

§ 1738.11

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

7 CFR Ch. XVII (1-1-10 Edition)

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