

ALERT

RUS ReConnect Funding Opportunity Announcement

October 29, 2021

On October 24, 2021, the Rural Utilities Service (RUS) of the U.S. Department of Agriculture (USDA) released a Funding Opportunity Announcement (FOA) to announce the application window for the 2022 fiscal year (FY 2022) Rural eConnectivity Program, more commonly known as the ReConnect program. The FOA greatly expanded the eligibility area and moves away from the historic definition of what constitutes an “unserved area” for federal broadband support. The FOA also adopts evaluation and scoring criteria that enhance the position of local government applicants, while more formally integrating long-time Democratic policy priorities such as network neutrality and non-discriminatory wholesale access into federal subsidies for broadband deployment.

For FY 2022, the program will make available \$350 million for grants with a 25% matching requirement, \$250 million for 50/50 grant-loan combinations, \$200 million for loans only, and \$350 million in new 100% grant funding for Tribal and socially vulnerable communities, with no matching required. The funding application window will open on November 24, 2021 and will close in February 2022.

Expansion for Eligible Areas

Existing funding is not disqualifying, but must be complementary.

Pursuant to the Consolidated Appropriations Act of 2021, the service areas of existing RUS borrowers without sufficient access to broadband, as defined by the FOA and explained further below, are eligible for ReConnect Funding. More importantly, areas that receive or are under consideration for support from the Federal Communications Commission (FCC), including the Rural Digital Opportunity Fund (RDOF), are eligible for funding under this FOA. The

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FOA explains that because ReConnect funds only capital expenses while RDOF funds both operational and capital expenses, RDOF fund recipients should remain eligible for ReConnect support. However, the ReConnect funding is only eligible for “complementary purposes,” not “duplicative ones,” and therefore funding from ReConnect and RDOF cannot be used to pay for “the same labor or materials” or to procure the same unit of network equipment. Furthermore, the applicant is required to explain why the RUS should provide additional funding, such as to accelerate the deployment schedule. Finally, recipients of both RDOF and ReConnect funding must keep separate accounts to track the use of each funding source.

Proposed funded service area (PFSA). In scoring the applications, the FOA clarifies that applicants are “not required to treat the publicly available FCC current Form 477 data as dispositive of what speed service currently exists” in the PFSA. The FOA does not, however, identify the means by which applicants can prove that their PFSAs are eligible for ReConnect support. It is possible that applicants can rely on existing mapping from NTIA or they may be required to conduct their own speed survey to support their PFSA.

100% grants. Finally, the FOA creates a new funding option that will make available up to \$35 million in grants that have no matching required per project (100% grants) for areas classified by the USDA Economic Research Service as Frontier and Remote (FAR) Level 4. FAR Level 4 is defined as extremely remote or rural areas that are “15 minutes or more from an urban area of 2,500-9,999 people; 30 minutes or more from an urban area of 10,000 – 24,999 people; 45 minutes or more from an urban area of 25,000 – 49,999 people; and 60 minutes or more from an urban area of 50,000 or more people.”

Redefining Broadband

The FOA defines an eligible PFSA as one that is not currently receiving speeds of 100 megabits per second (Mbps) download and 20 Mbps upload in fixed, terrestrial broadband service, consistent with recent legislative efforts that have effectively redefined the speed thresholds of the types of Internet services that constitute “broadband” and moving beyond the FCC’s traditional definition of broadband as 25 Mbps download/3 Mbps upload.

Preference for Local Governments and Open Internet Policies

The FOA made substantial changes to the way ReConnect applications have traditionally been scored. Local governments, non-profits, and cooperatives as applicants and projects involving public-private partnerships where the local government, non-profit, or cooperative is the applicant are given strong preference during the scoring process. Other adjustments to the scoring matrix include:

- *Affordability:* additional points will be awarded for projects in which applicants can demonstrate that the broadband prices they will offer are affordable to their target markets, provide pricing and speed tier information on the services they intend to offer, and include at least one low-cost option offered at speeds that are “sufficient for a household with multiple users to simultaneously telework and engage in remote learning.” Applicants should also commit to applying to participate in the FCC’s Lifeline Program, the Emergency Broadband Benefit Program, and any successors to those programs targeted at low-income consumers. Additional points are also awarded for projects where at least 75% of the

PFSA's are proposed to serve Socially Vulnerable Communities based on the Center for Disease Control's Social Vulnerability Index.

- *Labor Standards*: additional points will be awarded for applications that include a description of whether and, if so, how the project will incorporate strong labor standards, including whether workers will be paid wages at or above the prevailing rate, whether the project will be covered by a project labor agreement, and whether a locally-based workforce will be used, among others.
- *Open Internet*: additional points will be awarded if an applicant submits a board resolution committing that the applicant's network shall not block, impair, or degrade lawful content, applications, services, or non-harmful devices, subject to reasonable network management, nor engage in paid prioritization. Additional points will also be awarded for projects that commit to offering wholesale broadband services at rates and terms that are reasonable and nondiscriminatory.

Future Request for Information on Potential 100 Mbps symmetrical Service Requirement

The RUS notes that it intends to issue a Request for Information seeking comment on whether to apply, in future funding rounds, the requirement for facilities constructed with RUS funding to provide 100 Mbps symmetrical service to every premise in a PFSA.

If you have any questions on the ReConnect program, please contact one of the authors listed on this alert.

Scott Bouboulis, a Law Clerk at Wiley Rein LLP, contributed to this alert.