

**This is Advance Notification of the Federal Register Notice**

**BILLING CODE: 3410-XV-P**

**DEPARTMENT OF AGRICULTURE**

**RURAL HOUSING SERVICE**

**Notice of Solicitation of Applications (NOSA) for Loans to Re-lenders under the  
Community Facility Loan Program for Fiscal Year (FY) 2016**

**AGENCIES:** Rural Housing Service, USDA.

**ACTION:** Notice; applications for Re-lenders.

**SUMMARY:** The Rural Housing Service (RHS) has amended the Community Facility Direct Loan regulations to enable the Agency to make loans to qualified Re-lenders who will loan those funds to Applicants primarily for projects in or serving persistent poverty counties or high poverty areas that are eligible under the Community Facility Loan Program.

**DATES:** To apply for funds, the Agency must receive a complete application by 5:00 p.m. Eastern Daylight Time on August 8, 2016.

**ADDRESSES:** Applications must be submitted to: Kristen Grifka, 1400 Independence Ave, SW, Stop 0787, Room 0175, Washington, DC 20250-0787.

**FOR FURTHER INFORMATION CONTACT:** Please contact Kristen Grifka at (202) 720-1504 or via email at kristen.grifka@wdc.usda.gov for further information.

**SUPPLEMENTARY INFORMATION:**

Overview

*Solicitation Title:* Community Facility Direct Loan Program—Re-lending.

*Announcement Type:* Initial Notice.

*Catalog of Federal Domestic Assistance Number:* 10.766.

*Dates:* For the list of dates please refer to the DATES section above.

*Availability of Notice:* This Notice is available through the USDA Rural

Development site at: <http://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas>.

**I. Funding Opportunity Description**

A. Purpose

The purpose of this Notice is to seek applications from Re-lenders who would loan those funds to Applicants primarily for projects in or serve persistent poverty counties or high poverty areas that are eligible under the Community Facility (CF) Direct Loan Program.

B. Statutory Authority

This program is authorized in 5 U.S.C. 301; 7 U.S.C. 1989; 7 USC 1926(a)(1)

**II. Award Information**

Type of Awards: Direct Loans will be made to eligible Re-lenders for the purpose of lending these funds to eligible CF applicants for eligible CF purposes in accordance with 7 CFR part 1942.

Fiscal Year Funds: \$500 Million of FY 2016 Direct CF Loan funds.

Available Funds: The Agency will make available \$500 Million of Direct CF Loan funds to eligible Re-lenders for the purpose of carrying out this notice.

Award Amounts: Direct loans will be made in amounts based upon the availability of \$500 Million of CF Direct Loan funds.

Award Dates: Awards will be made on or before September 30, 2016.

### **III. Definitions**

Aeris Financial Strength and Performance Rating – Aeris is ratings system that rates community development financial institutions (CDFI). The Aeris rating methodology is designed for non-depository CDFIs that have a majority of their assets invested in loans (as opposed to real estate, equity, or equity-like investments), and have at least five years of financing history. The Financial Strength and Performance Rating is an assessment conducted by AERIS of the CDFI's overall creditworthiness that is based on an analysis of past financial performance, current financial strength, and apparent risk factors.

Applicant. Those eligible entities described in 7 CFR 1942.17(b)(1) making application to the Re-lender to borrow funds for an eligible Community Facilities project.

Borrower. An Applicant who has received a loan from a Re-Lender.

Full Recourse. – Notwithstanding any provisions of the loan documents issued by the re-lender for a Community Facilities project to the contrary, the Re-lender shall be fully and severally liable for the payment and performance of all obligations under the debt instrument issued to the Agency, regardless if the Re-lender and applicant’s assets financed by advancing relending funds have been fully liquidated and are inadequate to fully pay the loan amount, accrued interest, and all other related costs the Re-lender is liable for.

High Poverty Area. A census tract with a poverty rate greater than or equal to 20%. Areas that are considered to be High Poverty may be found on the following website: <http://rdgisportal.sc.egov.usda.gov/home/index.html> entitled “High Poverty Targeting.” A project is considered to be located in a High Poverty Area when the structure, equipment, or other hard assets are physically built and/or placed in a High Poverty Area. A project is considered to be serving a High Poverty Area if the physical structure, equipment, or other hard assets serves residents who live in a High Poverty Area.

Irrevocable Letter of Credit. Firm commitment by an issuing bank to pay the Agency a specified sum in a specified currency, provided the conditions included in the Letter of Credit document are met within a specified timeframe. This Letter of Credit cannot be canceled without the Agency’s prior written approval.

Letter of Intent. Written documentation, acceptable by the Agency, from a financial institution stating the financial institution will issue an Irrevocable Letter of Credit or similar instrument such as a cash collateral account or prior to any funds being disbursed by the Agency.

Persistent Poverty County(ies). Counties where 20 percent or more of county residents were poor as measured by each of the 1980, 1990, and 2000 censuses, and 2007-11 American Community Survey 5-year average. Counties that are considered to be Persistent Poverty may be found under the map entitled “Persistent Poverty” on the following website: <http://www.ers.usda.gov/data-products/county-typology-codes/descriptions-and-maps.aspx#ppov>. A project is considered to be located in a *Persistent Poverty County when the structure, equipment, or other hard assets are physically built and/or placed in a Persistent Poverty County*. A project is considered to be serving Persistent Poverty County(ies) if the physical structure, equipment, or other hard assets serves residents who live in Persistent Poverty County(ies).

Re-lender. Eligible lending institutions under section IV of this Notice who lend funds to eligible Applicants for projects eligible under 7 CFR part 1942.

#### **IV. Eligibility Information**

- A. Re-Lender Eligibility. Re-lenders must meet each of the following requirements:
- (a) Meet the re-lender requirements as outlined in 7 CFR 1942.30;
  - (b) Demonstrate the legal authority necessary to make and service loans involving community infrastructure and development similar to the type of projects listed in 7 CFR 1942.17(d);
  - (c) Meet federal, state and local requirements in accordance with 7 CFR 1942.17(k);
  - (d) Demonstrate that at least 30 percent of its existing portfolio is for projects located in or serving Persistent Poverty County(ies) or High Poverty Areas; or that the

Re-lender has at least 3 years of experience making loans for projects located in or serving Persistent Poverty County(ies) or High Poverty Area(s);

(e) Agree to provide adequate collateral, as determined by the Agency, to support the loan request;

(f) Provides a Letter of Intent from a financial institution that an Irrevocable Letter of Credit or similar instrument such as a cash collateral account or performance guarantee acceptable to the Agency will be issued by the financial institution if the Re-lender is approved for funding;

(g) Unless otherwise required in this Notice, agree to provide an Irrevocable Letter of Credit (or similar instrument such as a cash collateral account or a Performance Guarantee) acceptable to the Agency in the minimum amount equal to the principal and interest installments due the Government during the first 5 years of the loan prior to receiving loan disbursements;

(h) Demonstrate one of the following:

(1) Re-lender is regulated and supervised by a Federal or State Banking Regulatory Agency that is subject to credit examination, AND the institution, its subsidiaries, holding companies, and affiliates are not on their respective regulatory agency's watch list and have no regulatory actions outstanding against them; AND such Federal or State Banking Regulatory Agency has certified that the Re-lender has the financial capacity to receive Agency funding. If the Agency doesn't receive the requisite certification from the Federal or State Banking Regulatory Agency, then the Re-lender has not met this criteria. The Agency reserves the right to reduce funding amounts based

on information received from the Federal or State Banking Regulatory Agency and based on the agency's determination of available funding or other agency funding priorities; or

(2) Re-lender has an Aeris Financial Strength and Performance Rating of 1 or 2 within the past two years; the achieved rating must indicate financial strength, performance, and risk management practices that consistently provide for safe and sound operations. Re-lender grants the Agency permission to review all documents submitted to Aeris. If Agency reviews such documentation and finds documentation to be insufficient then this criteria has not been met. The Agency reserves the right to reduce funding amounts based on review of such documentation and based on the agency's determination of available funding or other agency funding priorities; or

(3) At the time of application, re-lender provides written documentation, acceptable to the Agency, from a financial institution that an Irrevocable Letter of Credit or similar instrument such as a cash collateral account or a performance guarantee acceptable to the Agency will be issued by the financial institution, if the Re-lender is approved for funding; and the re-lender:

(i) Obtains an Aeris Financial Strength and Performance Rating of 1 or 2 prior to any funds being advanced. Re-lender grants the Agency permission to review all documents submitted to Aeris. If Agency reviews such documentation and finds documentation to be insufficient then this criteria has not been met. The Agency reserves the right to reduce funding amounts based on review of such documentation and based on the agency's determination of available funding or other agency funding priorities; or

(ii) Proves to be a financially sound institution, as determined by the Agency, based on the Agency's risk assessment of the institution's adequate capital, adequate

liquidity, management capabilities, repayment ability, credit worthiness, balance sheet equity and other financial factors as determined appropriate. The Agency reserves the right to reduce funding amounts based on review of financial factors and based on the agency's determination of available funding or other agency funding priorities.

(i) Be a legal, non-governmental entity at the time of application (with the exception of Tribal governmental entities);

(j) Be a member of a national organization that provides training, technical assistance and credit evaluation of member organizations, such as FDIC, NCUA or other similar organizations; or be certified by a Government agency as having a primary mission of promoting community development in low-income target markets and perform training and technical assistance as part of that mission; and

(k) Agrees to loan a majority of Agency funds to applicants whose projects are located in or serve Persistent Poverty County(ies) or High Poverty Area(s).

B. Applicant Eligibility. Applicants applying for loans from the Re-lender must meet the eligibility requirements of 7 CFR 1942.17.

C. Project Eligibility.

(a) Facilities must be located in rural areas in accordance with 7 CFR 1942.17(b)(2), and comply with all project eligibility requirements as outlined in 7 CFR Part 1942.

(b) Essential community facilities associated with Re-lending projects must:

(1) Carry out a function customarily provided by a local unit of government;

(2) Be a public improvement needed for orderly development of a rural community;

(3) Not include private affairs, commercial or business undertaking (except for limited authority for industrial parks);

(4) Be operated on a nonprofit basis; and

(5) Be considered the area of jurisdiction or operation for public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit corporation owning and operating an essential community facility. A community may be a small city or town, county, or multi-county area depending on the type of essential community facility involved. The applicant must have the legal authority and responsibility to carry out the project. The term "facility" refers to the physical structure financed or the resulting service provided to rural residents under the CF program.

(c) For essential community facilities, the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 20,000 inhabitants, according to the latest decennial Census of the United States in accordance with 7 CFR 1942.17(b)(2)(iv).

(d) In accordance with 7 CFR 1942.17(d)(1)(i)(B), essential community facilities are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis, including but not limited to:

(1) Health services (e.g. Hospitals, medical and dental clinics, skilled nursing facilities, assisted living facilities, telemedicine equipment);

(2) Public services (e.g. Town halls, courthouses, airport hangers, fire hall, police station, prison, police vehicles, fire trucks, public works vehicles, equipment);

(3) Community, social or cultural services (e.g. Childcare centers, community centers, transitional housing, libraries, schools (including public, private and charter),

distance learning equipment, community gardens, food pantries, community kitchens, food banks, food hubs or greenhouses); and

(4) Transportation facilities, such as streets, roads and bridges.

(5) Loan Funds may NOT be used for prohibited purposes listed at 7 CFR 1942.17(d)(2).

## **V. Application Submission, Evaluation, and Selection Process**

A. Application Submission. The forms listed below can be found at:

<http://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home>. To apply for funds under this Notice, a Re-lender must submit the following items, as applicable:

(a) Its DUNS number. An organization may obtain a DUNS number from Dun and Bradstreet by calling (1-866-705-5711).

(b) The Re-lender must provide documentation that they are registered in System for Award Management (SAM.gov).

(c) SF-424, “Application for Federal Assistance (For Non-Construction).”

(d) SF424-A, “Budget Information – Non-Construction Programs.”

(e) SF-424-B “Assurances – Non Construction.”

(f) Form RD 442-7 “Operating Budget” or similar form.

(g) AD-1047 “Certificate Regarding Debarment.”

(h) RD Form 400-4 “Assurance Agreement.”

(i) RD Instruction 1970-A, Exhibit A, “Multi-tier Action Environmental Compliance Agreement.”

(j) Certification regarding relationship with any Agency employee.

(k) AD-3030 “Representations regarding Felony convictions and tax delinquency status” (Corporations only).

(l) AD-3031 “Assurances regarding Felony convictions and tax delinquency status” (Corporations Only).

(m) Discussion and documentation of each evaluation factor listed in Part V(B).

(n) Certification of Non Lobbying Activities.

(o) SF-LLL “Disclosure of Lobbying Activities.”

(p) Re-lenders applying under paragraph (IV)(A)(e)(3)(b)(Agency risk assessment) must also submit all of the following:

(1) 3 years audited financial statements;

(2) Interim financial statements as of most recent quarter end;

(3) Auditor’s most recent management letter and management’s response ;

(4) Operating Budget versus Actual for last completed fiscal year and most recent quarter-end;

(5) Schedule of outstanding debt (name of creditor, balance, origination and maturity dates, note rate, collateralization), and attach covenants;

(6) Schedule of five largest sources of grant funding over each of the last 3 fiscal years (including grantor name, amount granted, description of allowable uses or any restrictions);

(7) Schedule of five largest investors over each of the last 3 fiscal years (including investor name, total investment, form of investment, description of allowable uses or any restrictions);

- (8) Schedule of any other funding sources, including off-balance sheet financing, for the last completed fiscal year and most recent quarter-end;
- (9) List and description of any contingent liabilities;
- (10) Schedule of loans receivable (including borrower, loan type, description of collateral, original and maturity dates, note rate, current status e.g. delinquency or nonaccrual);
- (11) Schedule of loans restructured and modified in each of the last 3 fiscal years and most recent year to date (YTD) (including borrower, pre and post-mod loan terms, and current payment status);
- (12) Schedule of loans charged off in each of the last 3 fiscal years and most recent YTD, with any recoveries realized;
- (13) Any external loan reviews performed over the last 3 years;
- (14) Bylaws;
- (15) Credit policies and procedures (loan underwriting, servicing, portfolio management);
- (16) Loan risk grading and assessment system;
- (17) Enterprise risk management policies and procedures;
- (18) Disaster recovery plan, if any;
- (19) Accounting policies (including loss reserve policies);
- (20) Staff organizational chart, including names and titles for senior staff;
- (21) Organizational chart showing relationships to any parents, subsidiaries, or affiliates;
- (22) Management Team resumes;

- (23) Succession plans for key leadership and staff;
- (24) Board roster, with affiliations;
- (25) Board meeting minutes for past year;
- (26) Board meeting packets for last year;
- (27) Most recent strategic plan;
- (28) Most recent annual report; and
- (29) Description of programs, financial and non-financial products and services.

(q) Documentation that the re-lender meets all eligibility requirements listed in this Notice.

(r) Documentation of any evaluation factors listed below that the re-lender wants the Agency to consider.

B. Evaluation. The Agency will score and rank all eligible and complete Re-lender applications based upon the following evaluation factors:

(a) Lending experience and strength of the Re-lender: A Re-lender that has demonstrated experience administering community infrastructure or development loan funds will be awarded points as follows:

- (1) More than 10 years of experience: 10 Points;
- (2) 5 years of experience but less than or equal to 10 years: 5 Points;

(b) Poverty and project service area. Re-lenders who demonstrate that they have a lending history in Persistent Poverty County(ies) or Poverty Areas:

- (1) More than 75% of the Re-Lender's loan portfolio is for projects located in or serve Persistent Poverty County(ies) or High Poverty Area(s): 30 points;

(2) More than 50% of the Re-Lender's loan portfolio is for projects located in or serve Persistent Poverty County(ies) or High Poverty Area(s): 20 points; and

(3) More than 30% of the Re-Lender's loan portfolio is for projects located in or serve Persistent Poverty County (ies) or High Poverty Area(s): 10 points.

(b) Administrator's Discretionary Points:

(c) Up to 10 Administrator points may be awarded to applications that address geographic distribution of funds, emergency conditions caused by economic problems, natural disasters and other initiatives that support the Agency's strategic plan.

C. The Agency will select the highest scoring applications based upon the evaluation factors listed above.

D. If an application that is filed by the application deadline is determined by the Agency to be substantially complete, the Agency will notify the submitter of the elements that are needed to make the application complete and will provide the submitter five calendar days to provide information that fully addresses such elements. If the application is not complete at the end of this five day period, the application will be rejected.

## **VI. Award Administration Information**

### **A. Award Notices**

The Agency will notify Re-Lenders about the status of their applications in the same method as listed in 7 CFR part 1942, subpart A.

Prior to receiving a direct loan from the Agency, eligible Re-Lenders who are chosen to receive funding for the purpose of re-lending must:

- (a) Enter into a Re-Lenders Agreement provided by the Agency;
- (b) Execute a promissory note;
- (c) Provide adequate security satisfactory to the Agency;
- (d) Agree to provide the Agency with an irrevocable letter of credit (or similar instrument such as a cash collateral account or a Performance Guarantee) acceptable to the Agency in the minimum amount equal to the principal and interest installments due during the first 5 years of the loan prior to receiving any loan disbursements; and
- (e) Meet any other loan conditions imposed by the Agency.

**B. Reporting Requirements**

(a) The Re-lender must submit the following information to the Agency, after any loan disbursement is made,

- (1) On a quarterly basis:
  - (i) Financial statements;
  - (ii) List of CF Borrowers, outstanding principal and interest balances for each Borrower;
  - (iii) Status of CF loan for each Borrower;
  - (iv) Amount and due date of the next installment due from the Borrower; and
  - (v) Servicing Actions conducted for each delinquent CF loan.
- (2) On an annual basis:
  - (i) Annual audited financial statement;
  - (ii) Copy of most recent Financial Strength and Performance Rating which is not more than 3 years old;
  - (iii) Documentation of Fidelity Bond coverage; and

(iv) Civil Rights data for each Applicant.

C. Planning, bidding, contracting, and construction. Re-lenders must certify to the Agency that the Borrower has met the requirements of 7 CFR 3575.42 and 3575.43 for all planning, bidding, contracting and construction.

(a) The Re-lender will provide the Agency with a written certification at the end of construction that all funds were utilized for authorized purposes. The Re-lender will ensure that designs and construction meet all applicable Federal, State, and local laws.

(1) Architectural and engineering practices. All project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, State, and local codes and requirements. The Re-lender must ensure that the planned project will be completed within the available funds and, once completed, will be suitable for the borrower's needs.

(2) Construction monitoring. The Re-lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction proceeds in accordance with the approved plans, specifications, and contract documents and that funds are used for eligible project costs. .

(3) Equal employment opportunities. For all construction contracts in excess of \$10,000, the contractor must comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended and as supplemented by applicable Department of Labor regulations (41 CFR part 60-1). The Borrower and Re-lender are responsible for ensuring that the contractor complies with these requirements. (RD Forms 400-1 and 400-6 may be used to meet this requirement.)

(4) Americans with Disabilities Act. Projects which involve the construction of, or addition to, facilities that accommodate the public and commercial facilities as defined by the Americans with Disabilities Act (42 U.S.C. 12181 et seq.) must comply with that Act. The Re-lender and borrower are responsible for compliance.

(b) Other Federal, State, and local requirements. Borrowers and Re-lenders will be required to comply with any Federal, State, or local laws or regulatory commission rules which affect the project including, but not limited to, those regarding:

(1) Organization and authority to design, construct, develop, operate, and maintain the proposed facilities;

(2) Borrowing money, giving security, and raising revenues for the repayment;

(3) Land use zoning;

(4) Health, safety, and sanitation standards, including seismic safety requirements of Executive Order 12699; and

(5) Protection of the environment and consumer affairs.

D. National Environmental Policy Act (NEPA) environmental review requirements.

NEPA requirements are outlined in 7 CFR 1942.2(b) and part 1970. The re-lender will need to comply with and agree in writing to requirements under the Re-lender Environmental Compliance Agreement. RD Instruction 1970 can be found at:

<http://www.rd.usda.gov/publications/regulations-guidelines/instructions>.

E. Civil Rights. The Re-lender and Borrowers must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age

Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E. The re-lender is also subject to the Equal Credit Opportunity Act.

(a) The re-lender agrees:

(1) To have each prospective Applicant sign Form RD 400-4, Assurance Agreement, which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR Part 15 and other Agency regulations.

(2) That no person will be discriminated against based on race, color or national origin, in regard to any program or activity for which the re-lender receives Federal financial assistance.

(3) That nondiscrimination statements are in advertisements and brochures.

(4) To collect and maintain data on applicants by race, sex, and national origin of the Applicants and Borrowers, and ensure that the borrowers also collect and maintain the same data on the entities benefiting from those projects.

(5) The projects supported with Agency funds will not cause any adverse human health or environmental effects on minority and low-income populations.

(6) The Agency will use the above information to complete Civil rights compliance reviews 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.

(7) For other Federal, State and Local Requirements, see 7 CFR 1942.17(k).

(8) Any loan funds not disbursed within 5 years of the loan to the Re-Lender will be deobligated and become unavailable for disbursement.

## **VII. Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, 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, familial/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). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992, submit your completed form or letter to USDA by:

Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

Fax: (202) 690-7442; or

e-mail: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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Lisa Mensah

Under Secretary

Rural Development

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Date