

Rural Utilities Service, USDA

§ 1720.4

electrification or telephone purposes authorized by section 313A of the RE Act as amended.

Rating Agency means a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization.

RE Act means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) as amended.

RUS means the Rural Utilities Service, a Rural Development agency of the U.S. Department of Agriculture.

Secretary means the Secretary of Agriculture acting through the Administrator of RUS.

Subsidy Amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal government of a guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on government receipts or outlays, in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*)

[69 FR 63049, Oct. 29, 2004, as amended at 75 FR 42574, July 22, 2010]

§ 1720.4 General standards.

(a) In accordance with section 313A of the RE Act, a guarantee will be issued by the Secretary only if the Secretary determines, in accordance with the requirements set forth in this part, that:

(1) The proceeds of the guaranteed bonds will be used by the guaranteed lender to make loans to borrowers for electrification or telephone purposes eligible for assistance under this chapter, or to refinance bonds or notes previously issued by the guaranteed lender for such purposes;

(2) At the time the guarantee is executed, the total principal amount of guaranteed bonds outstanding would not exceed the principal amount of outstanding eligible loans previously made by the guaranteed lender;

(3) The proceeds of the guaranteed bonds will not be used directly or indirectly to fund projects for the generation of electricity; and

(4) The guaranteed lender will not use any amounts obtained from the reduction in funding costs provided by a loan guarantee issued prior to June 18, 2008, to reduce the interest rates bor-

rowers are paying on new or outstanding loans, other than new concurrent loans as provided in part 1710 of this chapter.

(b) During the term of the guarantee, the guaranteed lender shall:

(1) Limit cash patronage refunds, for guaranteed lenders having a credit rating below "A-" on its senior secured debt without regard to the guarantee. For such guaranteed lenders, cash patronage refunds are limited to five percent of the total patronage refund eligible. The limit on patronage refunds must be maintained until the credit rating is restored to "A-" or above. For those guaranteed lenders subject to patronage limitations, equity securities issued as part of the patronage refund shall not be redeemable in cash during the term of any part of the guarantee, and the guaranteed lender shall not issue any dividends on any class of equity securities during the term of the guarantee.

(2) Maintain sufficient collateral equal to the principal amount outstanding, for guaranteed lenders having a credit rating below "A-" on its senior secured debt without regard to the guarantee, or in the case of a lender that does not have senior secured debt, a corporate (counterparty) credit rating below "A-" without regard to the guarantee. Collateral shall be in the form of specific and identifiable unpledged securities equal to the value of the guaranteed amount. In the case of a guaranteed lender's default, the U.S. government claim shall not be subordinated to the claims of other creditors, and the indenture must provide that in the event of default, the government has first rights on the asset. Upon application and throughout the term of the guarantee, guaranteed lenders not subject to collateral pledging requirements shall identify, with the concurrence of the Secretary, specific assets to be held as collateral should the credit rating of its senior secured debt, or its corporate credit rating, as applicable, without regard to the guarantee fall below "A-." The Secretary has discretion to require collateral at any time should circumstances warrant.

(c) The final maturity of the guaranteed bonds shall not exceed 20 years.

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(d) The guaranteed bonds shall be issued to the Federal Financing Bank on terms and conditions consistent with comparable government-guaranteed bonds and satisfactory to the Secretary.

(e) The Secretary shall guarantee payment on guaranteed bonds in such forms and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as determined appropriate for satisfying the requirements of this part. The Secretary shall require the guaranteed lender to enter into a guarantee agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering.

[69 FR 63049, Oct. 29, 2004, as amended at 75 FR 42574, July 22, 2010]

§ 1720.5 Eligibility criteria.

(a) To be eligible to participate in the program, a guaranteed lender must be:

(1) A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis; and

(2) Able to demonstrate to the Secretary that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

(b) To be eligible to receive a guarantee, a guaranteed lender's bond must meet the following criteria:

(1) The guaranteed lender must furnish the Secretary with a certified list of the principal balances of eligible loans then outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding; and

(2) The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee;

(c) A lending institution's status as an eligible applicant does not assure that the Secretary will issue the guarantee sought in the amount or under

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the terms requested, or otherwise preclude the Secretary from declining to issue a guarantee.

[69 FR 63049, Oct. 29, 2004, as amended at 75 FR 42574, July 22, 2010]

§ 1720.6 Application process.

(a) Applications shall contain the following:

(1) Background and contact information on the applicant;

(2) A term sheet summarizing the proposed terms and conditions of, and the security pledged to assure the applicant's performance under, the guarantee agreement;

(3) A statement by the applicant as to how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program;

(4) A pro-forma cash flow projection or business plan for the next five years, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed bonds in accordance with their terms;

(5) Consolidated financial statements of the guaranteed lender for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(6) Evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee;

(7) Evidence of a credit rating, from a Rating Agency, on its senior secured debt or its corporate credit rating, as applicable, without regard to the government guarantee and satisfactory to the Secretary; and

(8) Such other application documents and submissions deemed necessary by the Secretary for the evaluation of applicants.

(b) The application process occurs as follows:

(1) The applicant submits an application to the Secretary;

(2) The application is screened by RUS pursuant to 7 CFR 1720.7(a) of this part, to ascertain its threshold eligibility for the program;