

SUPPORTING STATEMENT

**OMB Docket No. 0572-0130
7 CFR Part 1738
Rural Broadband Access Loans and Loan Guarantees**

NOTE: This information collection package (ICP) was reviewed by OMB at the proposed rulemaking stage and filed with comment. The agency published a proposed rulemaking on May 11, 2007. The 2008 Farm Bill enacted statutory changes to the Broadband Program which necessitate providing an additional comment period. The agency will publish an Interim Final rule with a 60-day Paperwork Reduction Act Notice to solicit additional comments from the public. At this time, the agency is submitting an ICP for emergency approval in order to allow the agency to continue collecting information while the interim final rule is out for comment.

A. Justification

1. Explain the circumstances that make the collection of information necessary.

The Rural Utilities Service (RUS), is authorized by Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended (RE Act), to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural areas in the States and Territories of the United States. 7 CFR part 1738 prescribes the types of loans available, facilities financed, and eligible applicants, as well as minimum equity requirements to be considered for a loan. In addition, 7 CFR part 1738 outlines the process through which RUS will consider applicants under the priority consideration required in Title VI.

The term of the loans is based on the expected composite economic life based on the depreciation rates of the facilities financed. The term of the loan can be as high as 35. These loans are secured by a first lien on the borrower's broadband system. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural broadband service access, Title VI of the RE Act further requires that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.

This rulemaking proposes to implement changes on the following subject matter: funding in competitive markets and new eligibility requirements; new equity and market survey requirements; and new legal notice requirements to increase transparency.

The collection of information described in this supporting statement is necessary in order for RUS to determine an applicant's eligibility to borrow under the terms of the RE Act and that the applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. This information is also used by RUS to determine that the Government's security for loans are reasonably adequate and that the loans will be repaid within the time agreed.

Applications will be submitted by entities to RUS in the form of 2 hard copies and a CD containing the material in electronic format. The applicant will submit an application containing those items set forth in the Application Guide and the regulation (7 CFR Part 1738).

The information in the application will be used to determine: applicant eligibility, availability of broadband service for priority consideration, technical and economic feasibility of the proposed project (that the funds requested are adequate to complete the project taking into consideration any additional funding provided by the applicant and that the loan can be repaid within the allowable time frame), and applicant compliance with certain Federal regulations and requirements. Applicants are required to submit:

RUS Form 532, "Rural Broadband Access Loan and Loan Guarantee Application", is submitted by loan applicants when requesting a loan from RUS. Form 532 is used by staff (1) as formal notification of an applicant's desire to obtain financing from RUS and (2) in determining the preliminary eligibility of an applicant. The Form 532 also includes the necessary certification and notification requirements of OMB Circular A-129 with regard to Federal debt delinquency. Schedules A through O are included in Form 532 to support the loan application. The information provided in the schedules is as follows:

CONGRESSIONAL DISTRICTS (Schedule A)

Schedule A shall contain information on the congressional districts. This information shall include both the districts where the applicant's headquarters are located and the ones that cover the service territory proposed by this project.

EXECUTIVE SUMMARY (Schedule B)

The executive summary should be a brief description of the proposed project. It should state the reason why the system is needed and the qualifications of the applicant that demonstrate the ability to construct and operate a broadband system. It should also state the number and names of the rural areas to be served, the proposed type of broadband system that will be deployed and the overall cost of the broadband system.

LEGAL OPINION & PROPERTY SCHEDULE (Schedules C-1 and C-2)

A. Legal Opinion - A legal opinion shall be prepared in accordance with the sample format as shown on Schedule C-1.

B. Real Property Schedule - Schedule C-2 shall include the legal descriptions of all the real property owned by the applicant. It should be categorized into real property, leased-property, easements, and rights-of-way.

CORPORATE STRUCTURE (Schedules D-1 through D-6)

A. Articles of Incorporation or Organization Agreement – A registered copy of the Articles of Incorporation or Organization Agreement of the applicant should be included as Schedule D-1.

B. By-laws or Operating Agreement – Attach a copy as schedule D-2. If the applicant is a Limited Liability Company (LLC), the applicant must submit either LLC agreement for all members of the applicant's LLC or an opinion of counsel which certifies that the applicant's agreement does not conflict with any of the LLC agreements of the applicant's members.

C. Board of Directors or Managing Members – Schedule D-3 shall include a list of the board members and a brief biography to highlight their experience within the industry and community.

D. Management Experience and Compensation – Schedule D-4 should include information on the key personnel who will manage the company and the project as outlined in the RUS Bulletin 1738-1.

D. Organizational Chart - Schedule D-5 shall include an organizational chart showing the key personnel who manage or will manage the company and/or this project and the number of employees in each division or department managed by those personnel.

E. Parent and Subsidiaries – Schedule D-6 should include an organizational chart illustrating all the other entities (parent/subsidiaries) that are affiliated with the applicant and clearly indicate the relationships between these entities and the applicant. An accompanying narrative should briefly indicate any services the affiliate will be providing to the applicant.

BOARD RESOLUTION (Schedule E)

A Board of Directors' resolution or other document authorizing the funding request should be included as Schedule E

SERVICE AREA MAPS AND DEMOGRAPHIC DATA

Applicants must use the RUS mapping tool to complete Schedules F-1 and F-2 to designate and submit maps of their service area and provide additional demographic data about those service areas.

EXISTING, NEW, AND PROPOSED SERVICE AREAS (Schedule G)

Schedule G must be completed for all existing and new service areas. The service areas should be listed by four categories:

- New or existing
- Funded or Non-Funded

For each service area, the name of the County and the respective State; the area's population; the number of Households (HH) in the area; and the number of Businesses (Bus) in the area should be indicated.

COMPLIANCE CERTIFICATES (Schedules H-1 through H-6)

Schedules H1 - H6 are forms that need to be certified by the applicant to ensure compliance with Federal statutes and regulations.

- A. Equal Opportunity and Nondiscrimination Certification (Schedule H-1)
- B. Certification Regarding Architectural Barriers (Schedule H-2)
- C. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Certification (Schedule H-3)
- D. Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions (Schedule H-4)
- E. Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements (Schedule H-5)
- F. Certification Regarding Flood Hazard Area Precautions (Schedule H-6)

OUTSTANDING FEDERAL DEBT (Schedule I)

Schedule I should list all outstanding Federal Debt, and attach a copy of the loan documents.

EQUITY (Schedule J-1 and J-2)

RUS requires that as a condition to financing that an applicant have equity in an amount equal to 10 percent of the request loan amount at the time of application. If an applicant's balance sheet (Schedule L-4a) does not demonstrate the required equity, Schedule I-1 will be included which will provide an investor's commitment to cover the shortfall by providing additional equity. This will include a letter from the investor indicating the investor's commitment, the timing for providing the investment, the amount of the investment, and all terms and conditions associated with the investment. Schedule I-2 will be used by State and Local Government who wish to satisfy the equity requirement with a general obligation bond. Included with Schedule I-2 will be an opinion from legal counsel.

This schedule should indicate all the appropriate categories that will be used to satisfy the credit support requirement. For each category that is used, the dollar amount for that category should be indicated. In addition, if the applicant is an existing telecommunications company, if the company has had a positive cash flow from operations for the previous two calendar years preceding the date of the application this should be indicated.

RESEARCH DATA AND MARKET ANALYSIS (Schedules K-1 and K-2)

Market research is critical in determining the interest and demands of the targeted rural areas for the services offered. This research provides the applicant with knowledge of market potential, , and knowledge of the needs/demands of the potential customer base. But most important market research supports feasibility studies and strategic planning goals. A market survey, satisfactory to RUS, shall be conducted by the applicant in *each* service area where the applicant proposes to provide broadband service. The market survey will collect data from potential subscribers (both residential and business) on the service offerings and the respective rates to determine the levels of interest in the services and rate plans to be offered by the applicant. The surveys must be conducted within 6 months of the submission of the application to RUS. Surveys can be conducted through direct-mail; telephone; door-to-door interviews; and town hall meetings. The survey questionnaire used for conducting the market survey should, at a minimum, capture the following information:

1. Ownership of computers and Internet usage (including time online);
2. Existing service provider, types of service provided; rate plans (both price and transmission rate), satisfaction with current provider;
3. Proposed services offered by applicant, the respective rate plans (including any one-time fees), and the timeline for providing those services;
4. Incentive/introductory packages offered by the applicant;
5. Interest in switching service providers and reasons for switching (price, service level, customer service/local presence); and
6. Economic and social demographics including age, income level, and family/household members.
7. Type of broadband services desired by the customer.

A. Research Data (Schedule K-1)

Schedule J-1 shall contain the methodology for conducting the market survey and the tabulated results for each service area, and a copy of the questionnaire used in the market survey. The results shall include:

1. Total number of surveys sent;
2. Total number of respondents;
3. Number and percent of responses to each question; and
4. Cross-tabulations for income levels, computer ownership, Internet usage.

B. Market Analysis (Schedule K-2)

Schedule J-2 shall contain an analysis of the research data.

The applicant will draw conclusions regarding projected subscriber levels across the different service levels/rates for each service area for each year of the financial forecast. The results will clearly differentiate business subscribers from residential subscribers. The results will be based on the tabulated data from the market survey, as well as other market data gathered with respect to existing and potential competition, and demographics of each service area. The results shall be for each service area taking into account each service area's individual circumstances and shall be

based on the number of households/businesses in each service area and not the population of the service area. The applicant must clearly explain the methodology behind the final subscriber projections. Subscriber projections based on population numbers and national/state statistics are not acceptable on their own. Projections must be supported from the research data provided in this section.

COMPETITIVE ANALYSIS (Schedules L-1 and L-2)

The applicant must submit a competitive market analysis for each proposed service area. Schedule K-1 shall contain a list of all existing service providers and all resellers competing in the applicant's proposed service area. Also, information on each competitor's service offerings and pricing, the area that is being covered and a description of the quality of services being provided.

Schedule K-2 shall be a narrative that describes the applicant's strategic approach for how it intends to successfully compete against existing service providers. The analysis should compare the applicant's offering with their competition's and describe how the applicant will successfully win new customers, including those of its competitors.

FINANCIAL POSITION (Schedules M-1 through M-6)

RUS will approve a loan only if, in RUS's sole judgment, the loan will be repaid according to its terms and within the time agreed upon. It is the applicant's responsibility to provide RUS with sufficient financial information and supporting justification to determine that the loan will be feasible and adequately secured. Long-term forecast analysis should be based on knowledge of the external and internal factors that affect a company's operations. Historical financial statements and the projections should be prepared by a financial consultant, accountant or individual familiar with preparing these types of financial statements and supporting schedules. The applicant must submit evidence of the preparer's qualifications.

A. Historical Financial Statements (Schedule M-1)

Financial statements of the applicant for the last three (3) years, or for as long as the applicant has been in business if less than three (3) years, must be provided. The financial statements must include the balance sheet, income statement and statement of cash flow as well as any accountant's letter and the notes to the financial statements. Audited financial statements are preferred

B. Total Outstanding Indebtedness (Schedule M-2)

A listing of all outstanding RUS indebtedness, including loan maturity and interest rates, should be included. A listing of outstanding non-RUS indebtedness, including loan maturity, interest rates and conditions, should

be included. Also, as part of this schedule a copy of all loan documents related to non-RUS indebtedness (notes, loan contracts, mortgages, etc.) should be included.

C. Subscriber Projection and Service Tiers (Schedule M-3A to L-3C)

Subscriber projections shall be provided on a yearly basis for five (5) years. A separate table shall be included in Schedule L-3 for each type of service proposed (data, voice, and video).

D. Pro Forma 5-Year Financial Forecast and Assumptions (Schedule M-4A to L-4F)

To identify the potential business opportunities within the proposed rural area, the applicant must complete a pro forma financial analysis. This forecast must cover at least 5 years and be inclusive of **ALL** operations of the applicant, existing and proposed. A detailed narrative of the financial assumptions must be included and address revenues, expenses, working capital, investments, refinancing, acquisitions, and current operations.

Additional Cash (Schedule M-5)

Applicants should conduct analysis to identify cash shortfalls and provide the resources to cover those amounts. Applicants will use Schedule M-5 to document evidence of the analysis.

F. Depreciation Schedule (Schedule M-6)

A depreciation schedule should be provided as Schedule M-6. This schedule should include all categories of depreciable equipment and facilities that are proposed for purchase through Broadband Loan Project funds only.

NETWORK DESIGN (Schedules N-1 through N-3)

The Network Design of the application shall include all the technical information on the applicant's existing and proposed systems. Schedule N-1 shall present a Network Design. Schedule N-2 shall present a narrative description of the planned service, whether the service will be outsourced, and how each service will be provisioned and operationalized. Schedule N-3 shall present a Network Design Certification in accordance with the Application Guide.

NETWORK DIAGRAMS (Schedules O-1 and O-2)

Existing and proposed network diagrams shall be included in the application as Schedule O-1 and O-2 and provide the level of detail found in the Application Guide.

PROJECT COSTS AND BUILDOUT TIMELINE (Schedule P)

Schedule P will provide detailed information on the project capital investment, including detailed project costs, build-out timeline, and project milestones.

ENVIRONMENTAL REPORT (Schedule Q)

RUS is responsible for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended; the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related Federal environmental laws, statutes, regulations, and Executive Orders (EO) that apply to RUS programs. The policies and procedures set forth in 7 CFR Part 1794, Environmental Policies and Procedures, assist RUS with making decisions that are based on an understanding of environmental consequences, and taking action that protects, restores and enhances the environment. Applicants are responsible for ensuring that proposed actions are in compliance with all appropriate RUS requirements. Therefore, applicants must prepare an environmental report in accordance with 7 CFR Part 1794, for any facilities that will be constructed with broadband loan funds. A copy of 7 CFR Part 1794 can be retrieved from RUS's web site.

LICENSES AND AGREEMENTS (Schedule R)

Applicants must complete the information in Schedule R for all applicable licenses and agreements and provide supporting documentation.

Public Notice Survey – The agency will post a public notice filing on its website. Incumbent service providers in the area may respond to the public notice filing by providing a public notice response. The filer must provide specific information and provide mapping of their service territory. The agency estimates that on average 3 public notice filings will be submitted per application received.

Post loan construction and advance requirements and procedures are cleared in Docket 0572-0059, Telecommunications System Construction Policies and Procedures.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.

RUS is committed to meeting the requirements of the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

The agency will make the application form available in a fillable PDF form and post it on the agency's website. The agency seeks approval to post the form.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Each application will be for a new project and new purpose, therefore information to determine economic and technical feasibility and broadband availability will be unique and will not be duplicated. Where an existing borrower requests a new loan, certain organizational information, maintained in RUS files, will not need to be resubmitted, as listed in the application guide.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-I), describe any methods used to minimize burden.

The Agency believes it has minimized the burden on both large and small entities and that the required information is the least amount needed to determine applicant eligibility and project feasibility.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The required information is submitted annually at the time of application and is necessary in order for RUS to make a prudent loan decision; therefore, this information cannot be submitted less frequently.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

a. Requiring respondents to report information more than quarterly.

There are no such requirements.

b. Requiring written responses in less than 30 days.

There are no such requirements.

c. Requiring more than an original and two copies.

There are no such requirements.

d. Requiring respondents to retain records for more than 3 years.

Records will be maintained until the loan fund advance has been audited by RUS in accordance with 7 CFR Part 1767, which is generally less than a 3-year period.

e. That is not designed to produce valid and reliable results that can be generalized to the universe of study.

This information collection does not involve statistical information.

f. Requiring use of statistical sampling which has not been reviewed and approved by OMB.

This information collection does not involve statistical sampling.

g. Requiring a pledge of confidentiality.

There is no such requirement.

h. Requiring submission of proprietary trade secrets.

There is no such requirement.

8. If applicable, identify the date and page number of publication in the Federal Register of the agency's notice soliciting comments on the information collection. Summarize public comments received and describe actions taken by the agency in response to these comments. Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, reporting format (if any), and on data elements to be recorded, disclosed, or reported.

Since the program's inception on January 31, 2003, RUS has offered numerous workshops and informational sessions across the country. At these sessions, personnel present detailed instructions on how to apply for a loan and correctly fill out the necessary forms. The sessions include an overview of the analysis process and post-application procedures. During the workshops, applicants and borrowers are given the opportunity to ask questions and offer comments on the application process. RUS has considered the feedback received from the workshops and published a proposed rulemaking on May 11, 2007, to address many of the public concerns. A 60-day notice was published in the proposed rulemaking. Comments received during the rulemaking process have been incorporated into the next phase of rulemaking.

The 2008 Farm Bill implemented statutory changes to the Broadband Program. These changes make it necessary for the agency to publish an Interim Final rule and collect additional comments on the rulemaking. The agency is also seeking additional comments on the information collection requirements of the rulemaking and has cited specific questions in the comments section to solicit opinion on the agency's estimate of burden hours associated with the collection.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

No such decision has been made.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.

No assurances have been made. Information submitted to RUS by borrowers and applicants is covered by the provisions of the Freedom of Information Act (5 U.S.C. 552).

11. Provide additional justification for any question of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of this nature.

12. Provide estimates of the hour burden of the collection of information.

Between fiscal years 2006 and 2009, RUS has received on average 25 loan applications. The applications range in size and may cover requests for funding for many communities.

All of the pre-loan data collected by the applicant is generally submitted to RUS at the same time. The annual burden for preparation and submission per respondent for the pre-loan data is estimated to be 400 hours per response, response to the public notice filing requirement is 1.5 hours per response, and the preparation of loan documents is estimated at 24 hours per response. (See attached spreadsheet for breakout.)

The Agency estimates the cost to respondents will be estimated at \$548,825. Organizations use various types of person's to complete these applications, including engineering and legal consultants. The following rates are an average rate attributed to the type of position in the applicant's organization.

| | Hrs. Per. | Hours | Cost per Hour Professional Time | Total Cost |
|--------------------------|--------------------|--------|---------------------------------|------------|
| 25 applicants | 400 – application | 10,000 | \$50.00 | \$500,000 |
| 75 public notice filings | 1.5 – per filing | 112.5 | \$50.00 | \$5,625 |
| 18 loan recipients | 24 – loan document | 432 | \$100.00 | \$ 43,200 |
| Total annual cost burden | | | | \$548,825 |

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

(a) Total capital and start-up cost component (annualized over its expected useful life); and

There are no capital or start-up costs involved with this collection.

(b) Total operation and maintenance and purchase of services component.

There are no operation and maintenance, or purchase of services costs involved with this collection.

14. Provide estimates of annualized cost to the Federal Government.

The cost to the Federal Government to collect and evaluate this information is estimated to be \$322,305 based on the following calculations:

Initial review of applications for priority, eligibility, and completeness:

Engineer review – \$39.70* X 25 applications X 80 hours = \$79,400
 Loan Analyst review - \$39.70* X 25 applications X 80 hours = \$79,400.
 Recommendation to Operations Chief - \$49.22** X 25 applications X 1.5 hours = \$1,846

* GS 12, step 5

** GS 14, step 1

Complete review of application:

Engineer review – \$39.70* X 18 applications X 240 hours = \$79,400
 Loan Analyst review - \$39.70* X 18 applications X 240 hours = \$79,400

* GS 12, step 5

** GS 14, step 1

Clerical time on various functions:

\$19.75* X 2 hours X 25 applications = \$544

*Secretary GS 7, step 1

Preparation of legal documents for loan closing:

Loan Analyst - \$39.70* X 18 recipients X 2 hours = \$1,429
 Attorney - \$49.22** X 18 recipients X 1 hour = \$886

* GS 12, step 5

*GS 14, step 1

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

This is a revision of a currently approved information collection and is tied to an interim rule. The items covered by this collection include forms and related documentation to support a loan application, including Form 532 and supporting documentation. Revisions to the information collection include reworking the order of the application form into a more user friendly document which will allow the agency to capture the requested information in a format that the agency can use. Specific program changes are: (1) funding in competitive markets and new eligibility requirements (revisions will affect the details of an application, but not the difficulty of preparation or quantity of information provided; accordingly, the paperwork burden associated with these changes is not expected to be appreciably more or less than under the existing rule);

(2) new equity requirements (revisions will affect the details of an application, but not the difficulty of preparation or quantity of information provided; accordingly, the paperwork burden associated with these changes is not expected to be appreciably more or less than under the existing rule); (3) new market survey requirements (the associated paperwork burden will be reduced by a small amount for some applicants as the requirement will be eliminated in certain instances); and (4) new legal notice requirements to increase transparency (the additional information required by the proposed modification of legal notice requirement will increase the paperwork burden of each application by a small amount and there will be voluntary burden on incumbent service providers).

There is an overall decrease for this collection of 2,935 hours. The agency has increased its estimate of hour burden associated with the application from 325 hours to 400 hours based on working with current applicants. However, there is a decrease in respondents from 40 to 25 per year based on past experience. The net decrease for the application is 3,000 hours. There is a net decrease of 48 hours for the loan documents due to decreasing the number of respondents by 2. There is a net increase of 113 hours due to the new public notice filing requirement which local incumbent service providers may voluntarily respond to.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

There are no plans for publication.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The agency is not seeking such approval.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-1.

There are no exceptions.

B. Collection of Information Employing Statistical Methods.

This collection does not involve statistical methods.