Section 5.4 – Deposit of Advances into Pledged Deposit Account:
 - Moneys in the Pledged Deposit Account shall be used solely for the purposes for which advances were made (FRS). Any exception must be approved in writing

Disbursement of ReConnect Funds

ReConnect Construction Procedures

- Funds in Pledged Deposit Account shall be used solely for the purposes approved in the application and shall be disbursed for the approved purposes for which they were requested on the FRS
- Funds should be disbursed for the item for which they were advanced
- Interest earned must remain in Pledged Deposit Account and cannot be disbursed without RUS approval

Disbursement of ReConnect Funds

- Clear description of the funded asset associated with each advance request will make it easier to receive partial lien release in the future

Financial Requirements



Financial Requirements

100% Grants:

- For Awardees with existing debt, the following requirements will apply:
 - At least two of the three requirements on the Financial Requirements Commencement Date until the debt is repaid in full:
 - A minimum TIER , DSCR, Current Ratio requirements of 1.2;
 - Positive cash flow from operations at the end of the fifth year of the award
 - Positive ending cash balance as reflected on the cash flow statement for each year of the forecast period
- For Awardees with no existing debt and who are not proposing to borrow funds during the period in which grant funds are expended, the following requirements will apply:
 - A minimum Current Ratio of 1.2
 - Positive cash flow from operations at the end of the fifth year of the award
 - Positive ending cash balance as reflected on the cash flow statement for each year of the forecast period

Financial Requirements

100% Loans:

- At least two of the three requirements on the Financial Requirements Commencement Date, as specified in Schedule 1 hereto, until the Loan is repaid in full:
 - A minimum TIER, DSCR, Current Ratio requirements of 1.2;
- Tangible equity to total assets must be at least 20 percent at the end of the calendar year starting in the third year and ending in the fifth year of the award
- Positive cash flow from operations at the end of the fifth year of the award
- Positive ending cash balance as reflected on the cash flow statement for each year of the forecast period

Loan and Grant combinations:

- Same as 100% Loans except for tangible equity requirement

Reporting Requirements



Audit Requirements

Section 6.3 - Annual Audit

- Non-Federal Entities:
 - States, local governments, Indian tribes, institutions of higher education, or nonprofit organizations, provide the following:
 - Audit pursuant to 2 C.F.R. part 200, Subpart F (Audit Requirements)
 - A report on compliance and internal controls over financial reporting
 - Management letter
 - The audit submission requirement begins in the awardee's fiscal year that the loan is made. See 2 CFR 200.502
- All required audits must be submitted within the earlier of:
 - 30 calendar days after receipt of the auditor's report; or
 - Nine months after the end of the awardee's audit period

Audit Requirements

- All Other Entities:
 - Audit is due 120 days after the as of audit date in accordance with 7 C.F.R. part 1773, Policy on Audits of RUS Borrowers
 - Also provide the following:
 - A report on compliance and internal controls over financial reporting
 - A report on compliance with aspects of contractual agreements and regulatory requirements
 - Note, with respect to advances that contain loan funds, the audit is required after an advance has been made, and, thereafter, from the close of each subsequent fiscal year until the loan is repaid in full. With respect to advances that only contain grant funds, the audit is required until all grants funds have been expended or rescinded

Reporting Requirements (All Awards)

- Quarterly Reporting:
 - Due 30 days after the end of each calendar year quarter
 - Submit through RUS' online reporting system, the following information:
 - Balance sheets, income statements, and statements of cash flow
 - Summaries of the rate packages
 - Number of customers taking broadband service on a per community basis
 - Completion of status of the build-out

Reporting Requirements (All Awards)

- Semi-Annual Reporting:
 - For three years starting the first January 31st after Project Completion, submit the following information utilizing RUS' online reporting system:
 - Existing network service improvements and facility upgrades, as well as, new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers
 - Estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure
 - Progress towards fulfilling the objectives for which the assistance was granted
 - Speed and average price of the most subscribed tier of the awardee's broadband service offerings in the project's service area
 - Average price of broadband service in the project's service area

Reporting Requirements (All Awards)

- Annual Report:
 - Due 30 days after the end of each calendar year.
 - Submit updated Service Area Maps through RUS' Online Mapping Tool showing the areas where construction has been completed and geospatial location of residences and businesses that are receiving new broadband service, until the entire proposed service area can receive the broadband service

Reporting Requirements (All Awards)

- Project Completion Report:
 - Due 90 days after the expiration or termination of the award or expenditure of all award funds. The report shall address:
 - A comparison of actual accomplishments to the objectives set forth in the application
 - A description of problems, delays, or adverse conditions that occurred which affected the attainment of overall project objectives
 - A comparison of how funds were spent against the original general budget in the application
 - A final buildout map on the RUS mapping tool indicating that all construction has been completed as proposed in the application
 - Failure to properly report, given the extreme national interest in understanding where federal dollars are going, may result in the suspension of advances





Rural Development