

(3) The applicant's demonstrated performance of financially sound business practices;

(4) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, to generate other economic benefits, including the amount of fee income available to be deposited into the Rural Economic Development Subaccount, maintained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c-1(b)(2)(B)), after payment of the subsidy amount.

(c) *Independent Assessment.* Before a guarantee decision is made by the Secretary, the Secretary shall request that the Federal Financing Bank review the adequacy of the determination by the Rating Agency, required under §1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without the guarantee.

(d) *Decisions by the Secretary.* The Secretary shall approve or deny applications in a timely manner as such applications are received. The Secretary may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS shall notify the applicant in writing of the Secretary's approval or denial of an application. Approvals for guarantees shall be conditioned upon compliance with 7 CFR 1720.4 and 1720.6.

§ 1720.8 Issuance of the guarantee.

(a) The following requirements must be met by the applicant prior to the endorsement of a guarantee by the Secretary.

(1) A guarantee agreement suitable in form and substance to the Secretary must be delivered.

(2) Bond documents must be executed by the applicant setting forth the legal provisions relating to the guaranteed bonds, including but not limited to payment dates, interest rates, redemption features, pledged security, additional borrowing terms including an explicit agreement to make payments even if loans made using the proceeds of such bond or note is not repaid to the lender, other financial covenants, and events of default and remedies;

(3) Prior to the issuance of the guarantee, the applicant must certify to the Secretary that the proceeds from the guaranteed bonds will be applied to fund eligible new loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans;

(4) The applicant provides a certified list of concurrent loans and their outstanding balances as of the date the guarantee is to be issued;

(5) Counsel to the applicant must furnish an opinion satisfactory to the Secretary as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents;

(6) No material adverse change occurs between the date of the application and date of execution of the guarantee;

(7) The applicant shall provide evidence of an investment grade rating from a Rating Agency for the proposed guaranteed bond without regard to the guarantee;

(8) The applicant shall provide evidence of a credit rating on its senior secured debt without regard to the guarantee and satisfactory to the Secretary; and

(9) Certification by the Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary), acknowledging the applicant's commitment to submit to the Secretary, an annual credit assessment of the applicant by a Rating Agency, an annual review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, annual consolidated financial statements audited by an independent certified public accountant each year during which the guarantee bonds are outstanding, and other such information requested by the Secretary.

(b) The Secretary shall not issue a guarantee if the applicant is unwilling or unable to satisfy all requirements.

§ 1720.9 Guarantee Agreement.

(a) The guaranteed lender will be required to sign a guarantee agreement

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with the Secretary setting forth the terms and conditions upon which the Secretary guarantees the payment of the guaranteed bonds.

(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

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(26) Such other matters as the Secretary believes to be necessary or appropriate.

§ 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 books and accounts of the guaranteed lender to ascertain compliance with the provisions of the RE Act and the bond documents.

§ 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,