



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Loan Application Procedures, and Deadlines for the Rural Energy Savings Program (RESP)

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funding Availability (NOFA); the RESP Application Process and Deadlines.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), is announcing funding availability and is soliciting letters of intent for loan applications under the Rural Energy Savings Program (RESP), announcing the application process for those loans and deadlines for applications from eligible entities. These loans are made available under the authority of Section 6407 of the Farm Security and Rural Investment Act of 2002, as amended, (Section 6407) and the Title III, Section 769 of the Consolidated Appropriations Act, 2017. This notice describes the eligibility requirements, the application process and deadlines, the criteria that will be used by RUS to assess Applicants' creditworthiness, and how to obtain application materials.

DATES: The application process consists of two steps. To be considered for this funding, Applicants must submit their documentation no later than the mandatory dates set forth herein.

Step 1: To be considered for financing pursuant to this notice, an Applicant seeking financing must submit a Letter of intent to apply, as provided herein, in an electronic Portable Document Format (PDF), not to exceed 10 MB in size, by electronic mail (email) to RESP@wdc.usda.gov no later than 11:59 p.m. (EST) on [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late or incomplete Letters of Intent will not be considered by RUS.

Step 2: An RESP Applicant that has been invited in writing by RUS to proceed with the loan application, as provided in this NOFA, will have up to sixty (60) days to complete the documentation for a complete application. The sixty (60) day timeframe will begin from the date the RESP Applicant receives an email with RUS' Invitation to proceed. If the deadline to submit the completed application falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day. Instructions on how to submit the loan application package will be included in the RUS Invitation to proceed to the RESP Applicant.

ADDRESSES: Copies of this NOFA and other information on the Rural Energy Savings Program may be obtained by:

- (1) Contacting Robert Coates at (202) 260-5415 to request a copy of this Notice.
- (2) Sending an electronic mail (Email) to Robert.Coates@wdc.usda.gov. The email must be identified as RESP Notice of Funding Availability in the subject field.
- (3) The Letter of intent must be submitted by the Applicant in an electronic PDF (PDF) format not to exceed 10 Megabytes (10 MB) by electronic mail (email) to RESP@WDC.USDA.GOV on or before the deadline set forth herein. No paper letters of intent will be accepted.

(4) The completed loan application package must be submitted following the instructions that will be outlined in the RUS Invitation to proceed to the RESP Applicant. The loan application package must be marked with the subject line “Attention: Christopher McLean, Assistant Administrator for the Electric Program; RESP Loan Application.”

FOR FURTHER INFORMATION CONTACT: Robert Coates, Rural Utilities Service-Electric Program, Rural Development, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 1568, Room 0217-S, Washington DC 20250-1560; Telephone: (202) 260-5415; Email Robert.Coates@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS), USDA.

Funding Opportunity Title: Rural Energy Savings Program (RESP).

Announcement Type: Requests for Letter of intent and Applications

Catalog of Federal Domestic Assistance (CFDA) Number: 10.751

Dates: Submit the Letter of intent on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and the completed loan application package on or before sixty (60) days from the receipt date of a written RUS Invitation to proceed.

Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment. The Administrative Procedure Act of 1946, as amended (5 U.S.C. 553)(APA), has several exemptions to rulemaking requirements. Among them is an exception for a matter relating to “loans, grants, benefits, or contracts.” Furthermore, the 30 day effective date policy is excepted for “good cause.” USDA has determined, consistent with the APA that making these funds available under this NOFA for the RESP is in the public interest since the Consolidated Appropriations Act, 2017 (Pub. L. No. 115-31) appropriated a budget authority of \$8,000,000 until September 30, 2018 and the Farm Security and Rural Investment Act of 2002, as amended, authorized the program until that very same date. RUS is using its experience operating under the 2016 Notice of Solicitation for Applications and this NOFA in its effort to undertake a rulemaking process to more permanently codify requirements.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), OMB approved this information collection under OMB Control Number 0572-0151. The current expiration date for the information collection is December 31, 2019

Definitions and Rules of Grammatical Construction.

For the purpose of RESP, the following terms must have the following meanings:

Administrator means the Administrator of the Rural Utilities Service, an agency under the Rural Development mission area of the United States Department of Agriculture.

Applicant means an Eligible entity interested in applying for a RESP that is planning to submit a Letter of intent.

Commercially available technology means equipment, devices, applications, or systems that have a proven, reliable performance and replicable operating history specific to the proposed application. The equipment, device, application or system is based on established patented design or has been certified by an industry-recognized organization and subject to installation, operating, and maintenance procedures generally accepted by industry practices and standards. Service and replacement parts for the equipment, device, application or system must be readily available in the marketplace with established warranty applicable to parts, labor and performance.

Completed loan application means an application containing all information required by RUS to approve a loan and that is materially complete in form and substance satisfactory to RUS within the specified time.

Conditional commitment letter means the notification issued by the Administrator to a RESP Applicant advising it of the total loan amount approved for it as a RESP borrower, the acceptable security arrangement, and such controls and conditions on the RESP borrower's financial, investment, operational and managerial activities deemed necessary by the Administrator to adequately secure the Government's interest. This notification will also describe the accounting standards and audit requirements applicable to the transaction.

Conflict of interest means a situation or situations, event or series of events, that jointly or severely undermines an individual's judgement, ability, or commitment to providing an accurate, unbiased, fair and reliable assessment or determination about the cost-effectiveness of the

Energy efficiency measures due to self-interest or cannot be justified by the prevailing and sound application of the generally accepted standards and principles of the industry.

Eligible entity means an entity described in section C.1. of this NOFA.

Energy audit means an analysis or inspection of the energy flows in a building, process, or system with the goal of identifying opportunities to enhance energy efficiency. The activity should result in an objective standard-based technical report containing recommendations on the Energy efficiency measures to reduce energy costs or consumption of the Qualified consumer and an analysis of the estimated benefits and costs of pursuing each recommendation in a payback period not to exceed 10 years. The report will include a payback analysis of the aggregated energy efficiency measures.

Energy efficiency measures means for or at a property served by an Eligible entity, structural improvements or investments in cost-effective, commercially available technologies that result in a decrease in a Qualified consumer's energy usage or costs.

Energy efficiency program (EE Program) means a program set up by an Eligible entity to provide financing to Qualified consumers so that they can reduce their energy use or costs by implementing energy efficiency measures.

Financial feasibility means an Eligible entity's ability to generate sufficient revenues to cover its expenses, sufficient cash flow to service its debts and obligations as they come due, and meet the financial ratios set forth in the applicable loan documents.

Invitation to proceed means the written notification issued by RUS to the Eligible entity acknowledging that the Letter of intent was received and reviewed, describing the next steps in the application process and inviting the Eligible entity to submit a complete application.

Key performance indicators means the set of measures that help an entity to determine if it is reaching its performance and operational goals. These indicators can be both financial and non-financial.

Letter of intent means a signed letter issued by an Applicant notifying RUS of its intent to apply for a RESP loan and addressing all the elements identified in section D.1.a. of this NOFA.

Qualified consumer means a consumer served by an Eligible entity that has the ability to repay a loan made by an RESP borrower under the RESP program, as determined by the Eligible entity.

RESP applicant means an Eligible entity that has received a written Invitation to proceed from RUS to apply for a RESP loan.

RESP borrower means an Eligible entity with an approved RESP loan.

Small business means an entity that is in accordance with the Small Business Administration's (SBA) small business size standards found in 13 CFR part 121.

Special advance means an advance, not to exceed 4 percent of the total approved loan amount, that a RESP borrower may request to defray the start-up costs of establishing a new EE Program.

Start-up costs mean amounts paid or incurred for: (a) creating or implementing an active energy efficiency program; or (b) investing in the integration of an active energy efficiency

program. Start-up costs may include, but are not limited to, amounts paid or incurred in the analysis or survey of potential markets, products such as software and hardware, labor supply, consultants, salaries and other working capital directly related to creation or enhancement of an energy efficiency program consistent with RESP.

With regard to the rules of grammatical construction, unless the context otherwise indicates, “includes” and “including” are not limiting, and “or” is not exclusive.

Additional Items in Supplementary Information

- A. Program Description
- B. Federal Award Information
- C. Eligibility Information
- D. Application and Submission Information
- E. Agency Review of Letter of intent and Loan Application
- F. Federal Award Administration Information
- G. Federal Awarding Agency Contact
- H. Other Information

A. Program Description

The USDA through the Rural Utilities Service (RUS) provides RESP loans to Eligible entities that agree to, in turn, make loans to Qualified consumers for the purpose of implementing Energy efficiency measures. These loans are made available under the authority of Section 6407. Eligible Energy efficiency measures funded under this NOFA must be for or at a property or properties served by a RESP borrower, using commercially available technologies that would

allow Qualified consumers to decrease their energy use or costs through cost-effective measures including structural improvements to the structure. Loans made by RESP borrowers under this program may be repaid through charges added to the Qualified consumer's bill for the property or properties for, or at which, energy efficiencies are or will be implemented. The purpose of the program is to help rural families and small businesses achieve cost savings by providing loans to Qualified consumers to implement durable cost-effective Energy efficiency measures.

B. Federal Award Information

Type of Award: Loan

Fiscal Year 2017 Funds: \$8,000,000 in budget authority through September 30, 2018.

Authority: RESP is a program to be carried out by the Rural Utilities Service pursuant to Section 6407 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 8107a, as amended; and Section 769, Title VII, Division A of the Consolidated Appropriations Act, 2017, Public Law 115-31, May 5, 2017.

C. Eligibility Information

1. Eligible entities include:

a. Any public power district, public utility district, or similar entity, or any electric cooperative described in section 501(c)(12) or 1381(a)(2) of the Internal Revenue Code of 1986, that borrowed and repaid, prepaid, or is paying an electric loan made or guaranteed by the Rural Utilities Service (or any predecessor agency);

b. Any entity primarily owned or controlled by 1 or more entities described in section C.1.a. of this NOFA; and

c. Any other entity that is an eligible borrower of the Rural Utilities Service, as determined under 7 CFR 1710.101.

2. Equity Contributions

a. To be eligible for a RESP loan, a newly created Eligible entity or an entity primarily owned or controlled by one (1) or more entities described in section C.1.a. of this NOFA must have a minimum equity position in the EE Program proposed to be funded with RESP at the time of the loan closing and the Eligible entity will be required to continue to maintain the minimum equity position for the period of time determined by the Administrator and as set forth in the loan documents. The required equity position and terms will be determined by the Administrator on a case-by-case basis based upon review of the risk profile of the Eligible entity and other security arrangements.

b. If the Administrator determines that the RESP Applicant under this section does not have acceptable equity, in the Energy Efficiency Program at the time of application, the Administrator may consider the following to meet such shortfall regarding equity:

i. The infusion of additional capital into the Energy efficiency program by an Investor to meet any shortfall. RUS may require that the additional capital be deposited into a RESP Applicant's special account subject to a deposit account control agreement with RUS prior to loan closing.

ii. An unconditional, irrevocable letter of credit satisfactory to the Administrator in the amount of the shortfall. RUS must be an unconditional payee under the letter of credit and the letter of credit must be in place prior to loan closing and remain in place until the loan is repaid.

iii. General obligation bonds issued by tribal, state or local governments in the amount of the shortfall. If the equity requirement is satisfied with general obligation bonds, any lien securing the bonds must be subordinate to the lien of the government securing the RESP loan.

iv. Any other equity requirements determined necessary by the Administrator to meet the shortfall.

D. Application and Submission Information- Complete applications for loans to Eligible entities under this NOFA will be processed on a first-come-first-serve basis (queue) until funds appropriated to carry out RESP are expended on or before September 30, 2018. RUS will give priority to the Eligible entities in the queue pursuant to the NOFA issued on June 21, 2016 and that have not been invited to proceed yet. The Administrator may use the queued entities, provided they still meet the applicable requirements, pursuant to this NOFA should funding become available in the future. To be considered for this funding, Applicants must submit their documentation no later than the mandatory dates set forth in this NOFA. The application process consists of two steps.

1. Step 1: Letter of Intent - To be considered for financing pursuant to this notice, an Applicant seeking financing must submit a mandatory Letter of intent with the following information no later than 11:59 p.m. (EST) on [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Applicants must submit all the information identified in the Letter of intent “Evaluation Criteria Checklist” available online at the following web address: <http://www.rd.usda.gov/resp/>. A sample Letter of intent is available online at the following web address: www.rd.usda.gov/files/RD-RUS-SampleLetterofIntent.pdf.

By submitting the Letter of intent, the Applicant certifies to RUS that it has the intent of submitting a complete RESP loan application on or before the date set forth as the application deadline in the event that RUS provides an Invitation to proceed. RUS will not consider Letters of intent where the project description exceeds five (5) pages. An Invitation to proceed with the loan application sent by the RUS is not to be deemed as an offer by the Agency. The Letter of intent must contain the following:

a. Applicant's Profile and Point of Contact-

- i. Name and legal status of the Eligible entity and its address and principal place of business.
- ii. The Eligible entity's tax identification number, DUNS and Bradstreet (D&B) number.
- iii. Specify if the Eligible entity is a current or a former RUS borrower.
- iv. Identify the service territory.
- v. Identify the net assets value and specify if the Eligible entity has been placed in receivership liquidation, or under a workout agreement or declared bankruptcy or has had a decree or order issued for relief in any bankruptcy, insolvency or other similar action over the last 10 years. The Applicant must submit a copy of its balance sheet and income statements for the last 3 years. If applicable, the Applicant must provide the balance sheet and income statements for the last 3 years of the entity or entities providing equity or security for the RESP loan together with an explanation of the legal relationship among the legal entities.
- vi. Identify a point of contact and provide contact information.

b. The description of the project must not exceed five (5) pages (size 8.5 X 11) and must include the following:

- i. A description of the service to be provided to Qualified consumers.
- ii. Identity of the staff or contractors that will be implementing the EE Program and their credentials.
- iii. Implementation plan that briefly addresses:
 - A. The marketing strategy.
 - B. How the Applicant will operate the relending process.
 - C. A schedule showing sources and uses of funds to implement the EE Program.
 - D. A brief description of the processes, procedures, and capabilities to quantify and verify the reduction in energy consumption or decrease in the energy costs of the Qualified consumers.
- iv. A list of eligible Energy efficiency measures that will be implemented. An Applicant with an existing EE Program in place by April 8, 2014, may describe the Energy efficiency measures, its implementation plan, and its measurement and verification system for the existing program in its Letter of intent to expedite the application process.
- c. The Applicant must provide evidence of its key performance indicators for the 5 complete years prior to the submission of the loan application if the total loan amount exceeds 5 million dollars.

2. Step 2: Loan Application- A RESP Applicant that has been invited in writing by RUS to proceed with the loan application, as provided in this NOFA, will have up to sixty (60) days to complete the documentation for a complete application. The sixty (60) day timeframe

will begin from the date the RESP Applicant receives an email with RUS' Invitation to proceed. If the deadline to submit the completed application falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day. The Administrator may grant an extension of time to complete the documentation required for an application if, in the Administrator's sole judgment, extraordinary circumstances prevented the RESP Applicant from completing the application within the timeframe herein stipulated (60 days). An Applicant may not submit more than one application in this funding cycle for the same EE Program. However, one or more Eligible entities may submit their applications using the same EE Program model. In extending an Invitation to proceed to an Applicant in the queue, RUS reserves the right to meet overall RUS Program objectives and therefore, may notify the Applicant that the amount of financing to be awarded is below the level sought by the Applicant.

Instructions on how to submit the loan application package will be included in the RUS Invitation to proceed to the RESP Applicant. An initial conference call will be scheduled within 10 days from the date of the written invitation to proceed with the RESP loan application and a General Field Representative (GFR) will be assigned to assist the RESP Applicant during this part of the application process.

a. Loan Application Package- The RESP Applicant's application package must include the following documents:

i. Cover Letter. A signed cover letter from the RESP Applicant's General Manager or highest ranking officer requesting a RESP loan under this NOFA.

ii. Board Resolution. A signed copy of the board resolution or applicable authorizing document approving and establishing the EE Program.

iii. Environmental Compliance Agreement. A copy of the duly executed Multi-tier Action Environmental Compliance Agreement (Multi-tier Agreement). A template of a Multi-tier Agreement can be found in Exhibit H of RD Instruction 1970-A, Environmental Policies and Procedures (<http://www.rd.usda.gov/files/1970a.pdf>). A copy of the Multi-tier Agreement will be provided to the RESP Applicant with the Invitation to proceed and discussed with the RESP Applicant in the initial conference call.

iv. Financial Forecast. A financial forecast approved by the applicable governing body of the RESP Applicant in support of its loan application. RUS encourages RESP Applicants to follow the format set forth in RUS Form 325, which may be obtained from a GFR. The financial forecast must cover a period of at least 10 years and must demonstrate that the RESP Applicant's operation is economically viable and that the proposed loan is financially feasible. RUS may request projections for a longer period of time, or additional information, if RUS deems it necessary based on the financial structure of the RESP Applicant and necessary to make a determination regarding loan feasibility. The financial forecast and related projections submitted in support of a loan application must include:

A. Current and projected cash flows.

B. A pro forma balance sheet, statement of operations, and general funds summary projected for each year during the forecast period. The requested RESP loan must be included in the financial forecast.

C. The financial goals established for margins, debt service coverage, equity, and levels of general funds to be invested in the EE Program. The financial forecast must use the accrual method of accounting for analyzing costs and revenues and, as applicable, compare the economic results of the various alternatives on a present value basis.

D. A full explanation of the assumptions, supporting data, and analysis used in the forecast, including the methodology used to project revenues, operating expenses, power costs, and any other factors having a material effect on the balance sheet and the financial ratios such as equity and debt service coverage. RUS may require additional data and analysis on a case-by-case basis to assess the probable future competitiveness of the RESP Applicant.

E. Current and projected non-operating income and expense.

F. An itemized budget and schedule for the activities to be implemented with the RESP funds and a discussion on how the loan loss reserve will be set up, the expected delinquency and default rates. The RESP applicant is expected to forecast the amount of loans to be made to Qualified consumers over a 10 year timeframe. If the RESP Applicant determines to charge interest, the RESP Applicant must describe how it is going to use the funds generated from the interest to be received from the loans to the Qualified consumers.

G. A sensitivity analysis may be required by RUS on a case-by-case basis.

v. EE Program Implementation Work Plan (IWP). The RESP Applicant must produce, to the satisfaction of the Administrator, an IWP, duly approved by the applicable governing body of the Eligible entity. The IWP must address all the following core elements:

A. Marketing. In this section the RESP Applicant will identify the qualified customers by market segment that will benefit from the funding available under this NOFA and explains the

marketing and outreach efforts to be executed in implementing the relending program. In the identification of the marketing effort to the qualified customers, the RESP Applicant should provide racial and ethnic demographics for the service area or individuals.

B. Operations. In this section the RESP Applicant will describe its Energy efficiency program and how it will operate the relending process. The RESP Applicant must also identify the staff that will be implementing the program, including the tasks that each one will be carrying out, and whether or not it will be outsourcing some or all of the execution of the program.

The RESP Applicant must describe its expertise and the credentials of any third party implementing outsourced tasks to effectively implement the Energy efficiency measures at the scale contemplated by the EE Program for which RESP funding is requested. The statement of qualifications must show the party's experience carrying out the financial and technical expertise components of an EE program at the desired scale. The RESP Applicant will be held accountable to RUS for actions or omissions departing from the required standards by those partners or contractors, arising from or in connection with an EE Program funded under this NOFA.

In this section the RESP Applicant will identify the anticipated amount of special advance for start-up costs and purposes over the expected schedule to draw down the funds attributable to such purposes. In addition, the RESP Applicant will describe the expected schedule to implement the EE Program with an itemized allocation of expected resources including anticipated costs assigned to each task. *The IWP must only include those activities and investments identified in the Multi-tier Agreement executed between RUS and the RESP*

Applicant. If any additional activities or investments are to be pursued, additional environmental review would be required.

The RESP Applicant must describe the processes and procedures that will be put in place to avoid a Conflict of interest in the implementation of the energy efficiency loan program for Qualified consumers.

C. Financials. The RESP Applicant must address the items identified in the Financial Forecast section of this NOFA, Section D.2.a.iv.

D. Measurement and Verification. The RESP Applicant must describe the processes, procedures, and capabilities to quantify and verify the reduction in energy consumption or decrease in energy costs of the Qualified consumers. An RESP Applicant may provide a measurement and verification plan approved by a state or local regulatory body or sponsored by a governmental entity. A measurement and verification plan developed and certified by an industry recognized professional or entity will also be acceptable. Other measurement and verification plans may be acceptable if the Eligible entity can support, to the satisfaction of the Administrator, that the protocols and methodology used to verify the Energy efficiency measures are cost-effective and follow generally accepted industry principles and standards. An RESP Applicant with an existing EE Program as of April 8, 2014, may submit the measurement and verification plan previously established to fulfill this requirement.

vi. Articles of incorporation and bylaws or other applicable governing and organizational documents. The RESP Applicant must provide the Applicant's articles of incorporation or other applicable organizational documents currently in effect, as filed with the appropriate state office, setting forth the RESP applicant's corporate purpose; and the bylaws or other applicable

governing documents currently in effect, as adopted by the RESP Applicant's applicable governing body. RESP Applicants that are active RUS borrowers may comply with this requirement by notifying in writing to RUS that there are no material changes to the documents already on file with RUS.

vii. Statement of Compliance with other federal statutes. The RESP Applicant must provide statement of compliance with other federal statutes, including but not limited to the following:

A. Nondiscrimination in Federally Assisted Programs. 7 CFR part 15, subpart A, Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture-Effectuation on Title VI of the Civil Rights Act of 1964, RUS Bulletin 1790-1, "Nondiscrimination Among Beneficiaries of RUS Program." Eligible entities must complete and submit RUS Form 266, Assurance Agreement.

- Signing Form 266 ("Assurance Agreement") Each prospective recipient must sign Form 266, 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. That no person will be discriminated against based on race, color or national origin, in regard to any program or activity for which the recipient receives Federal financial assistance. That nondiscrimination statements are in advertisements and brochures.

- Collect and maintain data provided by ultimate beneficiaries on race, sex, and national origin. Race and ethnicity data will be collected in accordance with OMB Federal Register notice, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," (62 FR 58782), October 30, 1997. These items should not be submitted with the application but should be available upon request by the Agency.

- The applicant and the ultimate recipient 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, Equal Credit Opportunity Act, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

- Civil rights compliance reviews should be conducted by the Agency at pre award and post award. The results of the review should be documented on Form 9, Compliance Review, and appropriate documentation attached to substantiate findings of compliance or noncompliance. The original Form 9 should be maintained in the case file with copies forwarded to the Rural Development Program Compliance Branch. If the recipient is not in compliance, copies must be immediately forwarded to the Director, Civil Rights Staff, with a recommendation for action to be taken.

- RD Instruction 2006-P requires that a Civil Rights Impact Analysis be conducted prior to approving or implementing a wide range of Agency activities. The Agency will prepare Form RD 2006-38, Civil Rights Impact Analysis, on the recipient.

- Signing Form 400-1 Equal Opportunity Agreement in accordance with Executive Order 11246. The requirement of the Equal Opportunity Clause within a construction contract where federal financial assistance exceeds \$10,000.

B. Standard Form 100—Equal Employment Opportunity Employer Report EEO—1. This form, required by the Department of Labor, sets forth employment data for Eligible entities with 100 or more employees. A copy of this form, as submitted to the Department of Labor, is to be

included in the application for an insured loan if the Eligible entity has more than 100 employees.

C. Form AD-1049 – Certificate Regarding Drug Free Workplace Requirements. This form is required as prescribed in 2 CFR parts 182 and 421, Requirements for Drug Free Workplace (Financial Assistance). Information on all of your organization’s known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in Subpart B of 2 CFR part 421, which adopts the Government-wide implementation (2 CFR part 182) of the Drug-Free Workplace Act.

D. Form AD-1047 – Certification Regarding Debarment, Suspension, and Other Responsibility Matters. This form is required in accordance with 2 CFR part 417 (Nonprocurement Debarment and Suspension) supplemented by 2 CFR part 180, if it applies. See the section heading is “What information must I provide before entering into a covered transaction with the Federal Government?” located at 2 CFR 180.335.

E. Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.” For information on limited English proficiency and agency-specific guidance, go to <http://www.LEP.gov>.

F. Lobbying for Grants, Loans, Contracts and Cooperative Agreements. The information on lobbying is required pursuant to 2 CFR part 418. The RESP Applicant should consult RUS before submitting this information.

G. Report on Federal debt delinquency. This report indicates whether or not the RESP Applicant is delinquent on any Federal debt.

H. Certify Accounting, Auditing, and Reporting Requirements. The RESP Applicant must certify to RUS that it is aware of and will abide by the accounting, auditing, and reporting requirements as described within the Federal Award Administration Information section of this NOFA.

I. Dun and Bradstreet Universal Numbering System (DUNS). The Dun and Bradstreet Universal Numbering System (DUNS Unique entity identifier and System for Award Management (SAM). Applicants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their Letters of Intent and RESP Applicants with their loan application. Please see <http://fedgov.dnb.com/webform>. RESP Applicant are required to be registered in SAM before submitting an application, provide a valid unique entity identifier in the application, and continue to maintain an active SAM registration with current information at all times during which the entity has an active Federal award or an application or plan under consideration by a Federal awarding agency. The agency may not make a Federal award to a RESP Applicant until the RESP Applicant has complied with all applicable unique entity identifier and SAM requirements. If a RESP Applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the RESP Applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another RESP Applicant. Applicants may register for the SAM at <http://www.sam.gov/portal/public/SAM>. To remain registered in SAM, the Applicant must review and update the information in the SAM database annually from the date of initial registration or last update. Applicants must ensure that the information in the database is current, accurate, and complete.

E. Agency Review: Letter of intent and Loan Application

1. General- Loans made to RESP Applicants for eligible purposes under this program will be made only when the Administrator, in his judgment, finds that there is reasonably adequate security and the loan will be repaid within the time agreed.

The Administrator, on case-by-case basis, may set financial coverage ratios based on the risk profile of the RESP Applicant and specific loan terms. Those financial ratios will be included in the RESP borrower's loan documents with RUS. Existing RUS borrowers will be subject to their current debt service coverage ratios in their current loan documents, unless notified otherwise. A RESP Applicant must, after submitting a loan application, promptly notify RUS of any changes in its circumstances that materially affect the information contained in the loan application.

2. Letter of Intent Review- RUS will consider complete Letters of intent as they are received. Upon review of the Letters of Intent, RUS will issue a notification to the Applicant indicating the result of the initial screening. Letters of intent will be reviewed by RUS for the following:

- a. Eligibility to participate in RESP in accordance with section C. of this NOFA.
- b. Eligibility and feasibility of the project. Compliance with the purpose of Section 6407 to help rural families and small businesses achieve cost savings by providing loans to Qualified consumers to implement durable cost-effective Energy efficiency measures.
- c. The financial status of the Applicant to determine the Applicant's likelihood to complete the full application.

3. Loan Application Review

a. Loan Feasibility. Based on the complete application, RUS must have reasonable assurance that the loan, together with all other outstanding loans and other obligations of the RESP Applicant, will be repaid in full as scheduled, in accordance with the loan documents. In making a finding of loan feasibility, RUS will consider, among others: i) that expected amount of loans and loan amounts are based on reasonable assumptions and adequate supporting data and analysis; ii) the interest rate, application fees, servicing fees and any other fees expected to be charged to the Qualified consumer per customer class; iii) the projected revenues, expenses, and any other reliable financial information that could enable RUS to assess its ability to repay the loan within a term not to exceed 20 years; iv) the ability of the RESP Applicant to meet the required coverage ratios; v) such risk factors that may substantially impair the RESP Applicant's ability to operate a sustainable business; vi) supplemental sources of funding to carry out the EE Program; vii) management's experience implementing EE Programs at the expected scale; and viii) the financial and management controls in place.

b. Loan Security. Loans will ordinarily be secured by a first and prior lien on substantially all the RESP borrower's property, and in any event will be secured by the best security position practicable in a manner which will adequately protect the interest of the Government during the repayment period of the loan. Collateral that is used to secure a loan must ordinarily be free from liens or security interests other than those permitted by RUS or existing security documents. RUS may in certain circumstances agree to share its first lien position with another lender provided the RESP loan is adequately secured and the security arrangements are acceptable to RUS. In such circumstances, RUS will consider entering into joint security arrangements with other lenders on a pari passu basis.

c. Loan Term. Amortization schedule must be based on a loan term that does not exceed 20 years from the date on which the loan is closed.

d. EE Program Compliance. Proceeds from a RESP loan may only be used for loans to Qualified consumers for the purpose of implementing Energy efficiency measures that decrease energy (not just electricity) usage or costs of the Qualified consumer by an amount that ensures, to the maximum extent practicable, that a loan term of not more than 10 years will not pose an undue financial burden on the Qualified consumer.

Proceeds from the interest charged to the Qualified consumers may be used to establish a loan loss reserve, and to offset personnel and program costs necessary to carry out the program.

Nonetheless, under no circumstances will the RESP borrower be able to charge more than 3 percent interest rate to its customers. Loans made by the RESP borrower to Qualified consumers may not exceed 10 years.

Qualified consumers must ordinarily repay their loans to the RESP borrower through charges added by the RESP borrower to the electric bill associated with the property where the Energy efficiency measures are or will be implemented. The repayment mechanism adopted to implement an EE Program under RESP must not prevent the voluntary prepayment of the loan by the owner of the property. A RESP borrower may adopt any other repayment mechanism to carry out its EE Program with RESP proceeds as long as it can demonstrate that the proposed repayment mechanism has appropriate risk mitigation features and ensures repayment to the RESP borrower if the Qualified consumer will no longer be a customer of the RESP borrower.

Loans made by a RESP borrower to a Qualified consumer using RESP loan funds must require an Energy audit by the RESP borrower to determine the impact of the proposed Energy

efficiency measures on the energy costs and consumption of the Qualified consumer. The RESP borrower may engage contractors to carry out the Energy audits necessary to fulfill this requirement. In so doing, the RESP borrower must engage contractors with adequate expertise to perform the Energy audits according to the applicable standards of the industry. The credentials of the energy auditors used or proposed to be used by the RESP Applicant will be subject to RUS review. RUS may reject a loan application or refuse to disburse loan proceeds to the RESP borrower that fails to demonstrate that the Energy audits will be or have been performed by qualified individuals.

4. Ancillary Provisions

a. Contractor's Expertise- Contractor's adequate expertise may be determined by using the following criteria:

i. Contractor's staff possesses a current residential or commercial Energy auditor or building analyst certification from a national, industry-recognized organization.

ii. Contractor's staff possesses proficiency in the knowledge, skills and abilities needed to conduct whole house assessments, building performance diagnostics and reasoning, and estimates of energy savings from improvement installations (via calculations or a modeling software tool) accredited by training and credentialing. The credentialing process must be at least as robust as those employed by nationally recognized certification bodies or suitable to meet or exceed the rigor of the standards of federal, state or local government entities.

iii. The contractor must demonstrate adequate capacity and resources to engage customers, conduct whole house assessments, building performance testing and diagnostic reasoning, and fulfillment of all program data collection and reporting requirements. This includes having access to satisfactory diagnostic equipment, tools, qualified staff, data systems and software, and administrative support.

iv. The contractor must be current and in good standing with all local registration and licensing requirements for their specific region and trade.

v. The contractor must employ or sub-contract to companies with workers who are qualified to install or physically oversee the installation of home performance improvements in compliance with local building codes and industry-accepted protocols.

vi. In the absence of fulfilling the first criterion under this subsection, the contractor for commercial Energy audits, must meet one of the following criteria:

A. Be a licensed professional engineer in the state in which the audit is conducted with at least 1 year experience and who has completed at least two similar type Energy audits;

B. Be an individual with a four-year engineering or architectural degree with at least 3 years of experience and who has completed at least five similar type Energy audits; or

C. Be an individual with an energy auditor certification recognized by the U.S. Department of Energy through its Better Buildings Workforce Guidelines project. For related information please visit: <https://www4.eere.energy.gov/workforce/projects/workforceguidelines>.

b. Collateral. RUS generally requires that borrowers provide it with a first priority lien on all of the borrower's real and personal property, including intangible personal property and any

property acquired after the date of the loan. For existing RUS borrowers, the agency may, at its sole discretion, rely on existing security arrangements with RUS. When a RESP borrower is unable by reason of preexisting encumbrances, or otherwise, to furnish a first priority lien on its entire system, the Administrator may accept other forms of security, such as a parent guarantee, state guarantee, an irrevocable letter of credit, or a pledge of revenues if the Administrator determines such credit support is reasonably adequate and otherwise acceptable in form and substance.

c. Appeal Rights. Applicants and RESP Applicants have appeal or review rights for Agency decisions made under this NOFA. 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). An Applicant and a RESP Applicant can appeal any Agency decision that directly and adversely impacts it. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

d. Eligible Activities and Investments. A RESP borrower may provide financing to Qualified consumers to implement or invest in one or more set of Energy efficiency measures listed in this section. However, a RESP borrower may be able to fund other Energy efficiency measures if it can justify, to the satisfaction of the Administrator, that the proposed Energy efficiency measure is cost effective and the technology is commercially available. Eligible activities and investments include, but are not limited, to:

i. Lighting:

A. Lighting fixture upgrades to improve efficiency.

B. Re-lamping to more energy efficient bulbs.

C. Lighting controls.

ii. Heating, Ventilation, and Air Conditioning (HVAC):

A. Central Air Systems – Energy Star qualified equipment.

B. Economizers.

C. Heat pumps.

D. Furnaces – Energy Star qualified equipment.

E. Air Handlers.

F. Programmable controls.

G. Duct sealing.

iii. Building Envelope Improvements:

A. Improved insulation – added insulation beyond existing levels, or above existing building codes.

B. Caulking and weather stripping of doors and windows.

C. Window upgrades – Energy Star qualifying windows.

D. Door upgrades – door upgrades could include man-doors, and overhead doors with integrated insulation and energy efficient windows.

E. Materials listed in Appendix A to Part 440 of the U.S. Department of Energy's Weatherization Assistance Program, 10 CFR Part 440, Appendix A - Standards for Weatherization Materials.

iv. Water Heaters.

v. Compressed Air Systems.

vi. Motors:

A. High efficiency motors – motors with a rated efficiency beyond the Energy Policy Act standards.

B. Variable frequency drive.

vii. Boilers, dryers, heaters and process-related equipment or equipment not otherwise specified, e.g. commercial coolers and freezers.

viii. Energy audits.

ix. On or Off Grid Renewable energy systems if consistent with the statutory purpose of RESP.

x. Energy storage devices if permanently installed to reduce the energy cost or usage of small businesses and families within a rural area.

xi. Energy efficient appliance upgrades if attached to real property as fixtures.

xii. Irrigation or water and waste disposal system efficiency improvements.

xiii. Necessary and incidental activities and investments directly related to implementation of an Energy efficiency measure.

e. Funding Disbursements and Restriction.

i. General. RUS will disburse RESP funds to the RESP borrower in accordance with the terms of the executed loan documents. Excluding the special advance for start-up activities, all loan funds will be disbursed either as an advance in anticipation of consumer loans to be made by the RESP borrower; or as a reimbursement for eligible program costs, including consumer loans already made, upon the RESP borrower having complied with the loan conditions set forth in the loan documents. Within a 12-month consecutive period, any disbursements of loan funds to an RESP borrower must not exceed 50 percent of the approved loan amount.

ii. Loan Advances. The RESP borrower must provide to the Qualified consumers all RESP loan funds that the RESP borrower receives within one year of receiving them from RUS. If the RESP borrower does not re-lend the RESP loan funds within one year, the unused RESP loan funds, and any interest earned on those RESP loan funds, must be returned to the Federal Government and will be applied to the RESP borrower's debt. The RESP borrower will not be eligible to receive additional RESP loan funds from RUS until providing evidence, satisfactory to RUS, that RESP loan funds from a previous advance have been fully relent to Qualified consumers or returned to the Federal Government.

RUS will disburse the RESP loan funds in advance only if: i) the RESP borrower has established written procedures that will minimize the time elapsing between the transfer of RESP loan funds from RUS and their disbursement to the Qualified consumer; and, ii) the requests for advances

made by the RESP borrower are limited to the minimum amounts needed and timed to be in accordance with the actual immediate cash needs to carry out the Energy Efficiency program.

iii. Loan term for loans to Qualified consumers. Each loan made by the RESP borrower to a Qualified consumer may not exceed a term of 10 years.

iv. Unauthorized uses of funds. The RESP borrower must not finance the purchase or modification of personal property with proceeds from the RESP loan unless the personal property is or becomes attached to real property (including a manufactured home) as a fixture. The RESP borrower must keep adequate processes, procedures and records and must not commingle RESP funds with other sources of funding in the implementation of an EE Program.

F. Federal Award Administration Information

1. General. A successful loan RESP Applicant will receive a Conditional commitment letter from the Administrator notifying it of the total loan amount approved by RUS; any additional controls on the its financial, investment, operational and managerial activities; acceptable security arrangements; and such other conditions deemed necessary by the Administrator to adequately secure the Government's interest and ensure repayment. Upon receipt of the acceptance of the loan offer from the RUS Borrower, RUS will begin to prepare the loan documents with the assistance of the Eligible entity. Upon completion of the loan documents, RUS will forward the loan documents to the RESP borrower.

Receipt of a Conditional commitment letter from the Administrator does not authorize the RESP borrower to commence performance under the award. All RUS requirements and loan conditions specified in the Conditional commitment letter must be met before the loan will be

advanced. RUS will notify the RESP borrower when it is authorized to commence performance using RESP funds.

2. Loan Term. RUS will make loans to RESP Applicant under RESP for a term not to exceed 20 years from the date on which the loan is closed.

3. Interest rate. Loans made under RESP will not bear interest (0 percent) although indebtedness not paid when due will be subject to interest, penalties, administrative costs and late fees as provided in the loan documents.

4. Repayment. The repayment of each advance to the RESP borrower must be amortized for a period not to exceed 10 years. However, any special advances under a loan must be made during the first 10-year period of the term of the underlying loan and repayment of such special advance shall be required during the 10 year period with such period beginning on the date on which such special advance is made. A RESP borrower may elect to defer the repayment of the special advance to the end of the 10-year period. However, all amounts advanced on the loan by RUS to the RESP borrower must be paid prior to the final maturity which must not exceed 20 years. The RESP borrower is responsible for fully repaying the RESP loan to RUS according to the loan documents regardless of repayment by its Qualified consumers.

5. Financial Ratios. The requirements for coverage ratios will be set forth in the Conditional commitment letter and RESP borrower's loan documents with RUS. The minimum coverage ratios required of RESP borrowers, whether applied on an annual or average basis will be determined by the Administrator on case-by-case basis based on the risk profile of the RESP Applicant and specific loan features. Existing RUS borrowers will be subject to their current debt service coverage ratios. When new loan documents are executed, the Administrator may, on

a case-by-case basis, increase the coverage ratio of the RESP borrower if the Administrator determines that higher ratios are required to ensure the repayment made by RUS. Also, the Administrator may, on a case-by-case basis, reduce the coverage ratios if the Administrator determines that the lower ratios are required to ensure the repayment of the loan made by RUS.

6. Equity Requirements. The required equity position would be determined by the Administrator on a case-by-case basis and will be set forth in the Conditional commitment letter and the loan documents as a condition to the RESP loan.

7. Opinion of counsel. An opinion of counsel is required at closing and must be acceptable to the Administrator, opining that the RESP Applicant is properly organized and has the required corporate authority to enter into the proposed transaction. It must also identify the proposed collateral to secure the RESP loan and certify that such collateral is free of liens or identify any issues that may arise for the Government regarding the securing and perfecting of a first and prior lien on such property comprising the collateral.

8. Loan Term and Conditions. The Administrator reserves the right to modify or waive certain requirements if the Administrator believes such modifications or waiver are in the best interest of the government and the Administrator has determined that the loan will be repaid in the designated time period and the security is adequate. Also, the Administrator, at his sole discretion, may add such terms and conditions in a loan under this NOFA to ensure the RESP loan is timely repaid and is adequately secured.

9. Administrative and National Policy Requirements. The items listed in this notice implement the appropriate administrative and national policy requirements, which include but are not limited to:

a. Execution of a RESP loan agreement and related loan documents;

b. Compliance with policies, guidance, and requirements as described in Section D.2.a.vii.

(Statement of Compliance with other federal statutes) of this notice, and any successor regulations.

10. Reporting

a. **Performance Reporting.** RUS will establish periodic reporting requirements. These will be enumerated in the loan documents.

b. **Accounting Requirements.** RESP borrowers must follow RUS' accounting requirements. These requirements, which will be specified in the loan agreement, include, but are not limited to, the following:

i. RUS accounting requirements include compliance with Generally Accepted Accounting Principles, as well as compliance with the requirements of the applicable regulations: 7 CFR part 200 (for RESP borrowers, under this CFR Part, the term "grant recipient" will also mean loan recipient) or the system of accounting prescribed by RUS Bulletin 1767. The Administrator may modify the accounting requirements if, in his judgement, it is necessary to satisfy the purpose of Section 6407.

ii. RESP borrowers must comply with all reasonable RUS requests to support ongoing monitoring efforts. The RESP borrowers must afford RUS, through their representatives, a reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect any or all books, records, accounts, invoices, contracts, leases, payrolls, timesheets, cancelled checks, statements, and other documents, electronic or paper of every kind belonging to or in possession of the RESP borrowers or in any way pertaining to its

property or business, including its parents, affiliates, and subsidiaries, if any, and to make copies or extracts therefrom.

c. Audit Requirements. RESP borrowers will be required to prepare and furnish to RUS, at least once during each 12-month period, a full and complete report of its financial condition, operations, and cash flows, in form and substance satisfactory to RUS, audited and certified by an independent certified public accountant, satisfactory to RUS, and accompanied by a report of such audit, in form and substance satisfactory to RUS. RESP borrowers must follow the 7 CFR 1773, Policy on Audits for RUS borrowers or 2 CFR part 200, subpart F audit requirements. The Administrator may modify the audit requirements if, in his judgement, it is necessary to satisfy the purpose of Section 6407.

G. FEDERAL AWARDING AGENCY CONTACT

Robert Coates, Electric Program, Rural Utilities Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 1568, Room 0217-S, Washington DC 20250-1510; Telephone: (202) 260-5415; Email: Robert.Coates@wdc.usda.gov.

H. OTHER INFORMATION

1. Other Funding Opportunities

Applicants may also consider the funding opportunities under the Energy Efficiency and Conservation Loan Program, 7 CFR 1710, Subpart H.

2. USDA 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, 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, 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 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:

- a. Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, DC 20250-9410;

b. Facsimile: (202) 690-7442; or

c. Email: program.intake@usda.gov.

d. USDA is an equal opportunity provider, employer, and lender.

Dated: September 26, 2017.

Christopher McLean

Acting Administrator, Rural Utilities Service

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