

Chapter Comm 120

RURAL HOSPITAL LOAN GUARANTEE PROGRAM

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Note: Chapter DOD 20 was renumbered chapter Comm 120 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

Comm 120.01 Purpose. The purpose of this chapter is to establish a procedure for the administration of those aspects of rural hospital loan guarantees made by the Wisconsin health and educational facilities authority which relate to the following:

- (1) The form of the loan guarantee agreement.
- (2) The conditions upon which the authority may enter into a loan guarantee agreement.
- (3) The procedures for making a demand for payment under a loan guarantee agreement, or for payment by the authority under such an agreement, in the event of a default of a guaranteed loan.
- (4) The basis for determining whether the guarantee is a guarantee for collection or payment.
- (5) The procedures by which the authority shall carry out a loan guarantee agreement.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

Comm 120.02 Definitions. In this chapter:

- (1) "Authority" means the Wisconsin health and educational facilities authority.
- (2) "Borrower" means a person identified in s. 231.35 (2) (a) or (b), Stats., who is seeking to have a loan guaranteed by the authority.
- (3) "Guarantee of collection" means a loan guarantee under which the authority agrees to pay according to the terms of the guarantee agreement if the instrument is not paid when due and the participating lender has pursued all reasonable efforts relative to collection.
- (4) "Guarantee of payment" means a loan guarantee under which the authority agrees to pay according to the terms of the guarantee agreement if the instrument is not paid when due.
- (5) "Participating lender" has the meaning contained in s. 231.35 (1) (c), Stats.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

Comm 120.03 Guarantee agreement. Each guarantee agreement entered into between the authority and a participating lender shall be in such form as the authority shall provide in the manual prepared according to s. Comm 120.07, and shall contain provisions that address each of the following:

- (1) The principal amount of the loan and the portion of the principal amount that will be guaranteed.
- (2) The loan servicing responsibilities of the participating lender.
- (3) The loan collection and enforcement responsibilities of the participating lender.
- (4) Any limitations on the rate of interest charged to or the timing of interest payments required of the borrower.
- (5) The term of the guarantee agreement.
- (6) The conditions under which a guarantee shall be paid and the procedures for making a demand for payment.
- (7) Any bond or insurance required of the participating lender in order to protect the authority from loss under the agreement.

(8) Any note, mortgage, other security agreements or other loan documents required to be provided by the participating lender to the authority.

(9) The need for any multi-party agreements between the borrower, the participating lender, the community or other guarantor, and the authority.

(10) Any limitations on the right of the participating lender to alter the terms of the original loan that is guaranteed under the agreement.

(11) Conditions under which the authority may terminate the agreement.

(12) The rights of the authority to enforce the agreement and the remedies available to it in case of a breach of the agreement.

(13) Any reporting requirements of the participating lender to the authority.

(14) The right of the authority to examine documents in the possession of the participating lender related to the loan that is guaranteed under the agreement.

(15) Any fee charged by the authority to the participating lender for the loan guarantee.

(16) Any limitation on assignment of the participating lender's interest in the loan.

(17) Sharing of repayment proceeds and collateral between the participating lender and the authority.

(18) Such other items as are necessary to produce a complete guarantee agreement between the participating lender and the authority.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

Comm 120.04 Conditions necessary for guarantee agreement. Before it may enter in to a loan guarantee agreement with a participating lender, the authority shall find that the following conditions exist:

- (1) That the borrower has demonstrated a reasonable ability to repay the loan.
- (2) That the availability of the guarantee either reduces the cost of the loan to the borrower or increases access to capital for the borrower.
- (3) That the borrower has or will obtain the legal authority necessary to construct, operate and maintain the facility and to incur and repay the debt.
- (4) That the participating lender employs normal and prudent loan processing procedures in relation to its evaluation of the borrower's loan proposal.
- (5) That the term of the loan does not exceed the useful life of the facility or equipment to be financed with the loan proceeds.
- (6) That adequate security is available to reasonably ensure the authority from loss under the guarantee agreement.
- (7) That the guarantee amount requested does not exceed the amount in the appropriation under s. 20.440 (2), Stats., available after subtracting outstanding loan guarantee commitments.
- (8) That the proposed loan and guarantee agreement comply with all of the applicable provisions of s. 231.35, Stats., and this chapter.

(9) That the reserve account required under s. Comm 120.08 is or will be established.

(10) That the community or other third party has or will provide a guarantee of not less than 20% of the original loan principal.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

Comm 120.05 Demand for payment procedures.

The procedures for making a demand for payment under a loan guarantee agreement and for payment by the authority under such an agreement in the event of a default of a guaranteed loan shall be contained in the guarantee agreement between the participating lender and the authority.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

Comm 120.06 Guarantee of collection and guarantee of payment. The guarantee agreement between the authority and the participating lender shall be a guarantee of collection unless in the judgment of the authority, a guarantee agreement that provides for a guarantee of payment results in substantial improvement in the loan terms that can be obtained by the borrower.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

Comm 120.07 Manual. The authority shall prepare a manual that can be updated as needed and that contains the procedures for submitting a loan guarantee application, the information required to be submitted with the application, sample loan guarantee contracts, sample multi-party agreements, and the procedures

the authority shall employ to carry out a loan guarantee agreement.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

Comm 120.08 Reserve fund. (1) The reserve fund required to be established by the borrower under s. 231.35 (3) (i), Stats., shall be deposited in an account controlled by the authority.

(2) If a guarantee is required to be paid under the terms of an agreement entered into between the authority and a participating lender, payment shall first be made out of the account established under sub. (1). If payment is still required under the terms of the agreement after the account established under sub. (1) is depleted then payment shall next be made by the authority under the guarantee established pursuant to s. 231.35 (4) (a) 1., Stats. If payment is still required under the terms of the agreement after the guarantee established pursuant to s. 231.35 (4) (a) 1., Stats., is depleted then, the remaining required payment shall be made under the guarantee established by the community or another third party pursuant to s. 231.35 (3) (g), Stats.

(3) All principal and interest in the account established under sub. (1) that has not been required to be spent under sub. (2) shall be returned to the borrower no later than 60 days after the loan has been completely repaid.

Note: The hospital loan guarantee program manual may be obtained at no charge from the Wisconsin Health and Educational Facilities Authority, 18000 W. Sarah Lane, Suite 140, Brookfield, WI 53045.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.