

§ 2201.12

credit rating opinion letter from the rating agency on the Loan that is in form and substance acceptable to the Board.

(3) *Evidence of Lack of Credit Elsewhere.* The Applicant shall provide the information required pursuant to § 2201.12(b)(2)(v) of this part.

(h) *Compliance with other Federal statutes, regulations and Executive Orders.* The Applicant must certify compliance with other applicable Federal statutes, regulations, and Executive Orders.

(i) *Environmental impact.* The Applicant must provide information describing the Project's impact on the environment as required pursuant to § 2201.16 of this part. The application may be submitted prior to final determination of a Project's environmental impacts; however, a Guarantee shall not be made and no Loan funds will be advanced prior to such determination and demonstrated compliance with all environmental statutes, regulations and executive orders.

(j) *Federal debt certification.* The Applicant must provide a certification that it is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019). No Guarantee will be made if either the Applicant or Lender has an outstanding, delinquent Federal debt until:

(1) The delinquent account has been paid in full;

(2) A negotiated repayment schedule is established and at least one payment has been received; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt, are made.

(k) *Supplemental information.* The Applicant should provide any additional information it considers relevant to the Project and likely to be helpful in determining the extent to which the Project would further the purposes of the Act.

(l) *Additional information required by the Board.* The Applicant must provide any additional information the Board determines is necessary to adequately evaluate the application.

(m) *Application Fee.* For an application to be considered complete, the Applicant must submit a check payable to the United States Treasury in the

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amount of the application fee as set forth in § 2201.21(a) of this part.

(n) *Incomplete application.* An incomplete application, including any fee submitted therewith, will be returned to the Applicant without action.

§ 2201.12 Applicant.

(a) *Eligibility.* (1) The Board will make a determination of eligibility of an Applicant to be a Borrower under the Program based upon the Applicant's ability to directly provide, as a result of financing received under the Program, Local Television Broadcast Signals to households in Nonserved Areas and/or Underserved Areas and the information provided pursuant to paragraph (b) of this section.

(2) A determination that an Applicant is eligible does not assure that the Board will approve a Guarantee sought, or otherwise preclude the Board from declining to approve a Guarantee.

(b) *Documentation for Eligibility Determination.* (1) An Applicant must provide a Term Sheet evidencing a commitment of that Lender or Agent, and the Lenders it represents, to make a Loan to the Applicant upon an Offer of Guarantee by the Board, subject to the requirements of the Act and the regulations set forth in this part.

(2) An Applicant must provide documentation demonstrating that:

(i) The Assets, facilities, or equipment covered by the Loan will be utilized economically and efficiently;

(ii) The terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the Loan protect the financial interests of the United States and are reasonable;

(iii) Appropriate and adequate Collateral secures the Loan sought to be guaranteed;

(iv) All necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions for the Loan and the Project under the Loan have been applied for or obtained (a Guarantee shall not be made and no Loan funds will be advanced until all such approvals, licenses and permissions have been obtained);

(v) The Loan would not be available on reasonable terms and conditions

without a Guarantee under this Program. To satisfy this requirement, an Applicant must provide, with its application, documentation from at least one lending institution other than the Lender to which the Applicant has applied for financial assistance dated within six months of submission of the application, indicating that the Applicant was unable to obtain substantially the same Loan it is applying for on reasonable terms and conditions; and

(vi) Repayment of the Loan can reasonably be expected.

§ 2201.13 Lender.

(a) *Eligibility.* (1) The Board will make a determination of eligibility of a Lender to make a Loan to be guaranteed under the Program based upon the criteria set forth in paragraphs (b) and (c) of this section.

(2) A determination that a Lender is eligible does not assure that the Board will approve a Guarantee sought, or otherwise preclude the Board from declining to approve a Guarantee.

(b) *Qualifications.* In addition to evaluating an application pursuant to § 2201.18, in making a determination to approve a Guarantee to a Lender, the Board will assess:

(1) The Lender's Regulatory Capital Ratios, in the case of Banking Institutions, or Net Worth Ratios, in the case of other institutions;

(2) Whether the Lender possesses the ability to administer the Loan, including its experience with loans to telecommunications companies;

(3) The scope, volume and duration of the Lender's activity in administering loans, including federally guaranteed loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's charge-off rate, expressed as a percentage of outstanding loans for its current fiscal year;

(6) If the Lender intends to sell participation interests in the Loan, the plan of syndication; and

(7) Any other matter the Board deems material to its assessment of the Lender.

(c) A Loan will not be guaranteed unless:

(1) If the Lender is not a nonprofit corporation and is subject to loan-to-one-borrower and Affiliate transaction restrictions under applicable law, the Loan is made in accordance with such restrictions;

(2) If the Lender is not a nonprofit corporation and is not subject to the restrictions described in paragraph (c)(1) of this section, the Loan is made to a Borrower that is not an Affiliate of the Lender and the amount of the Loan, and all outstanding loans by the Lender to the Borrower and any of its Affiliates, does not exceed 10 percent of the Net Equity of the Lender; and

(3) If the Lender is a nonprofit corporation, the Board determines that:

(i) Such nonprofit corporation has one or more issues of outstanding long-term debt that is rated within the highest 3 rating categories of a nationally recognized statistical rating organization, as evidenced by written confirmation from the nationally recognized statistical rating organization, subject to updating upon request of the Board; and

(ii) The making of the Loan would not cause a decline in the rating of such Lender's long-term debt below the highest 3 rating categories of a nationally recognized statistical rating organization, as evidenced by written confirmation from the nationally recognized statistical rating organization, subject to updating upon request of the Board.

(d) *Agent.* (1) An application for a Guarantee of a single Loan that includes participation of more than one Lender must identify one of the Lenders participating in such Loan to act as Agent for all Lenders. This Agent is responsible for administering the Loan and shall have those duties and responsibilities required of an Agent, as set forth in the Guarantee.

(2) If more than one Lender is seeking a Guarantee of a single Loan, each one of the Lenders on the application must meet the qualifications set forth in paragraphs (b) and (c) of this section. However, only the Agent must meet the qualifications set forth in paragraph (b)(2) and (3) of this section.

(3) Each Lender, irrespective of any indemnities or other agreements between the Lenders and the Agent, shall