

## § 1720.10

(b) The guaranteed bonds shall refer to the guarantee agreement as controlling the terms of the guarantee.

(c) The guarantee agreement shall address the following matters:

- (1) Definitions and principles of construction;
- (2) The form of guarantee;
- (3) Coverage of the guarantee;
- (4) Timely demand for payment on the guarantee;
- (5) Any prohibited amendments of bond documents or limitations on transfer of the guarantee;
- (6) Limitation on acceleration of guaranteed bonds;
- (7) Calculation and manner of paying the guarantee fee;
- (8) Consequences of revocation of payment on the guaranteed bonds;
- (9) Representations and warranties of the guaranteed lender;
- (10) Representations and warranties for the benefit of the holder of the guaranteed bonds;
- (11) Claim procedures;
- (12) What constitutes a failure by the guaranteed lender to pay;
- (13) Demand on RUS;
- (14) Assignment to RUS;
- (15) Conditions of guarantee which may include requiring the guaranteed lender to adopt measures to ensure adequate capital levels are retained to absorb losses relative to risk in the guaranteed lender's portfolio and requirements on the guaranteed lender to hold additional capital against the risk of default;
- (16) Payment by RUS;
- (17) RUS payment does not discharge guaranteed lender;
- (18) Undertakings for the benefit of the holders of guaranteed bonds, including: notices, registration, prohibited amendments, prohibited transfers, indemnification, multiple bond issues;
- (19) Governing law;
- (20) Notices;
- (21) Benefit of agreement;
- (22) Entirety of agreement;
- (23) Amendments and waivers;
- (24) Counterparts;
- (25) Severability, and
- (26) Such other matters as the Secretary believes to be necessary or appropriate.

## 7 CFR Ch. XVII (1–1–25 Edition)

### § 1720.10 Fees.

(a) *Guarantee fee.* An annual fee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guarantee bond will be deposited into the Rural Economic Development Sub-account maintained under section 313(b)(2)(A) of the RE Act.

(b) Subject to paragraph (c) of this section, up to one-third of the 30 basis point guarantee fee may be used to fund the subsidy amount of providing guarantees, to the extent not otherwise funded through appropriation actions by Congress.

(c) Notwithstanding subsections (c) and (e)(2) of section 313A of the RE Act, the Secretary shall, with the consent of the lender and if otherwise authorized by law, adjust the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees.

### § 1720.11 Servicing.

The Secretary, or other agent of the Secretary on his or her behalf, shall have the right to service the guaranteed bond, and periodically inspect the facilities, assets, books, and accounts of the guaranteed lender or the collateral agent to ascertain compliance with the provisions of the RE Act and the bond documents.

[87 FR 74501, Dec. 6, 2022]

### § 1720.12 Reporting requirements.

(a) As long as any guaranteed bonds remain outstanding, the guaranteed lender shall provide the Secretary with the following items each year within 90 days of the guaranteed lender's fiscal year end:

- (1) Consolidated financial statements and accompanying footnotes, audited by independent certified public accountants;
- (2) A review and certification of the security of the government guarantee, audited by reputable, independent certified public accountants or a federal banking regulator, who in the judgment of the Secretary, has the requisite skills, knowledge, reputation,

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and experience to properly conduct such a review;

(3) Pro forma projection of the guaranteed lender's balance sheet, income statement, and statement of cash flows with detailed assumptions over the ensuing five years;

(4) Credit assessment issued by a rating agency, or such other evidence of creditworthiness as may be required by the Administrator under § 1720.5(b)(2);

(5) Credit rating, by a rating agency on its senior secured debt or its corporate credit rating, as applicable, without regard to the guarantee and satisfactory to the Secretary, or such other evidence of creditworthiness as may be required by the Administrator under § 1720.5(b)(2); and

(6) Other such information requested by the Secretary.

(b) As long as any guaranteed bonds remain outstanding, the guaranteed lender will provide the Secretary with the following items each quarter within seven (7) business days of the guaranteed lender's quarter end:

(1) A list of pledged collateral which includes borrowers' billing information, and other information reasonably requested by RUS.

(2) A list of the guaranteed lender's criticized loans within 30 days of the end of each calendar quarter.

(c) The bond documents shall specify such bond monitoring, and financial and internal audit reporting requirements relating to the pledged collateral as deemed appropriate by the Secretary.

(d) Leveraging data must be submitted to RUS within five (5) business days after the guaranteed lender publishes its 10-K or 10-Q form or financial statements, as applicable.

(e) The use of the proceeds of the guaranteed bonds for the construction of new projects is subject to the environmental review requirements in accordance with 7 CFR part 1970. Prior to the guaranteed lender using the proceeds of the guaranteed bonds to make loans to borrowers for the construction of new projects, the guaranteed lender must provide sufficient details about the proposed construction to RUS so it can comply with the environmental requirements of 7 CFR part 1970. The guaranteed lender is prohibited from

using the proceeds of guaranteed bonds to fund loans to borrowers for new construction projects without RUS's written acknowledgment that the environmental requirements of 7 CFR part 1970 have been met with respect to each such project.

[69 FR 63049, Oct. 29, 2004, as amended at 75 FR 42575, July 22, 2010; 87 FR 74501, Dec. 6, 2022]

### § 1720.13 Limitations on guarantees.

In a given year the maximum amount of guaranteed bonds that the Secretary may approve will be subject to budget authority, together with receipts authority from projected fee collections from guaranteed lenders, the principal amount of outstanding eligible loans made by the guaranteed lender, and Congressionally-mandated ceilings on the total amount of credit. The Secretary may also impose other limitations as appropriate to administer this guarantee program.

[75 FR 42575, July 22, 2010]

### § 1720.14 Nature of guarantee; acceleration of guaranteed bonds.

(a) Any guarantee executed by the Secretary under this part shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the guaranteed bondholder had actual knowledge at the time it purchased the guaranteed bonds.

(b) Amounts due under the guarantee shall be paid within 30 days of demand by a bondholder, certifying the amount of payment then due and payable.

(c) The guarantee shall be assignable and transferable to any purchaser of guaranteed bonds as provided in the bond documents.

(d) The following actions shall constitute events of default under the terms of the guarantee agreements:

(1) The guaranteed lender failed to make a payment of principal or interest when due on the guaranteed bonds;

(2) The guaranteed bonds were issued in violation of the terms and conditions of the bond documents;

(3) The guarantee fee required by 7 CFR 1720.10 of this part, has not been paid;