



United States
Department of
Agriculture

Rural Development

USDA Rural Development



Community Facilities Post-Closing Guide for Re-Lenders

February 2018



CONTENTS

- Introduction **5**
- Applicant and Project Eligibility **6**
- Irrevocable Letter of Credit (or Similar Instrument) **8**
- Planning, Bidding, Contracting and Construction **9**
- National Environmental Policy Act (NEPA)
Environmental Review **10**
- Civil Rights **11**
- Attachment A — Administrative Notices and Unnumbered Letters **12**
- Attachment B — Irrevocable Letter of Credit Template **13**
 - Exhibit 1 **14**
 - Exhibit 2 (Incumbency Certificate of Bank) **15**
- Attachment C — Step by Step Processing Guide for Re-lender (Post Closing) **16**



INTRODUCTION

This guide is intended for Community Facilities (CF) Re-lenders to provide guidance and clarification to CFR 1942 Subpart A, §1942.30 Re-lending. This guide does not replace the regulation or any corresponding Notice of Solicitation of Applications (NOSA). If there is a conflict between this guide and the regulation or NOSA, the regulation and corresponding NOSA governs.

Re-lenders are encouraged to work closely with their designated Rural Development State Office contact. Re-lender's staff administering the CF Re-lending loan should become familiar with 7 CFR 1942 Subpart A found online at www.ecfr.gov. In addition, the following documents outline the Re-lender's requirements and commitments:

- Notice of Solicitation of Applications (NOSA) for Loans to Re-Lenders Under the Community Facility Loan Program For Fiscal Year (FY) 2016 dated July 16, 2016¹
- Re-lender's Agreement as Amended
- Loan Resolution Security Agreement ("Security Agreement") (Re-lender/Debtor) as Amended
- Promissory Note (Re-lender) as Amended
- Exhibit H of RD Instruction 1970–A, "Multi-tier Action Environmental Compliance Agreement"

The guidance addressed in this document relates to Post Closing activity. Post Closing is defined as occurring after the Re-lender has closed its loan with USDA Rural Development.

The guidance in this document is current as of the date noted on the title page. If the guidance should change or if additional guidance is needed, this document will be revised and reissued.

¹ This is the only NOSA issued for CF Re-lending as of the date of this guidance.

APPLICANT AND PROJECT ELIGIBILITY

Applicant Eligibility — credit elsewhere

The Re-lender's Agreement, Section 3.2, states the following: As part of its Applicant eligibility determination, it is the responsibility of the Re-lender to determine if other credit is available at reasonable rates and terms in accordance with 7 CFR Part 1942, Subpart A, and document its findings in the Applicant's file.

7 CFR Part 1942, Subpart A, §1942.30 (f) (2) states the Agency's responsibility to determine the eligibility of the Applicants based on the information presented by the Re-lender. This will include the Re-lender's other credit determination. The Re-lender's other credit determination may differ from an Agency other credit determination due to the rates and terms offered by the Re-lender. Other credit is defined in 7 CFR Part 1942, Subpart A, as commercial sources.

Re-lenders should review the [Unnumbered Letter \(UL\) dated May 18, 2018, Determination and Documentation on Availability of Other Credit](#), provided in Attachment A.

Applicant Eligibility — significant ties with the local rural community

Essential community facilities, operated on a not-for-profit basis, must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Re-lenders will need to provide this documentation to the Agency as part of the Applicant eligibility determination. 7 CFR Part 1942, Subpart A, §1942.17(b) (1) (ii), outlines the ways in which an Applicant may provide evidence of such ties:

- (1) Association with or controlled by a local public body or body, or broadly based ownership and controlled by members of the community.
- (2) Substantial public funding through taxes, revenue bonds, or other local Government sources, and/or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

In addition, Re-lenders should review [Administrative Notice \(AN\) No. 4818 dated February 27, 2017, Evidence of Significant Community Support for Essential Community Facilities Projects](#), and obtain the required certificate of community support as part of its applicant eligibility documentation. The AN is provided in Attachment A.

Project Eligibility — obligations for construction incurred before loan approval

7 CFR Part 1942, Subpart A, §1942.17 (d) (1) (v), outlines when CF direct loan funds may be used for financing a project already under construction.

Project Eligibility — Boys & Girls Clubs

The following guidance documents found in Attachment A may assist Re-lenders regarding the eligibility of Boys & Girls Clubs:

- [AN No. 4832 dated April 27, 2017, Definition of an Essential Community Facility](#)
- [AN No. 4835 dated April 27, 2017, Eligibility of Private Nonprofit Organizations](#)
- [AN No. 4824 dated March 9, 2017, Eligibility of YMCA, YWCA, Boys and Girls Scouts for Community Facilities Loans and Grants](#)

Project Eligibility — recreational facilities

CF direct loan funds may not be used to finance facilities to be used primarily for recreation purposes. Please refer to 7 CFR Part 1942, Subpart A, §1942.17 (d) (2) (ii).

Project Eligibility — broadband

7 CFR Part 1942, Subpart A does not currently support the use of CF direct loan funds to finance broadband.

Broadband financing is currently available from the [Rural Utilities Service \(RUS\) Telecommunications Program](#).

Project Eligibility — electric utilities

7 CFR Part 1942, Subpart A, §1942.17 (d) (1) (i) (B) (4) & (5) and §1942.17 (d) (2) (iv) outline the eligible use and non-eligible use of CF direct loan funds related to electric utilities.



IRREVOCABLE LETTER OF CREDIT (OR SIMILAR INSTRUMENT)

Attachment B is a Standby Letter of Credit template for Re-lenders to use for the Irrevocable Letter of Credit (ILOC). The State Office will review the Re-lender's ILOC and if it follows the Standby Letter of Credit template, they may concur in the document. If it does not follow the template, the ILOC will need to be reviewed by the Agency's Regional Office of General Counsel (OGC) to determine the legal sufficiency of the document in meeting the Agency's security requirements.

Each advance will have a corresponding ILOC. The amount of the ILOC will be equal to the principal and interest (P&I) payments due during the first five (5) years of the advance. The amount will be calculated based on amortizing the advance over the remaining term of the loan between the Agency and Re-lender using the interest rate in place at the time of the loan closing.

Example:

Advance = \$1,000,000

Remaining life² of Re-lender loan with Agency = 39 years & 2 months

Interest rate at loan closing, Re-lender loan with Agency = 2.375%

² The Re-lender and Agency will estimate an approximate date into the future for when the advance will occur in order to determine the remaining life of the loan.

Amortization Factor = 3.28 (per \$1,000)

Monthly Payments = $1,000 \times 3.28 = \$3,280$

ILOC amount = $\$3,280 \times 60 \text{ months} = \$196,800$

In lieu of an ILOC, the Re-lender may provide a "similar instrument" such as a cash collateral account or a Performance Guarantee. At this time we do not have a Performance Guarantee template. All Performance Guarantee documents will be submitted to the State Office for review and concurrence.

For cash collateral accounts, a Deposit Control Agreement will be required. This is necessary in order for the Agency to have a perfected security interest. A cash collateral account without a Deposit Control Agreement does not meet the Agency's adequacy of security requirements. At this time a Deposit Control Agreement template is being drafted. Once it is available, it will be added to this document. Until the template is available, Re-lenders should submit all Deposit Control Agreements to the State Office for review and concurrence.

Regardless of the instrument used, the original document must be provided to the State Office in its final form and fully executed prior to any advance of loan funds.



PLANNING, BIDDING, CONTRACTING AND CONSTRUCTION

Financing construction projects

Re-lenders may use the CF loan funds to provide permanent financing for eligible projects upon completion of construction. When financing construction projects, Re-lenders will follow the Community Programs Guaranteed Loans regulation, 7 CFR 3575.42 and 3575.43. This method was chosen for the CF Re-lending initiative to streamline the process for the Re-lender.

7 CFR 3575.42 states the lender (Re-lender in this case) will provide a written certification at the end of construction that funds were used for authorized purposes. It also requires the lender to monitor construction and ensure that designs and construction meet all applicable Federal, State, and local laws.

If the Re-lender were to provide the CF loan funds during construction, following 7 CFR part 1942, subpart A, then the Agency would have to review all plans and specifications, approve the contract documents and require certain bidding procedures. This would add significant time to the process. This method was intentionally not selected for the CF Re-lending initiative.

7 CFR 1942.17(n)(3) requires that for loans exceeding \$50,000 and where the loan funds can be borrowed

at reasonable rates and terms, the Borrower will use commercial financing for the construction portion of the project. Once construction is complete, the CF loan funds can be used to pay off the commercial construction loan. In this context, financing construction is an eligible loan purpose. In all cases the project constructed must be an eligible essential community facility.

In summary, Borrowers will obtain construction financing from commercial sources (may come from other funds the Re-lender has available) during the construction phase. Re-lenders will authorize the design and plans; monitor construction; and ensure all applicable Federal, State, and local laws are met. The Re-lender will provide a written certification to the Agency at the end of construction that the requirements of 7 CFR 3575.42 and 3575.43 have been met. The CF loan funds will be advanced at the end of construction to take out the construction loan.

Design Plans

7 CFR 3575.42 indicates the Agency will review the preliminary architectural/engineering report or plans. The Agency review will be limited to ensuring the project is modest in design and construction.



NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) ENVIRONMENTAL REVIEW

Re-lenders should review the following documents in regards to their Environmental compliance responsibilities:

- 7/6/16 NOSA, Section VI. Award Administration Information, D. National Environmental Policy Act (NEPA) environmental review.
- Exhibit H of RD Instruction 1970–A, “Multi-tier Action Environmental Compliance Agreement” (as signed by each Re-lender with their Re-lending application)
- Re-lender’s Agreement, Section 2.1 (g)³

- CF Re-lending FAQ Env-Civil Rights 121516_FINAL (includes sample Re-lender Environmental Compliance Certification)
- CF Re-lending Environmental Compliance Trng_121516 (PowerPoint)

Re-lenders with additional questions on NEPA compliance should consult with the Agency’s State Environmental Coordinator (SEC). Please make your request to visit with the SEC through your State Office contact.

³ Form RD 2006–38, “Rural Development Environmental Justice and Civil Rights Impact Analysis Certification” must be signed by the Agency and will be completed based on information provided by the Re-lender.



CIVIL RIGHTS

Re-lenders should review the following documents in regards to their Civil Rights compliance responsibilities:

- 7/6/16 NOSA, Section VI. Award Administration Information
 - B. Reporting Requirements (iv)
 - E. Civil Rights
- Letter of Conditions
- Re-lender’s Agreement, Section 6.
- CF Re-lending FAQ Env Civil Rights 121516_FINAL
- CF Re-lending Civil Rights Compliance Trng_121516 (PowerPoint)

State Offices will complete a Civil Rights compliance review within the first year after the initial loan closing and thereafter at intervals of not more than 3 years until the CF direct loan funds have all been re-lent. The Agency’s review is documented on [Form RD 400–8](#), “Compliance Review.”



ATTACHMENT A — Administrative Notices and Unnumbered Letters

| Number | Title | Date |
|---------|--|-------------------|
| UL | Best Practices for Evaluating the Feasibility and Eligibility of Community Facilities Projects | April 4, 2018 |
| AN 4818 | Evidence of Significant Community Support for Essential Community Facilities | February 27, 2017 |
| AN 4819 | Guidance for Determining Eligibility of Faith-Based and Neighborhood Partnerships Project Eligibility Requirements | February 28, 2017 |
| AN 4820 | Financing Veteran of Foreign Wars Projects Using Community Facilities Funds | February 28, 2017 |
| AN 4817 | Funding for Renewable Energy Sources for Essential Community Facilities | March 1, 2017 |
| UL | Determination and Documentation on Availability of Other Credit | May 18, 2018 |
| AN 4858 | Business Incubators | March 8, 2018 |
| AN 4824 | Eligibility of YMCA, YWCA, Boys and Girls Scouts for Community Facilities Loans and Grants | March 9, 2017 |
| AN 4825 | Service Area for Certain Community Facilities Projects | March 9, 2017 |
| An 4826 | Use of Community Facilities Funds for Buildings with Leased Space | March 9, 2017 |
| AN 4829 | Financing Thrift Store Projects Using Community Facilities Funds | April 12, 2017 |
| AN 4834 | Definition of “Rural” and “Rural Area” for Community Facilities Loans and Grants | April 12, 2017 |
| AN 4836 | Guidance on Financing Short-Term Debt and Refinancing Long-Term Debt with Community Facilities Direct and Guaranteed Loans | April 12, 2017 |
| AN 4832 | Definition of an Essential Community Facility | April 27, 2017 |
| AN 4835 | Eligibility of Private Nonprofit Organization | April 27, 2017 |

ATTACHMENT B — IRREVOCABLE LETTER OF CREDIT TEMPLATE

STANDBY LETTER OF CREDIT

[Issuing Bank’s Name]
[Street]
[City, State 00000]
[Date]

IRREVOCABLE STANDBY LETTER OF CREDIT No. [0000000]
BENEFICIARY: United States Department of Agriculture
Rural Housing Service

[Rural Development State Office address]
Attn: [name of agency state official]

ACCOUNT PARTY: [Re-Lender’s Name]
[Street]
[City, State, Zip]

Gentlemen:

We, [Name of Issuing Bank,] (the “BANK”) hereby open our irrevocable standby letter of credit (“ILOC”) on behalf of [RE-LENDER’S NAME] (the “ACCOUNT PARTY”) in favor of the RURAL HOUSING SERVICE (the “BENEFICIARY”), for the sum or sums not to exceed the aggregate amount of [AMOUNT IN WORDS] Dollars (\$000,000) (hereinafter the “Maximum Amount,”) to be made available by your request for payment at sight. The Maximum Amount may be reduced on the annual anniversary date of the ILOC, during the term of the ILOC, based on the BANK’s written request and RHS written consent.

The Bank has been informed by the ACCOUNT PARTY that this ILOC is issued to secure obligations as set forth in that certain Loan Resolution Security Agreement, entered into between the ACCOUNT PARTY and BENEFICIARY, dated as of [date] (as amended from time to time, hereinafter the “Security Agreement.”) The BANK also acknowledges that pursuant to said Security Agreement, this ILOC may not be secured, guaranteed, or serviced by any asset of the ACCOUNT PARTY in which the BENEFICIARY has a secured interest as described in the aforementioned Security Agreement.

This ILOC shall be valid until [insert date five years from today], provided however; that this ILOC may be terminated at any time with the prior written consent of BENEFICIARY. After receiving BENEFICIARY’S consent, the BANK shall provide written notice of termination by certified mail to: (a) BENEFICIARY, at United States Department of Agriculture, Rural Housing Service., [BENEFICIARY’S ADDRESS] and (b) the ACCOUNT PARTY at [RE-LENDER’S ADDRESS]. The notice required hereunder will be deemed to have been given when received by all parties.

Funds under this ILOC are available to BENEFICIARY in one or more drawings upon the presentation of one or more executed drafts payable at sight, in the form as provided in Exhibit 1 attached hereto, as well as the original of this ILOC (including all amendments thereto, if any). Such draft(s) shall be presented to our office at [Street, City, State Zip], on any business day except those in which banking institutions in our State are authorized or required by law to close. Partial drawings and multiple drawings are permitted under this Iloc.

The BANK hereby agrees to honor one or more drafts drawn under, or demands for payment made under, and in conformity with this ILOC, up to the Maximum Amount, and accompanied by the documents required by this ILOC, and the BANK’S honoring of such draft or demand shall not relieve its obligation to so honor any further drafts or demands; provided however, that our aggregate obligation to honor such drafts and demands shall not exceed the Maximum Amount as reduced by prior draws hereunder. Payment shall be made by BANK certified check made payable to the RURAL HOUSING SERVICE. Except for the presentation of a copy of a delinquency bill at least 30 days overdue, this ILOC is not subject to any other condition or qualification, and is the obligation of the BANK which is in no way contingent upon reimbursement or likelihood of reimbursement.

We certify that neither the BANK nor any of its officers has an ownership interest in the ACCOUNT PARTY, nor is an officer or director of the ACCOUNT PARTY, and neither the ACCOUNT PARTY nor its officers, directors, members, or other owners have more than a 5 percent ownership interest in the BANK.

This ILOC sets forth in full the terms of our understanding with you, and this undertaking shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement referred to herein, or in which this ILOC is referred to, or to which it relates, except only the drafts referred to herein.

Except as otherwise expressly stated, this ILOC is subject to rules under the Uniform Customs and Practices for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600.

Very Truly Yours,

[Name of Issuing Bank]

by: _____
Name:
Title:

EXHIBIT 1

IRREVOCABLE STANDBY LETTER OF CREDIT No. [00000]

(DRAFT PRESENTED BY RHS)

[Date]

Pay to the order of RURAL HOUSING SERVICE, the sum of [amount in words] and [00]/100 dollars (\$000,000.00), drawn on [Bank's Name], the issuer of the above-mentioned irrevocable standby Letter of Credit, dated [insert date of issuance of ILOC].

RURAL HOUSING SERVICE

By: _____

Name:

Position:

CERTIFICATE

The undersigned hereby certifies that he/she is authorized to execute this certificate on behalf of the United States of America, acting through the RURAL HOUSING SERVICE, the BENEFICIARY under that certain irrevocable standby Letter of Credit No. [00000], issued by [Bank's Name]. The BENEFICIARY, as Lender, is entitled to draw the amount stated above pursuant to the terms of its Security Agreement with the Account Party and pursuant to the terms of the irrevocable standby Letter of Credit, and presents a copy of an overdue billing statement as required therein.

RURAL HOUSING SERVICE

By: _____

Name:

Position:

EXHIBIT 2 (INCUMBENCY CERTIFICATE OF BANK)

OFFICER INCUMBENCY CERTIFICATE

I [Secretary's Name], do hereby certify that I am the Secretary of [Name of Bank] of [City] in [County] County, [State], Charter No. [00000]; that [Name of Bank Official Signing Letter of Credit] is a(n) [position] of [Name of Bank] and is authorized to execute on behalf of the bank, such documents as the irrevocable standby Letter of Credit No. [00000] on behalf of [RE-LENDER'S NAME] and for the benefit of the Rural Housing Service; and that the following is the name, signature, and office of said official, who validly held and occupied his/her position on the date of actual execution of the irrevocable standby Letter of Credit.

| Name | Signature | Position |
|------|-----------|----------|
|------|-----------|----------|

IN WITNESS whereof, I have set my hand and affixed the seal of the [Name of Bank] of [City] on [date].

(corporate seal)

Secretary

ATTACHMENT C — STEP BY STEP PROCESSING GUIDE FOR RE-LENDER (POST CLOSING)

The process outlined below is provided to Re-lenders as a guide and represents a typical flow of steps between the Re-lender and USDA. Actual processing steps may vary from project to project and state to state. Re-lenders are encouraged to work closely with their USDA State Office contact.

PART I — Post Award & Loan Closing

1. Re-Lender is awarded Community Facilities fund for Relending and Re-Lender's loan is closed

PART II — Applicant & Project Eligibility

2. Re-Lender documents Applicant's Eligibility (non-profit/municipality/federal recognized tribe)
3. Re-Lender documents Project Eligibility (project is for an eligible purpose)
4. Re-Lender documents the Area Served (project is located in an area with a population less than 20,000 or in an unincorporated area AND the population served is primarily rural)
5. Re-Lender provides documentation that project serves Persistent Poverty Counties/High Poverty Area (PPC/HPAs)
6. Re-lender documents items needed for faith based organization review (if applicable)
7. Re-lender submits documents listed in items 1 – 6 to USDA.
8. USDA seeks OGC review regarding applicant eligibility and if applicable, faith based review
9. USDA determines eligibility of Applicant, Project and location based upon Re-Lender's documentation and OGC review. Confirms Re-lender has met or will be able to meet requirement to loan a majority of its Re-lender loan to projects in or serving PPC/HPAs. USDA notifies Re-lender in writing.

PART III — Prior to Construction or Purchase

10. Re-Lender provides the Preliminary Engineering Report (PER) or Preliminary Architectural Report (PAR) to USDA (construction projects only).
11. USDA reviews the PER or PAR to ensure the project is modest in design and construction and provides its written concurrence or non-concurrence to the Re-lender (construction projects only).
12. Re-Lender provides Certification to USDA that all NEPA Compliance has been met or provides the environmental assessment to USDA for review.
13. Re-lender provides information to USDA to address the Civil Rights Impact Analysis.
14. USDA completes the environmental assessment review (if applicable) and completes RD Form 2006–38, Civil Rights Impact Analysis. USDA will notify the Re-lender of the results of its environmental assessment review including if it determines a major environmental injustice or civil rights impact is likely to result if the proposal is implemented.

PART IV — Construction Projects Only

15. Re-lender monitors the project planning, bidding and contracting. Applicant obtains interim construction financing. Re-lender monitors construction.
16. Re-lender provides written certification at end of construction that Applicant has met the requirements of 7 CFR 3575.42 and 3575.43

PART V — Advance of Funds

17. Re-Lender submits ACH Vendor/Miscellaneous Payment Enrollment to establish account to receive the funds transfer
18. Re-lender establishes eAuthorization in preparation for payments through Customer Initiated Payment system or PreAuthorized Debit
19. Re-Lender provides their Certificate of Good Standing for the State in which the project is located
20. Re-Lender provides evidence of its Fidelity Bond Coverage
21. Re-Lender provides evidence of its Worker's Compensation coverage if applicable
22. Re-Lender provides Estimate of Funds, Form RD 440-11, indicating the amount of funds requested
23. Re-Lender provides original, executed Irrevocable Letter of Credit (or similar instrument)
24. USDA seeks OGC review of collateral and Irrevocable Letter of Credit, as necessary
25. USDA reviews the executed Re-Lender's Agreement, loan closing documents and the Letter of Conditions to ensure compliance
26. USDA confirms Re-Lender is current on their reporting requirements
27. USDA updates CPAP system recipient screen
28. USDA orders funds in CLSS to be disbursed to the Re-Lender.

PART VI — Post Advance of Funds

29. Re-Lender closes on their loan to the Applicant
30. Re-Lender begins making monthly payments to USDA in the month following the advance of loan funds. Re-lender will receive a billing statement each month.
31. Re-Lender reporting requirements begin (or continue).

USDA Rural Development is committed to the future of rural communities



United States
Department of
Agriculture

Rural Development

February 2018
Slightly Revised May 2018

USDA is an equal opportunity provider, employer, and lender