

## § 1780.8

(3) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(b) *Eligible facilities.* Facilities financed by RUS may be located in non-rural areas. However, loan and grant funds may be used to finance only that portion of the facility serving rural areas, regardless of facility location.

(c) *Eligible projects.* (1) Projects must serve a rural area which, if such project is completed, is not likely to decline in population below that for which the project was designed.

(2) Projects must be designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable.

(3) Projects must be necessary for orderly community development and consistent with a current comprehensive community water, waste disposal, or other current development plan for the rural area.

(d) *Credit elsewhere.* Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(e) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for owning, constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable user rates and charges. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. Guidance for preparing a management agreement is available from the Agency. Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(f) *Economic feasibility.* All projects financed under the provisions of this sec-

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tion must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed.

(g) *Federal Debt Collection Act of 1990 (28 U.S.C. 3001 et seq.).* An outstanding judgment obtained by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan or grant until the judgment is paid in full or otherwise satisfied.

[62 FR 33478, June 19, 1997, as amended at 64 FR 29946, June 4, 1999]

### § 1780.8 [Reserved]

### § 1780.9 Eligible loan and grant purposes.

Loan and grant funds may be used only for the following purposes:

(a) To construct, enlarge, extend, or otherwise improve rural water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

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

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

(d) For payment of other utility connection charges as provided in service contracts between utility systems.

(e) When a necessary part of the project relates to those facilities authorized in paragraphs (a), (b), (c) or (d) of this section the following may be considered:

(1) Loan or grant funds may be used for:

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(i) Reasonable fees and costs such as: legal, engineering, administrative services, fiscal advisory, recording, environmental analyses and surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights;

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

(iii) Purchasing or renting equipment necessary to install, operate, maintain, extend, or protect facilities;

(iv) Cost of additional applicant labor and other expenses necessary to install and extend service; and

(v) In unusual cases, the cost for connecting the user to the main service line.

(2) Only loan funds may be used for:

(i) Interest incurred during construction in conjunction with multiple advances or interest on interim financing;

(ii) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the applicant is unable to pay such expenses;

(iii) The purchase of existing facilities when it is necessary either to improve service or prevent the loss of service;

(iv) Refinancing debts incurred by, or on behalf of, an applicant when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts were incurred for the facility or service being financed or any part thereof; 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; and

(v) Prepayment of costs for which RUS grant funds were obligated.

(3) Grant funds may be used to restore loan funds used to prepay grant obligated costs.

(f) Construction incurred before loan or grant approval.

(1) Funds may be used to pay obligations for eligible project costs incurred before loan or grant approval if such requests are made in writing by the ap-

plicant and the Agency determines that:

(i) Compelling reasons exist for incurring obligations before loan or grant approval;

(ii) The obligations will be incurred for authorized loan or grant purposes; and

(iii) The Agency's authorization to pay such obligations is on the condition that it is not committed to make the loan or grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan or grant approval requirements, including environmental and contracting requirements.

(2) If construction is started without Agency approval, post-approval in accordance with this section may be considered, provided the construction meets applicable requirements including those regarding approval and environmental matters.

(g) Water or sewer service may be provided through individual installations or small clusters of users within an applicant's service area. The approval official should consider items such as: quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(1) Applicants providing service through individual facilities must meet the eligibility requirements in §1780.7.

(2) The Agency must approve the form of agreement between the applicant and individual users for the installation, operation, maintenance and payment for individual facilities.

(3) If taxes or assessments are not pledged as security, applicants providing service through individual facilities must obtain security necessary to assure collection of any sum the individual user is obligated to pay the applicant.

(4) Notes representing indebtedness owed the applicant by a user for an individual facility will be scheduled for

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payment over a period not to exceed the useful life of the individual facility or the RUS loan, whichever is shorter. The interest rate will not exceed the interest rate charged the applicant on the RUS indebtedness.

(5) Applicants providing service through individual or cluster facilities must obtain:

(i) Easements for the installation and ingress to and egress from the facility if determined necessary by RUS; and

(ii) An adequate method for denying service in the event of nonpayment of user fees.

### § 1780.10 Limitations.

(a) Loan and grant funds may not be used to finance:

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

(2) Loan or grant finder's fees;

(3) The construction of any new combined storm and sanitary sewer facilities;

(4) Any portion of the cost of a facility which does not serve a rural area;

(5) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment, etc.;

(6) Rental for the use of equipment or machinery owned by the applicant;

(7) For other purposes not directly related to operating and maintenance of the facility being installed or improved; and

(8) A judgment which would disqualify an applicant for a loan or grant as provided for in § 1780.7(g).

(b) Grant funds may not be used to:

(1) Reduce EDU costs to a level less than similar system cost;

(2) Pay any costs of a project when the median household income of the service area is more than 100 percent of the nonmetropolitan median household income of the State;

(3) Pay project costs when other loan funding for the project is not at reasonable rates and terms; and

(4) Pay project costs when other funding is a guaranteed loan obtained in accordance with 7 CFR part 1779 of this title.

(c) Grants may not be made in excess of the following percentages of the RUS eligible project development costs. Facilities previously installed

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will not be considered in determining the development costs.

(1) 75 percent when the median household income of the service area is below the higher of the poverty line or 80% of the state nonmetropolitan median income and the project is necessary to alleviate a health or sanitary problem.

(2) 45 percent when the median household income of the service area exceeds the 80 percent requirements described in paragraph (c)(1) of this section but is not more than 100 percent of the statewide nonmetropolitan median household income.

(3) Applicants are advised that the percentages contained in paragraphs (c)(1) and (c)(2) of this section are maximum amounts and may be further limited due to availability of funds or the grant determination procedures contained in § 1780.35 (b).

[62 FR 33478, June 19, 1997, as amended at 64 FR 29946, June 4, 1999; 66 FR 23151, May 8, 2001]

### § 1780.11 Service area requirements.

(a) All facilities financed under the provisions of this part shall be for public use. The facilities will be installed so as to serve any potential user within the service area who desires service and can be feasibly and legally served. This does not preclude:

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

(2) 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 and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and potential users located in the areas not to be initially served receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so.

(b) Should the Agency determine that inequities exist within the applicants service area for the same type service proposed (i.e., water or waste