

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Part 1942

RIN 0575-AD05

### Community Facility Loans

**AGENCY:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Rural Housing Service (RHS) is amending regulations on Community Facility Direct Loans to enable the Agency to make loans to eligible lenders who would then in turn re-loan those funds to applicants for projects that are eligible under the Community Facilities Direct Loan program.

**DATES:** *Effective date:* This interim rule is effective July 6, 2016.

*Comments due date:* Written comments on this rule must be received on or before September 6, 2016. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through September 6, 2016.

**ADDRESSES:** You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions on *Regulations.gov* for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department

of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., address listed above.

#### FOR FURTHER INFORMATION CONTACT:

Kristen Grifka, Rural Housing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250-3225; telephone: (202) 720-1504. Email contact: [Kristen.Grifka@wdc.usda.gov](mailto:Kristen.Grifka@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### A. Overview

This rulemaking adds provisions to the Community Facility (CF) Direct Loan program that allow the Agency to make direct loans to eligible lending institutions (referred to as “re-lenders”) who then will re-loan the funds to eligible applicants for eligible community facility projects. The rulemaking identifies the types of lending institutions that are eligible to become re-lenders as described in an annual Notice that the Agency will publish in the **Federal Register** to exercise this authority. The annual Notice will set out application procedures in more detail to supplement the regulation requirements. All applicants and projects must meet the eligibility requirements found at 7 CFR part 1942, subpart A or any successor regulation.

Re-lenders are responsible for all loan origination and servicing. Re-lenders must obtain Agency approval of applicant and project eligibility. The Agency will obligate aggregated funds to each approved eligible re-lender, but will disburse funds to such re-lenders for eligible projects on a project-by-project basis after making limited eligibility reviews. The re-lender is responsible for providing the Agency with status and servicing reports on each re-loan according to its Re-lender Agreement with the Agency. The

Agency will use the information to monitor portfolio performance on the re-loans and to assess the risk to the Agency on the re-lender’s portfolio of re-loans.

Because this rule concerns a loan program, it is not subject to the requirements of notice and comment rulemaking pursuant to 5 U.S.C 552(a)(2); however, the Agency is very interested in receiving comments regarding the re-lender activities authorized under this rule and their impacts on the ability of the Agency to make CF direct loan funds available, especially in areas of economic development need. Therefore, this rule is being promulgated as an interim rule to provide interested parties and the public with the opportunity to provide comments to the rule before it becomes final.

The rule will be effective immediately. The 30 day effective date policy is exempt for “good cause.” USDA has determined, consistent with the APA that making these funds available through re-lenders is necessary to provide CF funding to the hardest to reach and most needy areas this fiscal year. The Agency intends to test the new program this year with available funds and implement a final rule based on its findings.

The Agency is soliciting comments on this interim rule and will consider them in the final rule. The Agency is particularly interested in whether the public believes the re-lender structure is the best way to reach more persistent and high poverty areas or whether there are alternate proposals.

###### B. Costs and Benefits

The action is not expected to result in significant costs to the public. Generally speaking, the re-lenders will have a proven track record of successful lending for community infrastructure development in high poverty communities. Additionally, the Agency will continue to perform its due diligence in reviewing and determining applicant and project eligibility for each loan made by the re-lender. Therefore, loans will be made only to strong, viable, mission driven lending institutions for CF eligible projects. These risk mitigation strategies should provide protection to the mission and portfolio of the CF Direct Loan program.

The costs associated with these new provisions will be incurred mainly by

the lending institutions who participate in the re-lending of CF direct loans. Re-lenders will incur costs associated with the application process as well as originating, processing, and servicing loans to applicants. Re-lenders will also incur costs associated with reporting to USDA. Applicants will work directly with re-lenders for processing and servicing loans. Applicants may incur additional upfront costs working with a re-lender versus obtaining a loan directly from the Agency. However, the applicant will likely obtain other benefits working with a re-lender that may offset these costs in the long-term. The end result will be a more financially viable project providing an essential community facility or service to the community for years to come.

With the re-lending provision it is expected that re-lenders will leverage these Federal funds with other private and philanthropic funding so that applicants do not incur additional costs. By obtaining private sector support in the form of grants or guarantees, a community re-lender could reduce the cost of structuring the transaction, providing technical assistance to the borrowers, and servicing the loan.

In addition, there may be instances where the applicant incurs higher financing costs. In instances where the borrower receives higher financing costs than he/she would have received through a direct loan, the Agency believes that those costs may be outweighed by other benefits such as the ability to receive funding more quickly and the projects may be able to receive additional technical assistance. There may also be instances where a re-lender could use private grants to offer a lower interest rate to the applicant. For example, if the community lender obtained a grant of \$1 million paired with a loan from the CF program of \$10 million, the grant could cover not only the re-lenders cost of doing business but subsidize the interest rate to the ultimate recipient even below the CF program market rate. The Agency is not able to estimate how often this would occur though, if at all.

Most importantly, this provision provides re-lenders with capital that they currently lack thereby enhancing their lending capacity so that they can make loans to applicants that otherwise may go unserved, especially in places with high or persistent poverty.

Ultimately, the benefit of the new provision is expected to be an increase in the number of projects that receive funds under the CF Direct Loan program, especially in communities that have historically been economically underserved. There are three factors that

work together to achieve this goal: (1) Working with mission driven re-lenders, who already work in the targeted high poverty communities, to deploy CF loan funds in those places, (2) providing those re-lenders with additional capital so they can increase their capacity to make investments in community infrastructure projects, and (3) re-lenders can leverage the CF funds they receive with other private and philanthropic sources of funds in order to provide the right mix of affordable credit with the necessary technical assistance.

First, the re-lenders have proven track records of mission driven lending in high poverty places. The aim of these institutions is to pull together capital to meet a range of community needs as such they typically combine financial return with a social return. Further, the history of working in the community and longstanding relationships means they have the ability to tap different resources and expertise, have boots on the ground and are already visible and working in these areas we want to reach. The existing relationships between re-lenders and community leaders would facilitate and expedite project development that is supported by the community-at-large, resulting in the applicant benefitting from the improved service/facility sooner than under traditional CF lending. Also because of the longstanding work in the community the re-lenders traditionally have technical resources/complimentary programs available to assist applicants. Examples: assist a local nonprofit write a business plan for a daycare facility; assist a local nonprofit with a capital campaign; assist a local community with a strategic plan. Each of these ancillary services will likely result in a project that the re-lender can assist with. By relying on this network of re-lenders, the Agency will not only increase the number of projects funded through the CF Direct Loan program overall it will also increase the number of projects funded in high poverty and persistently poor communities.

Second, re-lenders often lack capital to support all of the much needed community infrastructure projects in the communities they serve. This change will enable a system of lenders who will originate, structure, underwrite, and finance sustainable rural community infrastructure projects. By providing these lenders with additional capital they will be able to grow, achieve organizational capacity, and fund more projects that will improve access to health care, education and other critical services, which will help ensure that

rural communities are strong, viable and economically well off.

Lastly, this provision will encourage greater leveraging of private and philanthropic investments in rural community infrastructure. The re-lenders have established relationships with other private and philanthropic funders. Thus the addition of CF funds could unlock additional capital to support community infrastructure development such as grant funding, as previously mentioned, to CF re-lenders. These grant dollars will give community lenders more flexibility and strength as they borrow from the USDA. This will help the re-lenders:

- Develop critically needed community facilities in America's most persistently poor rural communities that would not otherwise be feasible.
- Strengthen community lenders with deep and lasting ties to the local market so they can be enduring resources in economically distressed areas.
- Take advantage of community re-lenders' development expertise and knowledge of the local markets to identify the best community facilities investments.
- Establish partnerships that enable government, private foundations and mission investors to efficiently leverage and effectively target funding to the neediest rural areas.

If the Agency does not make this change the CF Direct Loan program will continue operating as it currently does. In FY15, CF invested 70% of its direct loan funds in facilities that serve high poverty areas. However, there are still some rural places with high poverty areas and persistent poverty counties that remain underserved. These communities need technical and financial support in order to develop an infrastructure project and secure adequate and affordable financing and ensure facilities are built and essential services are provided to some of the most vulnerable rural populations. This change seeks to partner with re-lenders who are positioned to provide the technical assistance to help these communities develop and fund community infrastructure projects.

To better understand the nature of persistent poverty and to help the USDA determine the way to reach those areas, Rural Development (RD) worked with a partner through a cooperative agreement, to learn more about persistent poverty and increasing the impact of RD dollars in these areas. Efforts included holding focus groups with key stakeholders in persistent poverty counties and high poverty areas, and analyzing data. In total, five (5) focus groups were convened with

numerous national and regional players in the community development organizations (CDOs) field. The purpose was to understand the needs that exist in areas of persistent poverty, what programs are successfully addressing these challenges, and how these stakeholders think RD could increase its impact and build on effective approaches. Four of the focus groups were held in the regions of concentrated persistent poverty including Appalachia, the Colonias, the Mississippi Delta, and in Indian Country, and one was held with RD officials.

In addition to the focus groups, a listening session with key national players or CDOs was held in Washington, DC on November 30, 2015 as well as various individual conversations were also held with other high-performing CDOs and regional Federal Reserve Banks to gain their perspectives as well. Several common themes emerged from the regional focus groups. These themes included challenges persistent poverty regions encounter and common solutions that have demonstrated success in these regions, which include:

*Common Challenges:*

- *Limited access to mainstream financial products and services*—Residents of all regions are often turned down for checking and savings accounts, or are found ineligible for loans or are extended loan instruments with unfavorable terms.
- *Banking Deserts*—They often have few if any traditional banking entities in or near their communities.
- *Insufficient Private Investment and Lack of Reinvestment*—The financial institutions that do exist in these communities are often hesitant to extend services to low-income clients, and there is a perception that much of the local money that is held at these banks is reinvested elsewhere.
- *Mission-Driven Banking and the Need for Scale*—Credit unions and other non-traditional financing entities fill the gap created by inadequate private investment, but these entities need more equity and human capital to have more expansive impact.
- *Scattered Geographies and Expensive Services*—These regions are largely rural, and residences and services can be a great distance from one another. The further communities are from utilities and other technologies, the more costly they are, if they are available at all.
- *Social Distress*—Substance abuse and fragmented families are not uncommon in these communities.

People also need help envisioning a positive future.

- *Outmigration*—Many of the most highly educated residents have a tendency to move away for better job opportunities.
- *Poor Quality Education*—It was universally agreed that the school systems in these communities are not preparing students for a productive future.
- *Infrastructure*—These regions have sub-standard roads and require much-needed infrastructure improvements ranging from water systems to broadband to make them more competitive.

*Common Solutions:*

- *Value of Nonprofits*—Areas of persistent poverty rely heavily on nonprofits and other mission-driven institutions to meet their social and economic needs (capital access, loan packaging services, etc.), but these organizations need more financial and human capacity.
- *Technical Assistance*—High performing mentorships, training opportunities, internships and other forms of information-sharing can boost human capacity.
- *Multi-Sectoral Partnerships*—Everyone agreed that strategically partnering with a variety of different organizations with similar overall missions is always valuable. It builds capacity, and leverages different skill sets and resources for greater impact.
- *Streamlining*—When it comes to implementing a program, applying for funding, or assisting residents, finding ways to simplify the process as much as possible increases efficiency and effectiveness.
- *Strategic Planning*—Programs are more likely to get funded and be successful in the long-term if the groundwork is carefully laid before building partnerships and seeking funding.

- *Employing Locals*—All regions were supportive of finding ways to incentivize businesses to hire locally for community and infrastructure projects or business relocations and expansions.

In persistent poverty communities such as Appalachia, the Colonias, the Mississippi Delta, and in Indian Country, there is a rich and successful history of community development. Poverty produces a multitude of social and economic stressors that compromise the growth and health of affected communities and their residents, particularly those saddled with high levels of disinvestment over prolonged periods of time.

The USDA's Economic Research Service (ERS) has classified 353

counties in the U.S. as 'persistently poor.' These chronically impoverished communities have sustained poverty rates above 20 percent for more than 30 years, and account for approximately 11 percent of all counties nationwide. While dispersed across the U.S., these communities are largely rural and concentrated in Central Appalachia, the Deep South (largely in the Mississippi Delta), the Texas-Mexico border (Colonias), and American-Indian reservations. The social and economic challenges that have handicapped progress in these communities have a number of dimensions.

High-impact CDOs, distinct from banks, investment funds, and other economic development organizations, have a demonstrated track record of implementing the kinds of creative and time-intensive activities that are necessary to create jobs, provide affordable housing, build necessary infrastructure, and strengthen the financial security of millions of lower-income Americans. The focus groups revealed that the problems faced by these communities are complex and multi-layered. Essential community facilities provide high poverty areas with critical services through hospitals, schools, community centers, and fire and police stations. It is not uncommon for distressed areas to be some distance away from the nearest high quality grocery store or health care facility, or for school buildings to be in need of updating. Building hospitals, rehabilitating educational institutions, or providing space for other core social and human services can enhance the quality and quantity of services needed to address the social and economic strains faced by these counties.

This rulemaking adds provisions to the CF Direct Loan program that allows the Agency to make direct loans to lenders who then re-loan the funds to eligible applicants for eligible projects. The action will not change the underlying provisions of the included programs (e.g., eligibility, applications, award decisions, scoring, and servicing provisions). The primary benefit associated with the new provisions is expected to be an increase in the number of projects that receive funds under the CF Direct Loan program, especially in persistent poverty counties and high poverty areas in rural America. The costs are minimal. Ultimately, this approach provides an innovative public private partnership that will enable the Federal government to more effectively serve its rural constituents and stakeholders and bolster rural community viability.

## II. Discussion of Interim Rule

The following paragraphs discuss each change being made to the CF Direct Loan program regulations.

### A. General (§ 1942.1)

The Agency is modifying this section by including language in paragraph (a) of the section indicating that 7 CFR part 1942, subpart A, contains policies and procedures that allow the Agency to make CF direct loans to approved eligible re-lenders who then in turn re-lend those funds to eligible applicants for eligible projects. The Agency is also re-paragraphing § 1942.1(a) for clarity.

### B. Re-Lending (§ 1942.30)

This new section contains the basic policies and procedures associated with the Agency making loans to re-lenders (*i.e.*, those eligible lenders to whom the Agency will make direct loans for purposes of re-lending those funds to eligible applicants for eligible projects). Under these provisions, re-lenders will be responsible for all loan origination and servicing of re-lender loans, and for repaying its loan to the Agency even if the ultimate borrower(s) does not repay the re-lender. The Agency will obligate aggregated funds to approved eligible re-lenders for the purpose of making CF loans, but will disburse loan funds to these re-lenders only on a project-by-project basis. This structure will ensure that only eligible applicants and projects will receive Federal dollars and allow re-lenders to lock in low interest rates and reduce their interest costs with Agency loan disbursements over 5 years.

1. *Re-lender eligibility (paragraph a).* This paragraph identifies the conditions under which a lender would be eligible to be a re-lender for CF direct loans. Re-lenders eligible for these loans must possess 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); meet federal, state and local requirements in accordance with 7 CFR 1942.17(k); have a history of making loans to community infrastructure projects located in or serving persistent poverty counties or high poverty areas; provide adequate collateral; provide a Letter of Intent; provide an irrevocable letter of credit (or performance guarantee) acceptable to the Agency, prior to receiving loan disbursements; demonstrate that they are regulated and supervised by a Federal or State Banking regulatory agency that is subject to credit examination or demonstrate they meet outlined standards for required financial

strength, be a legal non-governmental entity at the time of application (with the exception of Tribal government entities); be a member of a national organization that provides training, technical assistance and credit evaluation of member organizations, agree to loan a majority of funds to applicants whose projects are located in or serve Persistent Poverty County(ies) and High Poverty Area(s); and meet any other criteria specified by the Agency in a Notice published in the **Federal Register**.

2. *Applicant and project eligibility (paragraph b).* The purpose of this paragraph is to identify the types of applicants and the types of projects eligible to receive a CF direct loan through an eligible re-lender. In brief, both the applicant and the project must meet the eligibility requirements currently associated with receiving a CF direct loan directly from the Agency.

3. *Application submission requirements (paragraph c)* This paragraph outlines that in order to apply for funds under this section, a Re-lender must timely submit all items as specified in the annual **Federal Register** notice.

#### 4. *Evaluation criteria (paragraph d).*

This paragraph outlines that an Agency will score and rank all eligible and complete Re-lender applications based upon the evaluation factors set out in the annual **Federal Register** which will include, but not be limited to: Lending experience and strength of the re-lender, poverty and project service area, and Administrator's discretionary points.

5. *Other Re-lender requirements (paragraph e).* This paragraph specifies that, prior to receiving a direct loan from the Agency, the re-lender must enter into a Re-lender's agreement in accordance with the applicable **Federal Register** notice, execute a promissory note, provide an irrevocable letter of credit (or performance guarantee) acceptable to the Agency, provide adequate security, and meet any other loan conditions outlined in the annual **Federal Register** notice.

4. *Loan origination and servicing (paragraph f).* This paragraph identifies the basic responsibilities of both the re-lender and the Agency for re-lending loans.

a. *Re-lenders.* The re-lender is responsible for all underwriting (loan origination) and loan servicing of each loan it makes under the re-lending provisions. For each loan a re-lender makes under the re-lending provisions, the Agency expects that each re-lender generally will use its own policies and

procedures for loan origination and servicing for all loans it makes.

With regard to loan origination, however, the re-lender is responsible for presenting to the Agency each eligible CF direct loan application and any other documentation to demonstrate that both the applicant and the project meet the eligibility requirements of the CF direct loan regulation. If necessary, the Agency may request the re-lender to submit additional information about the applicant or the project. The Agency may identify in the applicable annual Notice published in the **Federal Register**, any additional specific information and documentation to be provided by the re-lender.

After the loan to the re-lender is made, the re-lender must submit reports to the Agency after any loan disbursement as specified in the annual **Federal Register** notice, certify that the applicant has met all planning, bidding, contracting and construction requirements as specified in the annual **Federal Register** notice, comply with agency requirements concerning NEPA, Civil Rights laws and other applicable Federal, state, and local law, and obtain disbursement of loan funds within 5 years.

b. *Agency.* The basic responsibilities of the Agency are spelled out and cover four basic areas:

i. *Re-lender Eligibility.* The Agency will evaluate the eligibility of the re-lender based on documentation submitted to meet the criteria outlined in the annual **Federal Register** Notice.

ii. *Applicant Eligibility.* Re-lenders will submit to the Agency for Agency review and approval only those applications that the re-lender has determined meet the applicant and project eligibility requirements of 7 CFR part 1942, subpart A and any additional requirements that may be outlined in an annual Notice published in the **Federal Register**. For each CF direct loan application presented by the re-lenders, the Agency will evaluate all information provided by the re-lender to confirm the eligibility of both the applicant and the project. Once the Agency concludes its evaluation, the Agency will notify the re-lender of its determination.

Applicants and re-lenders have administrative appeal or review rights for Agency decisions made under this subpart. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The applicant and re-lender may appeal any Agency decision that directly and adversely impacts them. For an adverse

decision that impacts the applicant, the re-lender and applicant must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the re-lender may be appealed by the re-lender only. A decision by a re-lender adverse to the interest of the borrower or applicant is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

ii. *Funding.* For each re-lender the Agency determines to be eligible, the Agency will obligate aggregated funds based on the re-lender's application for funds and in compliance with additional criteria, if any, published in the annual **Federal Register** Notice. For each applicant/project that the Agency determines eligible, the Agency will disburse from the re-lender's aggregated loan funds the appropriate amount of funds to that re-lender for the approved project. The Agency will require adequate security and compliance with all applicable National Environmental Policy Act provisions prior to making any re-lender loan and disbursing any loan funds.

The Agency will specify any terms and conditions associated with each loan from the Agency to a re-lender in the Re-lender's Agreement.

iii. *Monitoring.* The Agency expects each re-lender to service each loan it makes under these provisions as it would any other loan it makes. Nevertheless, the Agency will require the re-lender to submit reports, as will be specified in the Re-lender's agreement that enable the Agency to evaluate the status of the loans made under these re-lending provisions. The Agency may suspend further disbursements and pursue any other available and appropriate remedies, if any of the ultimate loans become troubled, delinquent or otherwise in default status.

### III. Regulatory Information

#### *Executive Order 12866—Classification*

This interim rule has been reviewed under Executive Order (EO) 12866 and has been determined significant by the Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and, therefore, OMB has reviewed this interim rule.

#### *Catalog of Federal Domestic Assistance*

The affected programs are listed in the Catalog of Federal Domestic Assistance

Program under 10.766, Community Facilities Loans and Grants.

#### *Executive Order 12372—Intergovernmental Review*

This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The re-lender conducts intergovernmental consultations on behalf of the Agency for individual loans to borrowers in the manner delineated in 2 CFR part 415, subpart C and at RD Instruction 1970 Subpart I—Intergovernmental Review. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: <http://www.whitehouse.gov/omb/grants/spoc.html>.

#### *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 (EO) 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.

The Agency 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 EO 13175. If a Tribe requests consultation, the Agency will work with the USDA's Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

#### *Executive Order 12988—Civil Justice Reform*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing

suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

#### *Environmental Impact Statement*

The document has been reviewed in accordance with 7 CFR part 1970, "Environmental Policies and Procedures." The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required. Individual loans will be subject to 7 CFR part 1970 for NEPA compliance.

#### *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 sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. None of the borrowers under the Community Facility Loan program are small businesses. Thus, this rule will not have a significant impact on a substantial number of small businesses.

#### *Executive Order 13132—Federalism*

The policies contained in this rule do not have any substantial direct effect on 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 states is not required.

#### *E-Government Act Compliance*

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and

other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995, the Agency is now seeking the Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements contained in this rule. With the permission of OMB, the Agency will be temporarily using these forms and recordkeeping requirements while seeking comments on the information collection.

*Title:* Community Facility Loans.

*OMB Number:* 0575—new.

*Type of Request:* New collection.

*Abstract:* This is a new information collection. This information is vital to the Agency to make wise decisions regarding the eligibility of certain qualified lenders to be “re-lenders” under the Community Facility Loan program to ensure that funds obtained from the Government are used appropriately. This collection of information is necessary in order to implement the re-lender provisions of the modified Community Facility Loan program.

The following estimates are based on the average over the first three years the re-lender provisions are in place.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 67 hours per response. This submission is for 20 respondents with 790 responses and 1,462 burden hours. Rural Development estimates 20 re-lender applications, 10 re-lenders approved for funding and 50 applicant loans among the 10 re-lenders on an annual basis. The estimated number of total man-hours on an annual basis is 1,462 for a total cost of \$121,346 ( $\$83 \times 1,462$ ). The cost of the regulations as a burden to the public was computed on the basis of \$83.00 per hour. This is the wage class most comparable to what eligible nonprofit employee compensation would be to process the information requested. This is the same wage class used in the Intermediary Relending Program which has a similar type of re-lender (0570–0021 dated February 2016).

*Respondents:* Lending institutions.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses:* 790.

*Estimated Total Annual Burden on Respondents:* 1,462.

Rural Development is amending its CF Direct Loan regulation to enable the Agency to make loans to qualified re-

lenders. Information collected from the re-lender is necessary to determine re-lender eligibility which includes legal authority, compliance with federal, state, and local requirements, experience, and financial strength.

Upon OMB approval, this collection package and burden will be merged into the existing Community Facility Loans burden package—OMB No. 0575–0015.

The information will be collected by the RD national office and field offices from re-lenders. This information is used to determine re-lender eligibility to participate in the Community Facilities program, to document that re-lenders have adequate security to protect the financial interest of the Government and to provide on-going reporting data to ascertain re-lenders operate on a sound basis including adhering to civil rights requirements.

To participate in the CF re-lender provision, re-lenders must make application to RD, provide financial information, certifications and other documentation to support their eligibility and priority to receive funding. Documents or documentation in this category include the following:

*Reporting Requirements—Non Forms:*

- *Documentation of Legal Powers:*

Only re-lenders with legal authority to make and service loans involving community infrastructure and development will be eligible. Documentation may come in the form of a legal opinion or a copy of the re-lenders organizational documents.

- *Certification of compliance with federal, state and local requirements:* Re-lenders responsible for administering a loan fund need to understand and be in compliance with laws impacting their operations and the operations of the clients they serve. Examples include local building requirements, state laws regarding certificates of need for health care facilities, Equal Credit Opportunity Act, and environmental compliance.

- *Documentation of Serving Persistent Poverty County(ies) or High Poverty Areas:* Re-lenders are required to provide documentation of their current portfolio or experience providing loans in Persistent Poverty County(ies) or High Poverty Area(s) to determine eligibility and priority. This documentation is also used in the evaluation factors and does not need to be duplicated.

- *Documentation from a Financial Institution that an Irrevocable Letter of Credit (or a performance guarantee) acceptable to the Agency will be issued if re-lender is approved for funding:* Re-lenders will provide this documentation at the time of application for eligibility. The purpose of this documentation (also

referred to as a “Letter of Intent”) is to insure Rural Development that the re-lender is creditworthy for the amount of financial assistance requested.

- *Documentation Regulated and Supervised by a Federal or State Banking Regulatory Agency, Subject to Credit Examination, Not on a Watch List, and No Regulatory Actions Outstanding:* We estimate

approximately 45% of re-lenders will provide this documentation for eligibility. The documentation insures Rural Development that the re-lender has the requisite capital, asset quality, management, earnings, liquidity, and sensitivity to market risk to operate a federally financed loan fund.

- *Documentation of strong Financial Strength and Performance rating:* We estimate approximately 20% of re-lenders will provide this documentation for eligibility. The assessment, conducted by an independent third party, evaluates overall creditworthiness based on an analysis of past financial performance, current financial strength, and apparent risk factors. The documentation insures Rural Development that the re-lender has the requisite capital, asset quality, management, earnings, liquidity, and sensitivity to market risk to operate a federally financed loan fund.

- *Documentation of being a financially sound institution:* We estimate approximately 35% of re-lenders will need to undergo an assessment by Rural Development to assess their capital adequacy, adequate liquidity, management capabilities, repayment ability, credit worthiness, balance sheet equity & other financial factors. To conduct the assessment, Rural Development requires the following documentation:

A. 3 years audited financial statements.

B. Interim financial statements as of most recent quarter end.

C. Auditor’s most recent management letter and management’s response.

D. Operating Budget versus Actual for last completed fiscal year and most recent quarter-end.

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

F. Schedule of 5 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).

G. Schedule of 5 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).

H. Schedule of any other funding sources, including off-balance sheet financing, for the last completed fiscal year and most recent quarter-end.

I. List and description of any contingent liabilities.

J. Schedule of loans receivable (including borrower, loan type, description of collateral, original and maturity dates, note rate, current status e.g. delinquency or nonaccrual).

K. Schedule of loans restructured and modified in each of the last 3 fiscal years and most recent YTD (including borrower, pre and post-mod loan terms, and current payment status).

L. Schedule of loans charged off in each of the last 3 fiscal years and most recent YTD, with any recoveries realized.

M. Any external loan reviews performed over the last 3 years.

N. Bylaws.

O. Credit policies and procedures (loan underwriting, servicing, portfolio management).

P. Loan risk grading and assessment system.

Q. Enterprise risk management policies and procedures.

R. Disaster recovery plan.

S. Accounting policies (including loss reserve policies).

T. Staff organizational chart, including names and titles for senior staff.

U. Organizational chart showing relationships to any parents, subsidiaries, or affiliates.

V. Management Team resumes.

W. Succession plans for key leadership and staff.

X. Board roster, with affiliations.

Y. Board meeting minutes for past year.

Z. Board meeting packets for last year.

AA. Most recent strategic plan.

BB. Most recent annual report.

CC. Description of programs, financial and non-financial products and services.

- *Documentation of Legal, Non-governmental Status (except for Tribal governments)*: Only non-governmental organizations (except for Tribal governments) will be eligible to participate as a re-lender. Documentation may come in the form of a legal opinion or a copy of the re-lenders organizational documents. This documentation is also used to determine legal powers and does not need to be duplicated.

- *Documentation of Membership in a National Organization that provides training, technical assistance and credit evaluation or certified by a Government agency as having a primary mission of promoting development in low-income*

*target markets and performs training and technical assistance as part of that mission*: This documentation is used to determine re-lender eligibility. The purpose of the information is to provide Rural Development with assurances of the re-lender's basic credentials and professional standing in their industry and that their mission is aligned with the goals of the re-lending provision.

- *Certification to loan a majority of funds to applicants whose projects are located in or serve Persistent Poverty County(ies) or High Poverty Area(s)*: This certification for eligibility will provide to Rural Development the re-lender's commitment to providing economic benefit in areas of greatest need in rural America. Rural Development will review the re-lender's loan disbursements to determine that this eligibility criteria is met.

- *RD Instruction 1970-A, Exhibit H, "Multi-tier Action Environmental Compliance Agreement"*: This agreement is signed by the re-lender (primary recipient of the loan funds) before Rural Development moves forward with obligation of the initial aggregated funds. The agreement stipulates the re-lender's environmental compliance requirements for applicant loans.

- *Documentation of Assistance Provided to Rural Development Employees (written)*: Re-lenders must identify and report any known relationship or association with an RD employee such as close personal association, immediate family, close relatives, or business associates. This includes any assistance provided to employees.

- *Documentation of each evaluation factor (written)*: Re-lender applications will be prioritized for funding based on years of loan fund experience, lending history in Persistent Poverty County(ies) or Poverty Areas, and discretionary points for geographic distribution, emergency conditions, and natural disasters.

- *Workers Compensation Insurance, if applicable*: This form of insurance is normal in any organization and Rural Development requires it to be available at the time of application. However, insurance requirements will not normally exceed those proposed by the re-lender.

- *Irrevocable Letter of Credit*: This document (or a performance guarantee) acceptable to the Agency serves as security for the loan between the re-lender and Rural Development and will be required by all re-lenders prior to loan disbursement. This document is issued by a financial institution.

- *Loan Origination and Servicing—applicant eligibility*: Applicants will apply directly to re-lenders for financial assistance. Re-lenders will be responsible for insuring applicants and the applicant's projects are eligible under 7 CFR 1942 Subpart A, Community Facilities Loan program and underwriting the loans for financial feasibility. Applicants applying to re-lenders will meet the same application requirements as applicant's applying to Rural Development including all environmental review requirements of 7 CFR 1970. No additional burden by Rural Development will be placed on the applicant. Re-lenders will pass through to Rural Development certain applicant documents to obtain Rural Development concurrence in applicant eligibility, project eligibility and eligible rural area.

- *Loan Origination and Servicing—reporting*: Rural Development will monitor the re-lender's portfolio on a quarterly and annual basis to insure the re-lender remains a financially sound institution in compliance with its Re-lender's Agreement.

Reporting Requirements—Forms:

- *RD 1942-46, "Letter of Intent to Meet Conditions"* (OMB Control No. 0575-0015): The re-lender completes this form to indicate the intent to meet the conditions of the loan closing(s). This information is necessary for Rural Development to continue further processing of the loan application.

- *RD 1942-55 "Re-lender's Agreement"*: This agreement is necessary to insure the re-lender is informed about its responsibilities and agrees to comply. The agreement covers among other things the following information: loan terms; disbursement procedures; responsibilities related to compliance with 7 CFR 1942, Subpart A with respect to eligible applicants and projects, Civil Rights, environmental, security, planning, bidding, contracting, construction and servicing; collateral, insurance and reporting requirements; and default provisions.

- *RD 1942-56, "Promissory Note"*: This document is executed by the re-lender as evidence of its indebtedness to Rural Development.

- *RD 1942-57, "Loan Resolution Security Agreement"*: This document is executed by the re-lender to attest to its legal authority as an organization to enter into the specific loan transaction, and provides for the pledging of certain assets to secure Rural Development's loan to the re-lender.

- *RD 440-11, "Estimate of Funds needed for 30-day Period Commencing"* (OMB Control No. 0575-0015): This form is a request used by the re-lender



to indicate the amount of funds required for a 30-day period. It is concurred in by Rural Development as to the reasonableness of the amount.

- *RD 440-24, Position Fidelity Schedule Bond Declarations of other evidence of coverage (OMB Control No. 0575-0015)*: This form may be used by organizations (where permitted by state law) to provide fidelity bond coverage for certain officials entrusted with funds. It is required at application and thereafter annually as a reporting requirement.

- *RD 442-7, "Operating Budget" (OMB Control No. 0575-0015)*: The form is used by the re-lender to project income and expense items and a complete cash flow through the first full year of the loan proceeds. These projections are necessary in determining the source and reliability of the projected income and the adequacy of resources to repay the loan in a timely manner.

- *RD 400-1, "Equal Opportunity Agreement" (OMB Control No. 0575-0018)*: The form is completed by the re-lender when construction work is subject to the provisions of the Civil Rights compliance requirements that contractors cannot discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

- *RD 400-4, "Assurance Agreement" (OMB Control No. 0575-0018)*: The form is completed by the re-lender and used to confirm that recipients of Rural Development loans have been reminded of their obligation to comply with all provisions of the Civil Rights Act of 1964 and regulations of Rural Development.

- *AD-1047, "Certification Regarding Debarment, Suspension & Other Responsibility Matters—Primary Covered Transactions (OMB Control No. 0505-0027)*: USDA regulations published at 2 CFR parts 180 and 417 implement the government-wide debarment and suspension system for USDA's non procurement transactions. Applicants and re-lenders are required to provide certification under these regulations. Form AD-1047 may be used to obtain the required certification.

- *SF 424, "Application for Federal Assistance" (OMB Control No. 4040-0004)*: Re-lenders use this form to apply under the re-lending provision. This is a common form, and as such, the numbers have been accounted for through the Request for Common Forms.

- *SF 424A, "Budget Information—Non-Construction Programs (OMB Control No. 4040-0006)*: Re-lenders use this form to project costs and expenses for the re-lending provision. The form

also provides Rural Development information on matching funds.

- *SF 424B, "Assurances—Non-Construction Programs (OMB Control No. 4040-0007)*: Re-lenders read and sign this form to indicate the organization's intent to comply with the laws, regulations, and policies to which a loan is subject.

- *AD 3030, "Representations Regarding Felony Convictions and Tax Delinquency Status for Corporate Applicants" and AD 3031, "Assurances Regarding Felony Convictions and Tax Delinquency Status for Corporate Applicants" (OMB Control No. 0505-0025)*: Completed by the re-lender once at the time of application. These two forms are required by Public Law 114-113.

- *SF LLL, "Certification of Non-Lobbying Activities or Disclosure of Lobbying Activities" (OMB Control No. 4040-0013)*: Re-lenders who are awarded loans over \$100,000 and/or lobby are required to complete this form.

- *SF 3881, ACH Vendor/Miscellaneous Payment Enrollment Form (OMB Control No. 1510-0056)*: The re-lender and its financial institution will complete this form and provide it to Rural Development. The information contained in the form will be used to establish an electronic transfer of loan funds to the re-lender.

Recordkeeping Requirements:

- *Quarterly Financial Statements*: Re-lenders will be required to submit financial statements quarterly to Rural Development. Rural Development will use the information to monitor the credit worthiness and paying capacity of the re-lender. Financial statements will include a verification by an official of the re-lender's organization.

- *Quarterly report of re-lent loans*: Re-lenders will provide a report that includes the following: Borrower name, outstanding principal and interest balance, status, amount and due date of the next installment due, and servicing actions conducted for any delinquent loan. Rural Development will use the information to monitor the current credit worthiness and paying capacity of the borrowers and to insure that re-lenders are adequately servicing the loan accounts in compliance with the Re-lender's Agreement.

- *Annual Audit*: Annual audits are required from all re-lenders. The audits help Rural Development determine if the operations are sound and the intended services are being provided to the public. Often Rural Development can use the audits to predict developing financial problems and suggest

corrective steps before the problems become serious.

- *Financial Strength and Performance Rating*: Re-lenders will provide Rural Development with their most recent Financial Strength and Performance Rating, not more than 3 years old, as conducted by an independent third party. The assessment includes overall creditworthiness based on an analysis of past financial performance, current financial strength, and apparent risk factors. The documentation insures Rural Development that the re-lender continues to have the requisite capital, asset quality, management, earnings, liquidity, and sensitivity to market risk to operate a federally financed loan fund.

- *Certification Re-lender and Borrower have met requirements of 7 CFR 3575.42 and 7 CFR 3575.43*: Re-lenders are required to inform Borrowers of their responsibility for planning, bidding, contracting and construction and certify at the end of construction that all funds were utilized for authorized purposes.

- *Civil Rights data*: Re-lenders are required to comply with Title VI of the Civil Rights Act of 1964. They will collect and maintain data on Applicants by race, sex, and national origin, and ensure that Applicants also collect and maintain the same data on beneficiaries. Rural Development will use the information to conduct a compliance review once every three years.

- *Documentation of providing funds to Persistent Poverty County(ies) and High Poverty Area(s)*: Re-lenders will provide this documentation to meet the additional terms specified in the annual Notice so Rural Development can monitor the re-lender's agreement to loan a majority of funds to applicants whose projects are located in these areas. Documentation is accessible to the re-lender at public Web sites identified by Rural Development in the annual Notice.

Information needed is specific to each re-lender. The Agency has many requirements that involve certifications from the re-lender as well as other parties involved. The Agency could not comply with legislative mandates without these certifications. All of the public use forms have been automated and put on the internet to comply with the Government Paperwork Elimination Act; however, at this time, the Agency is not collecting any of this information through an electronic application system. Based on the eGov initiative, all efforts will be made to comply with the migration of federal forms into web-



based fillable format consistent with the Agency's timeline.

The Agency has reviewed all loan programs it administers to determine which programs may be similar in intent and purpose. The Agency has other programs that are similar. If there were simultaneous participation in more than one Agency's programs, the Agency would make every effort to accommodate the requests within the same set of applications and processing forms. This effort is presently facilitated by assignment of management of these programs to the same program area of responsibility. If a re-lender is applying for or receiving a loan from another Federal agency, forms and documents furnished by the other agency would be utilized to the extent possible.

Information to be collected is in a format designed to minimize the paperwork burden on small businesses and other small entities. The information collected is the minimum needed by the Agency to approve loans and monitor re-lender performance.

The information collected under this program is considered to be the minimum necessary to conform to the requirements of the program regulations established by law. Information is collected only when needed, and we believe no reduction of collection is possible. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

#### Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (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). 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, audiotape, 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:

- (1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250-9410;
  - (2) *Fax:* (202) 690-7442; or
  - (3) *Email:* [Program.intake@usda.gov](mailto:Program.intake@usda.gov).
- USDA is an equal opportunity provider, employer, and lender.

#### Invitation To Comment

The Agency is interested in receiving comments on all aspects of the interim rule. Thus, the Agency encourages interested persons and organizations to submit written comments, which may include data, suggestions, or opinions. Commenters should include their name, address, and other appropriate contact information. If persons with disabilities (e.g., deaf, hard of hearing, or have speech difficulties) require an alternative means of receiving this notice (e.g., Braille, large print, audiotape) in order to submit comments, please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Comments may be submitted by any of the means identified in the **ADDRESSES** section. If comments are submitted by mail or hand delivery, they should be submitted in an unbound format, no larger than letter-size, suitable for copying and electronic filing. If confirmation of receipt is requested, a stamped, self-addressed, postcard or envelope should be enclosed. RD will consider all comments received during the comment period and will address comments in the preamble to the final regulation.

#### List of Subjects in 7 CFR Part 1942

Business and industry, Community development, Community facilities, Grant programs—Housing and community development, Industrial park, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

For the reasons stated in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

#### PART 1942—ASSOCIATIONS

- 1. The authority citation for part 1942 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

#### Subpart A—Community Facility Loans

- 2. Amend § 1942.1 by revising paragraph (a) to read as follows:

##### § 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing direct loans for Community Facilities except fire and rescue and other small essential community facility loans and water and waste disposal facilities. This subpart applies to Community Facilities loans for fire and rescue and other small essential community facility loans only as specifically provided for in subpart C of this part. Water and waste loans are provided for in part 1780 of this title.

(1) The policies and procedures in this subpart address both loans between the Agency and the applicant and between the Agency and an approved eligible re-lender who then relends the funds to eligible applicants for eligible projects under this subpart.

(2) The Agency shall cooperate fully with State, Tribal and local agencies in making loans to assure maximum support to the State and Tribal strategies for rural development. State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State.

(3) Federal statutes provide for extending Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(4) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is

subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

\* \* \* \* \*

■ 3. Add § 1942.30 to read as follows:

**§ 1942.30 Re-lending.**

The provisions in this section establish the process by which the Agency may make loans to eligible re-lenders who then in turn re-loan the funds to eligible applicants for eligible projects under this subpart. This section may be supplemented by provisions in annual notices published in the **Federal Register**. In such notices, the Agency may impose, among other things, limits on the total amount of funds to be used through this process and the amount of the loan funding that will be provided to each re-lender.

(a) *Re-lender eligibility.* Re-lenders must meet each of the following requirements:

(1) Demonstrate the legal authority necessary to make and service loans involving community infrastructure and development similar to the type of projects listed in § 1942.17(d);

(2) Meet federal, state and local requirements in accordance with § 1942.17(k);

(3) As specified in the annual **Federal Register** notice, demonstrate that a percent of its portfolio is for projects located in or serving Persistent Poverty County(ies) or High Poverty Areas, or that the Re-lender has a minimum amount of experience making loans for projects located in or serving Persistent Poverty County(ies) or High Poverty Area(s);

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

(5) Provide a Letter of Intent from a financial institution that an Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency will be issued by the financial institution if the Re-lender is approved for funding;

(6) As specified in the annual **Federal Register** notice, agree to provide an Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency in the minimum amount equal to the principal and interest installments due the Agency during the first five (5) years of the loan, prior to receiving loan disbursements;

(7) Demonstrate one of the following, as provided in the annual **Federal Register** notice:

(i) 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;

(ii) Re-lender has a strong Financial Strength and Performance Rating as specified in the annual **Federal Register** notice. The achieved rating must indicate financial strength, performance, and risk management practices that consistently provide for safe and sound operations; or

(iii) 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 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:

(A) Obtains a strong Financial Strength and Performance Rating as specified in the Annual **Federal Register** notice prior to any funds being advanced; or

(B) Proves to be a financially sound institution as determined by the Agency in accordance with the annual **Federal Register** notice;

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

(9) 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;

(10) Agrees to loan a majority of Agency funds, as specified in the annual **Federal Register** notice, to applicants whose projects are located in or serve Persistent Poverty County(ies) or High Poverty Area(s); and

(11) Meet any other criteria specified by the Agency in the annual Notice published in the **Federal Register**.

(b) *Applicant and project eligibility.* To be eligible for a CF Direct loan from a re-lender under this section,

(1) The applicant must meet the eligibility requirements found in this subpart, including but not limited to those in § 1942.2(a)(2) regarding the inability to obtain credit elsewhere and § 1942.17(b) and (k);

(2) The applicant must comply with any other criteria specified by the Agency in the annual Program Notice published in the **Federal Register**; and

(3) The project must:

(i) Meet all of the eligibility requirements for a project found in this subpart, including but not limited to § 1942.17(b)(2), (d), (e), and (g) and all environmental review requirements as specified in § 1942.2(b) and 7 CFR part 1970; and

(ii) Meet any additional requirements that may be specified in the program's annual Notice published in the **Federal Register**.

(c) *Application submission requirements.* To apply for funds under this section, a Re-lender must timely submit all items as specified in the annual **Federal Register** notice.

(d) *Evaluation criteria.* The Agency will score and rank all eligible and complete Re-lender applications based upon the evaluation factors set out in the annual **Federal Register** notice, including but not limited to: Lending experience and strength of the re-lender, poverty and project service area, and Administrator's discretionary points.

(e) *Other Re-lender requirements.* Prior to receiving a direct loan from the Agency, the eligible re-lender must:

(1) Enter into a Re-lender's agreement provided by the Agency;

(2) Execute a promissory note;

(3) Provide an Agency approved Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency in the minimum amount equal to the principal and interest installments due during the first five (5) years of the loan, prior to receiving any loan disbursements;

(4) Provide adequate collateral satisfactory to the agency; and

(5) Meet any other loan conditions as described in the annual Notice published in the **Federal Register**.

(f) *Loan origination and servicing—*  
(1) *Re-lenders.* After the Agency loan is made to the Re-lender, the Re-lender is responsible for:

(i) Presenting to the Agency eligible CF direct loan applications in accordance with this subpart and any additional terms established in the applicable annual Notice published in the **Federal Register**;

(ii) Underwriting and servicing each loan reviewed and approved by the Agency under this section;

(iii) Submitting reports to the Agency after any loan disbursement as specified in the annual **Federal Register** notice;

(iv) Certifying to the Agency that the Re-lender and Borrower have met the requirements of 7 CFR 3575.42 and 3575.43 for planning, bidding, contracting and construction, as specified in the annual **Federal Register** Notice;

(v) Complying with other Agency requirements as specified in the annual

**Federal Register** notice concerning environmental, civil rights, and other applicable Federal state, and local law;

(vi) Obtaining disbursement of loan funds according to this section and the annual **Federal Register** notice within 5 years. Any loan funds not disbursed within that time will be deobligated and become unavailable for disbursement.

(2) *Agency responsibilities.* (i) Based on the information presented by the Relender and any additional information that may be requested by the Agency, the Agency will determine the eligibility of the applicant and project under this subpart.

(ii) The Agency will notify the re-lender of its determination and any administrative review or appeal rights for Agency decisions made under this subpart. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The applicant and re-lender may appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the applicant, the re-lender and applicant must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the re-lender may be appealed by the re-lender only. A decision by a re-lender adverse to the interest of an applicant or borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

(iii) For approved eligible borrowers and projects, the Agency will confirm that all environmental requirements as specified in this subpart and 7 CFR part 1970 have been met and that the Relender has provided adequate security for its loan, before the Agency will disburse funds to the Re-lender;

(iv) The Agency will service each re-lender's loan in accordance with 7 CFR part 1951, subpart E. The Agency may suspend further disbursements, and pursue any other available and appropriate remedies, if any of the re-lender loans become troubled, delinquent, or otherwise in default status, or if the re-lender is not meeting the terms of its Relender's Agreement.

Dated: June 29, 2016.

**Lisa Mensah,**

*Under Secretary, Rural Development.*

Dated: June 29, 2016.

**Alexis Taylor,**

*Deputy Under Secretary, Farm and Foreign Agricultural Services.*

[FR Doc. 2016-16005 Filed 7-5-16; 8:45 am]

**BILLING CODE 3410-XV-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 250 and 385

[Docket No. RM16-16-000; Order No. 826]

#### Civil Monetary Penalty Inflation Adjustments

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Interim final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing an interim final rule to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission's jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Commission to issue this interim final rule.

**DATES:** *Effective Date:* This interim final rule is effective July 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** Todd Hettenbach, Attorney, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8794, [Todd.Hettenbach@ferc.gov](mailto:Todd.Hettenbach@ferc.gov).

**SUPPLEMENTARY INFORMATION:**

#### Order No. 826

#### Interim Final Rule

1. In this interim final rule, the Federal Energy Regulatory Commission (Commission) is complying with its statutory obligation to amend the civil monetary penalties provided by law for matters within the agency's jurisdiction.

#### I. Background

2. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act),<sup>1</sup> which further amended the Federal Civil Penalties Inflation Adjustment Act

of 1990 (1990 Adjustment Act),<sup>2</sup> requires the head of each federal agency to issue an "interim final rule" by July 1, 2016 adjusting for inflation each "civil monetary penalty" provided by law within the agency's jurisdiction. The agency must then update each such civil monetary penalty on an annual basis every January 15 thereafter.<sup>3</sup>

#### II. Discussion

3. The 2015 Adjustment Act defines a civil monetary penalty as any penalty, fine, or other sanction that: (A)(i) Is for a specific monetary amount as provided by federal law or (ii) has a maximum amount provided for by federal law; (B) is assessed or enforced by an agency pursuant to federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.<sup>4</sup> This definition applies to the maximum civil penalties that may be imposed under the Federal Power Act (FPA),<sup>5</sup> the Natural Gas Act (NGA),<sup>6</sup> the Natural Gas Policy Act of 1978 (NGPA),<sup>7</sup> and the Interstate Commerce Act (ICA).<sup>8</sup>

4. Under the 2015 Adjustment Act, for the initial adjustment, the first step for such adjustment of a civil monetary penalty for inflation requires determining the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI-U) for October of the preceding year exceeds the CPI-U for October of the year in which the civil monetary penalty was last set or adjusted under a provision of law other than the 1990 and 2015 Adjustment Acts.<sup>9</sup> The Office of Management and Budget has instructed agencies to use the CPI-U for 1914 when calculating the inflation multiplier for penalties established or last adjusted prior to 1914.<sup>10</sup> Adjustments previously made for inflation pursuant to the 1990 Adjustment Act must be excluded.<sup>11</sup> The first adjustment, which is the subject of the present interim final rule, is limited to 150 percent of the civil monetary penalty that was in effect on November 2, 2015.<sup>12</sup>

<sup>2</sup> Public Law 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

<sup>3</sup> 28 U.S.C. 2461 note, at (4).

<sup>4</sup> *Id.* (3).

<sup>5</sup> 16 U.S.C. 791a *et seq.*

<sup>6</sup> 15 U.S.C. 717 *et seq.*

<sup>7</sup> 15 U.S.C. 3301 *et seq.*

<sup>8</sup> 49 App. U.S.C. 1 *et seq.* (1988).

<sup>9</sup> 28 U.S.C. 2461 note, at (5)(b).

<sup>10</sup> See Memorandum from Shaun Donovan, Office of Management and Budget, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 6 (Feb. 24, 2016).

<sup>11</sup> *Id.* (5)(b)(2)(A).

<sup>12</sup> *Id.* (5)(b)(2)(C).

<sup>1</sup> Sec. 701, Public Law 114-74, 129 Stat. 584, 599.