

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

*RUS* means the Rural Utilities Service, an 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.*)

#### **§ 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 concurrent 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 the program to reduce the interest rates borrowers are paying on new or outstanding loans, other than new concurrent loans as provided in 7 CFR part 1710, of this chapter.

(b) The Secretary shall guarantee payments on guaranteed bonds in such form 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 guaranty agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering.

#### **§ 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 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 concurrent loans then outstanding evidencing 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;

(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;

(3) The final maturity of the guaranteed bonds may not exceed 15 years, and

(4) The guaranteed bonds must be issued to the Federal Financing Bank on terms and conditions consistent with Federal Financing Bank lending policy and satisfactory to the Secretary.

(c) During the term of the guarantee, the guaranteed lender must maintain the following:

(1) Establish a bankruptcy remote trust fund capitalized at 5% of the guaranteed amount outstanding; and

(2) As long as the guarantee is in effect, the lender shall not issue cash patronage refunds in excess of five percent of the total patronage refund eligible. Additionally, stock issued as part of the patronage refund shall not be redeemable in cash during the term of any part of the guarantee. The lender shall not issue any dividends on any class of stock during the term of any part of the guarantee.

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

#### **§ 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) A description of the specific and identifiable loans comprising the collateral or other pledge securing the guaranteed bonds;

(6) 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;

(7) 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;

(8) A review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and

(9) 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;

(3) RUS evaluates the application pursuant to the selection criteria set forth in 7 CFR 1720.7(b) of this part;

(4) If RUS provisionally approves the application, the applicant and RUS negotiate terms and conditions of the bond documents, and

(5) The applicant offers its guaranteed bonds to the Federal Financing Bank, and the Secretary upon approval of the pricing, redemption provisions and other terms of the offering, executes the guarantee.

(c) If requested by the applicant at the time it files its application, the General Counsel of the Department of Agriculture shall provide the Secretary with an opinion regarding the validity and authority of a guarantee issued to