

Rural Housing Service, USDA

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(2) An organization operated on a not-for-profit basis such as an association, cooperative, or private corporation. For-profit corporations operated as not-for-profit corporations are eligible borrowers as long as they operate as a not-for-profit corporation for the duration of their guaranteed loans. Single member corporations or corporations owned or substantially controlled by other corporations or associations are not eligible organizations. Before a loan is made to a borrower other than a public body, the articles of incorporation or the loan agreement will include a condition similar to the following:

If the corporation dissolves or ceases to perform the community facility objectives and functions, the board of directors shall distribute all business property and assets to one or more nonprofit corporations or public bodies. This distribution must be approved by 75 percent of the users or members and must serve the public welfare of the community. The assets may not be distributed to any members, directors, stockholders, or others having financial or managerial interest in the corporation. Nothing herein shall prohibit the corporation from paying its debts.

(3) A private nonprofit essential community facility (other than utilities) must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community.

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(4) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(d) *Facility location.* Facilities must be located in rural areas, except:

(1) For utility services such as natural gas or hydroelectric serving both rural and non-rural areas. In such cases, Agency funds may be used to fi-

nance only that portion serving rural areas, regardless of facility location.

(2) Telecommunication projects. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public purposes.

(1) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof. Additionally, the borrower must publicly announce a plan for extending service to areas not initially receiving service. Also, the borrower must provide written notice to potential users located in the areas not to be initially served.

(3) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed (i.e., gas distribution system) will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

§§ 3575.21-3575.23 [Reserved]

§ 3575.24 Eligible loan purposes.

(a) Funds may be used to construct, enlarge, extend, or otherwise improve

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other essential community facilities providing essential service primarily to rural residents and rural businesses.

(1) Essential community facilities include, but are not limited to:

- (i) Fire, rescue, and public safety,
- (ii) Health services,
- (iii) Community, social, or cultural services,
- (iv) Transportation facilities such as streets, roads, and bridges,
- (v) Telecommunication equipment,
- (vi) Hydroelectric generating facilities and related connecting systems and appurtenances only when not eligible for financing under the authorities of the Rural Utilities Service. Funds may not be used to finance other types of electrical generating or transmitting facilities,
- (vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) only when not eligible for financing under the authorities of the Rural Utilities Service,
- (viii) Natural gas distribution systems,
- (ix) Industrial park sites (but only to the extent of land acquisition and necessary site preparation) including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems or business and industrial buildings, and
- (x) Recreational facilities.

(2) Otherwise improve includes, but is not limited to, the following:

- (i) The purchase of major equipment (such as telecommunication equipment and X-ray machines) which will in themselves provide an essential service to rural residents,
 - (ii) The purchase of existing facilities, when necessary, either to improve or to prevent a loss of service, and
 - (iii) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.
- (b) Funds also may be used:
- (1) To construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities au-

thorized by paragraph (a) of this section.

(2) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(3) To pay the following expenses (but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a) of this section):

(i) Reasonable fees and costs such as origination fee, loan guarantee fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than 2 years unless a longer period is approved by the Agency; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the Agency's National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are less than 50 percent of the total loan,

(B) The debts were incurred for the facility or service being financed or any part thereof (such as interim financing, construction expenses, etc.), and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

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(4) To pay obligations for construction incurred prior to filing a preapplication and application with the Agency. Construction work must not be started (and obligations for such work or materials must not be incurred) before the Conditional Commitment for Guarantee is issued. If there are compelling reasons for proceeding with construction before the Conditional Commitment for Guarantee is issued, lenders may request Agency approval to pay such obligations and not jeopardize a guarantee from the Agency. Such request must comply with the following:

(i) Provide conclusive evidence that the contract was entered into without intent to circumvent the Agency regulations. However, the Agency is not required or obligated to pay a loss unless a written guarantee is issued,

(ii) Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When construction is complete and it is impracticable to modify the contract, the borrower and lender must provide the certification required by paragraph (b)(4)(iii) of this section,

(iii) Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications, and

(iv) The borrower and the contractor must have complied with all statutory and executive order requirements related to Agency financing for construction already performed even though the requirements may not have been included in the contract documents.

§ 3575.25 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site infrastructure development,

(b) Facilities primarily for the purpose of housing Federal or State agencies,

(c) Community antenna television services or facilities,

(d) Telephone systems,

(e) Facilities which are not modest in size, design, and cost,

(f) Finder's and packager's fees,

(g) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.* (available in any Agency office),

(h) New combined sanitary and storm water sewer facilities, or

(i) Projects that are located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program.

§ 3575.26 [Reserved]

§ 3575.27 Eligible lenders.

(a) *Eligible lenders.* Eligible lenders (as defined in this section) may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered bank or savings and loan association;

(2) Any mortgage company that is a part of a bank holding company;

(3) Bank for Cooperatives, National Rural Utilities Cooperative Finance Corporation, Farm Credit Bank of the Federal Land Bank, or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart;

(4) An insurance company regulated by a State or National insurance regulatory agency;

(5) State Bond Banks or State Bond Pools; and

(6) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development-type projects. These lenders must also be subject to credit examination