

Rural Utilities Service, USDA

§ 1720.14

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.

§ 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, 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 over the ensuing five years;

(4) Credit assessment issued by a Rating Agency;

(5) Credit rating, by a Rating Agency, on its senior secured debt without regard to the guarantee and satisfactory to the Secretary;

(6) Other such information requested by the Secretary.

(b) The bond documents shall specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

§ 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 principle amount of outstanding concurrent 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.

§ 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

§ 1720.15

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;

(4) The guaranteed lender made a misrepresentation to the Secretary in any material respect in connection with the application, the guaranteed bonds, or the reporting requirements listed in 7 CFR 1720.12; or

(5) The guaranteed lender failed to comply with any material covenant or provision contained in the bond documents.

(e) In the event the guaranteed lender fails to cure such defaults within the notice terms and the timeframe set forth in the bond documents, the Secretary may demand that the guaranteed lender redeem the guaranteed bonds. Such redemption amount will be in an amount equal to the outstanding principal balance, accrued interest to the date of redemption, and prepayment premium, if any. To the extent the Secretary makes any payments under the guarantee, the Secretary shall be deemed the guaranteed bondholder.

(f) To the extent the Secretary makes any payments under the guarantee, the interest rate the government will charge to the guaranteed lender for the period of default shall accrue at an annual rate of the greater of 1.5 times the 91-day Treasury-Bill

7 CFR Ch. XVII (1-1-08 Edition)

rate or 200 basis points (2.00%) above the rate on the guaranteed bonds.

(g) Upon guaranteed lender's event of default, under the bond documents, the Secretary shall be entitled to take such other action as is provided for by law or under the bond documents.

§ 1720.15 Equal opportunity requirements.

Executive Order 12898, "Environmental Justice." To comply with Executive Order 12898, RUS will conduct a Civil Rights Analysis for each guarantee prior to approval. Rural Development Form 2006-28, "Civil Rights Impact Analysis", will be used to document compliance in regards to environmental justice. The Civil Rights Impact Analysis will be conducted prior to application approval or a conditional commitment of guarantee.

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

Subpart A—Advance of Funds

Sec.

1721.1 Advances.

Subpart B—Extensions of Payments of Principal and Interest

1721.100 Purpose.
1721.101 General.
1721.102 Definitions.
1721.103 Policy.
1721.104 Eligible purposes.
1721.105 Application documents.
1721.106 Repayment of deferred payments.
1721.107 Agreement.
1721.108 Commencement of the deferment.
1721.109 OMB control number.

AUTHORITY: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; and 6941 *et seq.*

Subpart A—Advance of Funds

§ 1721.1 Advances.

(a) *Purpose and amount.* With the exception of minor projects, insured loan funds will be advanced only for projects which are included in an RUS approved borrower's construction work plan (CWP) or approved amendment and in an approved loan, as amended. Loan fund advances can be requested in an amount representing actual costs incurred.