

## Rural Utilities Service, USDA

## § 1738.10

(1) “United States” to include its territories and insular possessions (including the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau);

(2) “Area” to mean any identifiable place that has no more than 20,000 inhabitants based on the most recent available information of the Bureau of the Census; and

(3) “An incorporated city or town with a population in excess of 20,000 inhabitants” to mean any incorporated city or town with a population in excess of 20,000 inhabitants based on the most recent available information of the Bureau of the Census.

*Feasibility study* means the pro forma financial analysis prepared by the applicant, and acceptable to RUS, to determine the economic feasibility of a loan.

*Fiscal year* means the fiscal year of the federal government.

*Forecast period* means the time period beginning on the date (base date) of the applicant’s balance sheet used in preparing the feasibility study and ending on a date equal to the base date plus the number of years estimated in the feasibility study for completion of the construction covered by the loan. Feasibility projections are usually for 5 years.

*Initial loan* means the first loan made under section 601 of the RE Act to each eligible entity.

*Interim construction* means the construction, improvement, or acquisition of facilities and equipment prior to loan approval and release of funds.

*Interim financing* means funding for a project that RUS has acknowledged could be included in a loan prior to approving the loan.

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

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

*Loan documents* means the loan contract, note, and security instrument between the borrower and RUS and any associated document pertaining to a loan.

*Loan funds* means funds provided pursuant to a loan made or guaranteed under this part by RUS.

*Mortgage* means the security document between the borrower, as debtor, and RUS, as creditor, including any amendments and supplements thereto.

*Private loan guarantee* means a loan made by a non-Federal lender and guaranteed by RUS.

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

*Release of funds* means a determination by RUS that an applicant has complied with all of the conditions prerequisite to the advance of funds as set forth in the loan contract.

*RUS* means the Rural Utilities Service, an agency of the United States Department of Agriculture, and successor to the Rural Electrification Administration.

*RUS telecommunications borrower* means any organization that has an outstanding telecommunications loan made or guaranteed by RUS under Titles II, III, or IV of the RE Act.

*Service area* means the geographical area within which the applicant proposes to make broadband service available with a loan provided under this part.

*Telecommunications* means the transmission and reception of voice, data, sounds, signals, pictures, writings, or signs of all kinds, by wire, fiber, radio, light, or other visual or electromagnetic means.

*TIER* means Times Interest Earned Ratio. TIER is the ratio of an applicant’s net income (after taxes) plus interest expense, all divided by interest expense. For the purpose of this calculation, all amounts will be annual figures and interest expense will include only interest on debt with a maturity greater than one year.

[68 FR 4867, Jan. 30, 2003, as amended at 70 FR 16931, Apr. 4, 2005]

### §§ 1738.3–1738.9 [Reserved]

## Subpart B—Loan Purposes and Basic Policies

### § 1738.10 General.

(a) The purpose of the Rural Broadband Access Loan and Loan Guarantee Program is to provide loans to provide funds, on a technology neutral basis, for the costs of construction,

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improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities.

(b) The proceeds of any loan made under this part may be used to refinance an outstanding obligation on another telecommunications loan made or guaranteed under the RE Act if the use of the proceeds will further the construction, improvement, or acquisition of facilities in eligible rural communities.

(1) Funds used for refinancing may not constitute more than 40 percent of the loan. The remainder of the proceeds shall only be used for the construction or improvement of facilities and equipment for broadband services.

(2) In calculating the expected composite economic life under §1738.41 of this part, the economic life of any loan refinanced under this section will be based on the remaining economic life of the assets underlying that loan.

(c) RUS will not assess fees or charges for any loan made under this part.

(d) Loans will only be made under this part if the applicant's financial operations, taking into account the impact of the facilities financed with the proceeds of the loan and the associated debt, are economically feasible, as determined by RUS.

[68 FR 4867, Jan. 30, 2003; 68 FR 8989, Feb. 27, 2003]

### **§ 1738.11 Availability of broadband service.**

(a) As provided in §1738.15 of this part, priority will be given to loans to finance service to eligible rural communities in which broadband service is not available to residential customers in the applicant's proposed service area.

(b) RUS shall consider the following criteria in determining whether broadband service is not available to residential customers:

(1) Broadband service is not being provided to residential customers in the applicant's proposed service area and no entity is committed to provide such service before the service would reasonably be expected to be available pursuant to the loan application;

(2) Broadband service is not provided at rates comparable to those of similar

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services in neighboring urban and suburban areas, as determined by RUS; and

(3) The quality of existing service, including, but not limited to, the availability of specified data rates, system latency, and data rate restrictions, is not satisfactory as determined by RUS.

(c) All applicants, as part of submitting a completed application, shall:

(1) Certify to RUS the extent to which paragraphs (b)(1) through (b)(3) of this section, apply to residential customers in the proposed service area, and

(2) Publish legal notice stating the applicant's intent to offer broadband service in a particular community.

(i) The notice must set forth the applicant's proposed service area, and request any incumbent broadband service provider to submit to RUS within 30 days:

(A) The number of residential customers receiving broadband service in the applicant's proposed service area, the rates of data transmission, and the cost of each level of service, or proof of commitment to provide service in the proposed service area, and

(B) A map of its service territory.

(ii) The notice must satisfy all other requirements to constitute legal notice within the areas proposed to be served.

(iii) The notice must be published in state and local newspapers covering the applicant's proposed service area if such publication is not included in the legal notice requirement.

### **§ 1738.12 Location of facilities.**

RUS will make broadband loans for facilities which RUS determines are necessary to serve subscribers located in eligible rural communities. RUS may determine that it is necessary for facilities financed with loan funds to be located outside of eligible rural communities.

### **§ 1738.13 Allocation of funds.**

(a) On October 1, of each fiscal year, or as soon as possible after funds become available, RUS will:

(1) Establish a national reserve for broadband loans, and

(2) Allocate amounts in the reserve to each State, territory, and insular possession, based on the ratio of the