

§ 1738.22

(b) For an applicant to preserve the option of obtaining loan funds for reimbursement of interim financing, the following procedures must be followed:

(1) Interim construction shall be conducted in accordance with RUS Bulletin 1738-2 and 7 CFR part 1788, except that the applicant shall not begin interim construction until all necessary licenses, permits, and other governmental approvals have been obtained;

(2) Equal employment opportunity requirements apply to interim construction. See RUS Bulletin 20-15: 320-15; and

(3) Interim construction shall be covered by an Environmental Report prepared in accordance with 7 CFR part 1794 and approved by RUS.

(c) RUS approval of interim financing is not a commitment that RUS will make loan funds available.

§ 1738.22 Loan security.

(a) RUS makes loans only if, in the judgment of the Administrator, the security therefore is reasonably adequate and the loan will be repaid within the time agreed.

(b) RUS generally requires that an applicant provide RUS with a first lien, in form and substance satisfactory to RUS, on all of the applicant's property and such additional security as RUS may require. If necessary, RUS will share in the first lien with another lender provided the RUS loan is adequately secured and will be repaid within the time agreed.

(c) Unless otherwise approved by RUS, the applicant shall purchase and own the collateral for the loan free from liens or security interests, other than those securing the RUS loan.

(d) In the case of loans that include the financing of broadband facilities that do not constitute self-contained operating systems or units, the applicant shall, in addition to the mortgage lien on all of the applicant's facilities financed by RUS, furnish adequate assurance, in the form of contractual or other arrangements, satisfactory to RUS, that continuous and efficient broadband service will be rendered.

(e) Beginning with the first calendar year following the end of the forecast period, RUS will require the recipient of a broadband loan to maintain, at a

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

minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.25 and not greater than 2.0.

(f) Additional financial, investment, operational, and managerial controls appear in the loan documents required by RUS.

§§ 1738.23-1738.29 [Reserved]

Subpart C—Types of Loans

§ 1738.30 Rural broadband access loans and loan guarantees.

(a) Direct cost-of-money broadband loans shall bear interest at a rate (the "Cost of Money Interest Rate") equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity. The Cost of Money Interest Rate will be provided by RUS when the funds are advanced to the borrower.

(b) Direct 4 percent broadband loan.

(1) To be eligible for a direct loan bearing an interest rate of 4 percent, the applicant must be proposing to serve:

(i) A community that:

(A) Has a population of less than 2,500 inhabitants;

(B) Is not currently receiving broadband service as set forth in § 1738.11(b)(1) of this part, and

(C) Is located in a county with per capita personal income that is less than or equal to that percent of the national average per capita personal income which RUS will publish in the FEDERAL REGISTER at the beginning of each fiscal year. County per capita personal income as a percent of the national average per capita personal income is published by the Bureau of Economic Analysis, U.S. Department of Commerce, at <http://www.bea.doc.gov/bean/regional/reis/>. RUS will use the most recent statistics published on October 1 of the fiscal year in which the application is deemed complete by RUS; and

(ii) A service area with a certain maximum population density, calculated as the total number of persons in the service area divided by the square miles of the service area. The maximum population density requirement will be published by RUS in the

FEDERAL REGISTER at the beginning of each fiscal year.

(2) The total amount of financing made available by RUS, in each fiscal year, for direct loans bearing an interest rate of 4 percent and the maximum of any one loan will be published by RUS in the FEDERAL REGISTER at the beginning of each fiscal year.

(3) When an approved application exceeds the maximum amount of 4 percent financing that may be made available to the borrower, a direct loan made at 4 percent may be made simultaneously with a "Cost-of-Money Interest Rate" loan.

(4) A 4 percent direct loan may be made simultaneously with a Cost-of-Money Interest Rate loan or a private loan guarantee.

(c) Private loan guarantees. A private loan guarantee shall bear interest at a rate set by the lender consistent with the current applicable market rate for a loan of comparable maturity.

(1) A private loan guarantee is available to any legally organized lending agency which includes commercial banks, trust companies, mortgage banking firms, insurance companies, and any other institutional investor authorized by law to loan money, hereafter referred to as "lender". At the time of application, applicants must provide RUS the name of the lender who will be providing the funding and a commitment from that lender to provide the funds.

(i) The lender shall be subject to credit examination and supervision by a Federal or state agency unless RUS determines that alternative examination and supervisory mechanisms are adequate.

(ii) The lender shall demonstrate to RUS the capability to adequately service guaranteed loans. The lender shall also be in good standing with its licensing authority and meet the loan making, loan servicing, and other requirements of the jurisdiction in which the lender makes loans guaranteed under this part.

(2) The lender selected by the borrower shall provide evidence satisfactory to RUS of its qualification under this part, along with the name of the authority that supervises such lender.

(3) The lender may establish charges and fees for the loan provided they are not greater than those normally charged other applicants for the same type of loan in the ordinary course of business. RUS will not guarantee any portion of the loan used to pay lender charges and fees.

(4) Loans are guaranteed for no more than 80 percent of the amount of principal except for those purposes in §1738.30(c)(3) of this part for which RUS will not provide a guarantee. RUS' guarantee is limited to the loan repayment obligation of the borrower and does not extend to guaranteeing that a lender will remit to a holder loan payments made by the borrower.

(5) The interest rate must be fixed and must be the same for the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, and Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be.

(6) The entire loan will be secured by the same security with equal lien priority for the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, and Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, will neither be paid first nor given any preference or priority over the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(7) All loan documents, including, but not limited to, a loan guarantee agreement between RUS and the lender, the loan note guarantee, the guaranteed loan note, and the mortgage will be prepared by RUS. Contact RUS for copies of forms of the loan documents. The guaranteed loan agreement between

§ 1738.30

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

the borrower and the lender shall be subject to RUS approval.

(8) Once a private loan guarantee is approved, the lender will be required to fully service the loan including:

(i) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security documents have been fulfilled. The lender must obtain RUS approval to advance funds prior to each advance of funds.

(ii) Billing and collecting loan payments from the borrower.

(iii) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submit a report, as soon thereafter as possible, setting forth its views as to the reasons for the default, how long it expects the borrower will be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position.

(iv) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments, or conditions of which the lender is aware which might lead to nonpayment, violation, or other default.

(9) Upon notice to the lender, RUS may assume loan servicing responsibilities for the loan or the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, or require the lender to assign such responsibilities to a different entity, if the lender fails to perform its loan servicing responsibilities under the loan guarantee agreement, or if the lender becomes insolvent, makes an admission in writing of its inability to pay its debts generally as they become due, or becomes the subject of proceedings commenced under the Bankruptcy Reform Act of 1978 (11 U.S.C. 101 *et seq.*) or any similar applicable Federal or state law, or is no longer in good standing with its licensing authority, or ceases to meet the eligibility requirements of this section. Such negligent servicing is defined as the failure to perform those services which a reasonable prudent lender

would perform in servicing its own portfolio of loans that are not guaranteed, and includes not only a failure to act but also not acting in a timely manner.

(10)(i) The Guarantee shall cease to be effective with respect to any Guaranteed Loan Amount or any Guaranteed Loan Portion Amount or any Guaranteed-Amount Equivalent to the extent that:

(A) The Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, is separated at any time from the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, in any way, directly or through the issuance of any Guaranteed-Amount Equity Derivative or any Guaranteed-Amount Debt Derivative; or

(B) Any holder of the Guaranteed Loan Note or any Guaranteed Loan Portion Note or any Derivative, as the case may be, having a claim to payments on the Guaranteed Loan receives more than its pro-rata percentage of any payment due to such holder from payments made under the Guarantee at any time during the term of the Guaranteed Loan.

(ii) The assignment by the lender requires prior written approval from RUS.

(iii) The assignment shall entitle the holder to all of the lender's rights. However, the lender shall remain responsible for servicing the entire loan.

(iv) The borrower, its principal officers, members of the borrower's board of directors and members of the immediate families of said officials shall not be a holder of the borrower's loan.

(11) RUS will not guarantee any loan under this subpart that provides for:

(i) A balloon payment of principal or interest at the final maturity date of the loan; or

(ii) The payment of interest on interest.

(12) For purposes of this subsection:

(i) Derivative means any right, interest, instrument or security issued or traded on the credit of the Guaranteed

Rural Utilities Service, USDA

§ 1738.40

Loan or any Guaranteed Loan Portion, including but not limited to:

(A) Any participation share of, or undivided ownership or other equity interest in, the Guaranteed Loan or any Guaranteed Loan Portion;

(B) 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

(C) Any such interest in such an interest or any such instrument secured by such an instrument.

(ii) 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.

(iii) 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.

(iv) Guaranteed-Amount Equivalent means:

(A) 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

(B) With respect to any Derivatives 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 re-

spective Guaranteed Loan Portion Amount, as the case may be.

(v) Guaranteed Loan Amount means that amount of payment on account of the Guaranteed Loan which is guaranteed under the terms of the Guarantee.

(vi) 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.

(vii) Guaranteed Loan Note means, collectively, the note or notes executed and delivered by the Borrower to evidence the Guaranteed Loan.

(viii) Guaranteed Loan Portion means any portion of the Guaranteed Loan.

(ix) Guaranteed Loan Portion Note means any note executed and delivered by the Borrower to evidence a Guaranteed Loan Portion.

(x) Unguaranteed-amount equivalent means all amounts of payment on account of any Derivative other than the respective Guaranteed-Amount Equivalent.

(xi) Unguaranteed loan amount means all amounts of payment on account of the Guaranteed Loan other than the Guaranteed Amount.

(xii) Unguaranteed loan portion Amount means all amounts of payment on account of any Guaranteed Loan Portion other than the respective Guaranteed Loan Portion Amount.

§ 1738.31 Full faith and credit.

Loan guarantees made under this part are supported by the full faith and credit of the United States.

§§ 1738.32–1738.39 [Reserved]

Subpart D—Terms of Loans

§ 1738.40 General.

Terms and conditions of loans are set forth in a mortgage, note, and loan contract. Provisions of the mortgage and loan contract are implemented by provisions in RUS bulletins and regulations. Standard forms of the mortgage, note, and loan contract can be obtained from RUS. However, RUS reserves the right to establish terms and conditions, including security requirements, on a case-by-case basis.