

Rural Utilities Service, USDA

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Subpart A—General

§ 1738.1 Overview.

(a) The Rural Broadband Access Loan and Loan Guarantee Program furnishes loans and loan guarantees to provide funds for the costs of construction, improvement, or acquisition of facilities and equipment needed to provide service at the broadband lending speed in eligible rural areas. This part sets forth the general policies, eligibility requirements, types and terms of loans and loan guarantees, and program requirements under Public Law 107–171 and 7 U.S.C. 901 *et seq.*

(b) Additional information and application materials regarding the Rural Broadband Access Loan and Loan Guarantee Program can be found on the Rural Development Web site.

§ 1738.2 Definitions.

(a) The following definitions apply to part 1738:

Acquisition means the purchase of assets by acquiring facilities, equipment, operations, licenses, or majority stock interest of one or more organizations.

Stock acquisitions must be arms-length transactions.

Administrator means the Administrator of the Rural Utilities Service (RUS), or the Administrator's designee.

Advance means the transfer of loan funds from the Agency to the borrower.

Affiliate or *affiliated company* of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, “control” means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, or holding trusts (other than money exchanged) for property or services.

Agency means the Rural Utilities Service, which administers the United States Department of Agriculture's (USDA's) Rural Development Utilities Programs, including the Rural Broadband Access Loan and Loan Guarantee Program.

Applicant means an entity requesting approval of a loan or loan guarantee under this part.

Arm's-length transaction means a transaction between two related or affiliated parties that is conducted as if they were unrelated, so that there is no question of conflict of interest, or a transaction between two otherwise unrelated or unaffiliated parties.

Borrower means any organization that has an outstanding broadband or telecommunications loan made or guaranteed by the Agency.

Broadband borrower means any organization that has an outstanding broadband loan made or guaranteed by the Agency.

Broadband grant means a Community Connect or Broadband Initiatives Program grant approved by the Agency.

Broadband lending speed means the minimum bandwidth requirement, as published by the Agency in its latest notice in the FEDERAL REGISTER that an applicant must propose to deliver to every customer in the proposed funded service area in order for the Agency to approve a broadband loan and may be different for fixed and mobile broadband service. Broadband lending speed may be different from the minimum rate of data transmission required to determine the availability of broadband service when qualifying a service area. If a new broadband lending speed is published in the FEDERAL REGISTER while an application is pending, the pending application may be returned unless the proposed broadband system can provide service at the new broadband lending speed. Returned applications will lose their place in the processing queue.

Broadband loan means any loan approved under Title VI of the Rural Electrification Act of 1936 (RE Act).

Broadband service means any technology identified by the Administrator as having the capacity to provide transmission facilities that enable the subscriber to the service to originate and receive high-quality voice, data, graphics, and video. The Agency will publish the minimum rate of data transmission that will qualify as broadband service in a notice in the FEDERAL REGISTER and this rate may be different for fixed and mobile broadband service. The minimum rate of data transmission that defines broadband service may be different than the broadband lending speed. If a new minimum rate of data transmission is published in the FEDERAL REGISTER while an application is pending, broadband service for the purpose of reviewing the application will be defined by the minimum rate of data transmission that was required at the time the application was received by the Agency.

Build-out means the construction, improvement, or acquisition of facilities and equipment.

Competitive analysis means a study that identifies service providers and products in the service area that will compete with the applicant's proposed project.

Composite economic life means the weighted (by dollar amount of each class of facility in the loan) average economic life as determined by the Agency of all classes of facilities financed by the loan.

Cost share means equity, as defined by generally accepted accounting principles (GAAP).

Customer premises equipment (CPE), in the context of network services, means any network-related equipment (e.g. routers, switches, modems, etc.) used by a customer to connect to a service provider's network.

Derivative means any right, interest, instrument or security issued or traded on the credit of the guaranteed loan or any guaranteed loan portion, including but not limited to any participation share of, or undivided ownership or other equity interest in, the guaranteed loan or any guaranteed loan portion; any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the guaranteed loan or any guaranteed loan portion; or any such interest in such an interest or any such instrument secured by such an instrument.

Economic life means the estimated useful service life of an asset financed by the loan, as determined by the Agency.

Equity means total assets minus total liabilities, as determined by GAAP and as classified according to the Agency's system of accounts and as used in this Part for purposes of section 306F of the RE Act includes the requirements of credit support and cost share in Title VI of the RE Act.

Feasibility study means the evaluation of the pro forma financial analysis prepared by the Agency, based on the financial projections supplied by the applicant and as found acceptable by the Agency, to determine the financial feasibility of a loan request. Financial feasibility will be based on the entire

operation of the applicant and not limited to the funded project.

Financial feasibility means the applicant's ability to generate sufficient revenues to cover its expenses, sufficient cash flow to service its debts and obligations as they come due, and meet the minimum Times Interest Earned Ratio (TIER) requirement of 1.25 (see §1738.211(b)(2)(ii)) by the end of the forecast period, as evaluated by the Agency.

Fiscal year refers to the applicant or borrower's fiscal year, unless otherwise indicated.

Forecast period means the time period used in the feasibility study to determine if an application is financially feasible. Financial feasibility of a loan application is based on five-year projections.

Funded service area means the geographic area within which an applicant proposes to offer service at the broadband lending speed using loan funds. (See also "service area.")

GAAP means generally accepted accounting principles.

Guaranteed-amount debt derivative means any note, bond, or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the guaranteed loan note or any guaranteed loan portion note or any derivative, as the case may be, which has an exclusive or preferred claim to the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed-amount equivalent, as the case may be.

Guaranteed-amount equity derivative means any participation share of, or undivided ownership or other equity interest in, the guaranteed loan or any guaranteed loan portion or any derivative, as the case may be, which has an exclusive or preferred claim to the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed-amount equivalent, as the case may be.

Guaranteed-amount equivalent means, with respect to any derivative which is equal in principal amount to the guaranteed loan or any guaranteed loan portion, that amount of payment on account of such derivative which is equal to the guaranteed loan amount

or the respective guaranteed loan portion amount, as the case may be; or with respect to any derivative which in the aggregate are equal in principal amount to the guaranteed loan or any guaranteed loan portion, that amount of payment on account of such derivatives which is equal to the guaranteed loan amount or the respective guaranteed loan portion amount, as the case may be.

Guaranteed loan amount means the amount of the loan which is guaranteed by the Agency.

Guaranteed loan note means, collectively, the note or notes executed and delivered by the borrower to evidence the guaranteed loan.

Guaranteed loan portion means any portion of the guaranteed loan.

Guaranteed loan portion amount means that amount of payment on account of any guaranteed loan portion which is guaranteed under the terms of the guarantee.

Guaranteed loan portion note means any note executed and delivered by the borrower to evidence a guaranteed loan portion.

Grantee means any organization that has an outstanding broadband grant made by the Agency.

Incumbent service provider (i) Means a service provider that:

(A) Offers terrestrial broadband service in the proposed funded service area;

(B) Has not less than five percent of the households in an applicant's proposed funded service area subscribing to their broadband service at the time of application submission; and

(C) Provides this information to the Agency through a timely response to the public notice described in §1738.204.

(ii) Resellers are not considered incumbent service providers. If an applicant proposes an acquisition, the applicant will be considered a service provider for that area.

Indefeasible right to use agreement (IRU) means the effective long-term lease of the capacity, or a portion thereof, of a cable, specified in terms of a certain number of channels of a given bandwidth.

Interim financing means funds used for eligible loan purposes after the applicant is notified by the Agency that the application is complete. Such funds

may be eligible for reimbursement from loan funds if a loan is made.

Loan means any loan made or guaranteed under this part by the Agency, unless otherwise noted.

Loan contract means the loan agreement between the Agency and the borrower, including all amendments thereto.

Loan documents means the loan agreement, note(s), and security instrument between the borrower and the Agency and any associated documents pertaining to the broadband loan.

Loan guarantee means a loan made by another lender, some portion of which is guaranteed by the Agency.

Loan guarantee documents means the guarantee agreement between RUS and the lender, the loan and security agreement(s) between the guaranteed lender and the borrower, the loan note guarantee made by RUS, the guaranteed loan note, and other security documents.

Loan funds means funds provided pursuant to a broadband loan made or guaranteed under this part by the Agency.

Market survey means the collection of information on the supply, demand, usage, and rates for proposed services to be offered by an applicant within each service area. It supports the applicant's financial projections.

Pre-loan expense means any expense associated with the preparation of a loan application. Pre-loan expenses may be reimbursed with loan funds, as approved by RUS.

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

Reject means that the Agency returns the application to the applicant and discontinues processing of the loan application because the application failed to meet the requirements set forth herein. If an application is rejected, the loan application loses its place in the application processing queue.

Reseller means, in the context of network services, a company that purchases network services from network service providers in bulk and resells them to commercial businesses and residential households. Resellers are not considered incumbent service providers.

Rural area means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within:

(i) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or

(ii) An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau.

Security documents means any mortgage, deed of trust, security agreement, financing statement, or other document which grants to the Agency or perfects a security interest, including any amendments and supplements thereto.

Service area means the geographic area within which a service provider offers telecommunications service.

Service level objectives (SLOs) means the characteristics of the service to be delivered to the customer, for example the speed with which new service will be established, service availability, and response time for reports of system failure at a residence.

Service provider means an entity providing telecommunications service.

Service territory means "service area."

Start-up means a new business venture without operations or service delivery available.

System of accounts means the Agency's system of accounts for maintaining financial records as described in RUS Bulletin 1770B-1.

Telecommunications means electronic transmission and reception of voice, data, video, and graphical information using wireline and wireless transmission media.

Telecommunications loan means any telecommunication loan made or guaranteed under Title II, III, or IV of the RE Act.

TIER means times interest earned ratio. TIER is the ratio of an applicant's net income (after taxes) plus (adding back) interest expense, all divided by interest expense (existing and that required in the proposed loan), and with all financial terms defined by GAAP.

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Underserved household or Underserved area means a household or an area that is not offered broadband service, or that is offered broadband service by only one incumbent service provider.

Unguaranteed amount equivalent means all amounts of payment on account of any derivative other than the respective guaranteed-amount equivalent.

Unguaranteed loan amount means all amounts of payment on account of the guaranteed loan other than the guaranteed amount.

Unguaranteed loan portion amount means all amounts of payment on account of any guaranteed loan portion other than the respective guaranteed loan portion amount.

(b) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP and shall be recorded using the Agency's system of accounts.

§ 1738.3 Substantially underserved trust areas.

(a) If the Administrator determines that a community in "trust land" (as defined in section 3765 of title 38, United States Code) has a high need for the benefits of the Broadband Loan Program, he/she may designate the community as a "substantially underserved trust area" (as defined in section 306F of the RE Act).

(b) In order to improve the availability of the Broadband Loan Program in communities in substantially underserved trust areas, the Administrator retains the discretion to

(1) Make available to qualified utilities or applicants, financing with an interest rate as low as 2 percent, and with extended repayment terms;

(2) Waive nonduplication restrictions, matching fund and equity requirements, or credit support requirements; and

(3) Give the highest funding priority to designated projects in substantially underserved trust areas.

(c) The Administrator will only make loans and loan guarantees that RUS finds are financially feasible and that provide eligible program benefits to substantially underserved trust areas.

(d) Applicants should notify the National Office before preparing their ap-

plications that they are planning to seek waivers or adjustments based on this section (see §1738.201).

§§ 1738.4–1738.50 [Reserved]

Subpart B—Eligible and Ineligible Loan Purposes

§ 1738.51 Eligible loan purposes.

Loan funds may be used to pay for the following expenses:

(a) To fund the construction, improvement, or acquisition of all facilities required to provide service at the broadband lending speed to rural areas, including facilities required for providing other services over the same facilities.

(b) To fund the cost of leasing facilities required to provide service at the broadband lending speed if such lease qualifies as a capital lease under GAAP. Notwithstanding, loan funds can only be used to fund the cost of the capital lease for no more than the first three years of the loan amortization period.

(c) To fund an acquisition, provided that:

(1) The acquisition is necessary for furnishing or improving service at the broadband lending speed;

(2) The acquired service area, if any, meets the eligibility requirements set forth in §1738.102;

(3) The acquisition cost does not exceed 50 percent of the broadband loan amount; and

(4) For the acquisition of another entity, the purchase provides the applicant with a controlling majority interest in the entity acquired.

(d) To refinance an outstanding telecommunications loan made under the RE Act if refinancing the loan supports the construction, improvement, or acquisition of facilities and equipment for the provision of service at the broadband lending speed in rural areas provided that:

(1) No more than 40 percent of the broadband loan amount is used to refinance the outstanding telecommunications loan;

(2) The applicant is current with its payments on the telecommunication loan(s) to be refinanced; and