

**§§ 1779.14–1779.16**

**7 CFR Ch. XVII (1–1–10 Edition)**

be appealed only by the lender. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the regulations of the National Appeals Division, U.S. Department of Agriculture, published at 7 CFR part 11.

**§§ 1779.14–1779.16 [Reserved]**

**§ 1779.17 Exception authority.**

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

**§§ 1779.18–1779.19 [Reserved]**

**§ 1779.20 Eligibility.**

(a) *Availability of credit from other sources.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time. The Agency must also determine if an outstanding judgment obtained by the United States in a Federal Court (other than the U.S. Tax Court) has been entered against the borrower or if the borrower has an outstanding delinquent debt with any Federal agency. Such judgment or delinquency shall cause the potential borrower to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied or the delinquency is cured.

(b) *Legal authority and responsibility.*

(1) Each borrower must have, or will obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services. They must also have legal authority for obtaining, giving security for, and repaying the proposed loan.

(2) The borrower shall be responsible for operating, maintaining, and managing the facility and services, and providing for the continued availability and use of the facility and services at reasonable rates and terms.

(c) *Applicant.* Eligible entities are:

(1) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area.

(2) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or

(3) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(d) *Facility location.* Facilities must be located in rural areas, except: For utility services such as drinking water, sanitary sewer, solid waste disposal or storm drainage facilities serving both rural and non-rural areas. In such cases, Agency funds may be used to finance only that portion serving rural areas, regardless of facility location.

(e) *Facilities for public use.* All facilities financed under the provisions of this part shall be for public purposes.

(1) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin.

(3) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

**§§ 1779.21–1779.23 [Reserved]**

**§ 1779.24 Eligible loan purposes.**

(a) To construct, enlarge, extend, or otherwise improve rural drinking

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water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(b) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) For payment of other utility connection charges as provided in service contracts between utility systems.

(e) When a necessary part of the project relates to those facilities authorized in paragraphs (a), (b), (c) or (d) of this section the following may be considered:

(1) Reasonable fees and costs such as: legal, engineering, administrative services, fiscal advisory, recording, environmental analyses and surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights;

(2) Costs of acquiring interest in land: rights, such as water rights; leases; permits; rights-of-way; and other evidence of land or water control or protection necessary for development of the facility;

(3) Purchasing or renting equipment necessary to install, operate, maintain, extend, or protect facilities;

(4) Cost of additional applicant labor and other expenses necessary to install and extend service;

(5) In unusual cases such as a low-income area, the cost for connecting the user to the main service line;

(6) Interest incurred during construction in conjunction with multiple advances or interest on interim financing;

(7) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the applicant is unable to pay such expenses;

(8) The purchase of existing facilities when it is necessary either to improve service or prevent the loss of service; and

(9) Refinancing non-Agency debts incurred by, or on behalf of, an applicant when all of the following conditions exist:

(i) The debts being refinanced are a secondary part of the total loan unless the debt being refinanced is an Agency direct loan;

(ii) The debts were incurred for the facility or service being financed or any part thereof; and

(iii) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(10) Refinancing Agency debts.

### § 1779.25 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Facilities which are not modest in size, design, and cost;

(b) Loan or grant finder's fees;

(c) The construction of any new combined storm and sanitary sewer facilities;

(d) Any portion of the cost of a facility which does not serve a rural area;

(e) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment;

(f) Rental for the use of equipment or machinery owned by the applicant;

(g) For other purposes not directly related to operating and maintenance of the facility being installed or improved; or

(h) The payment of a judgment which would disqualify an applicant for a loan under § 1779.20(a).

### § 1779.26 [Reserved]

### § 1779.27 Lenders.

(a) *Eligible lenders.* Eligible lenders may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered bank or savings and loan association;

(2) Any mortgage company that is a part of a bank holding company;