

§ 1717.855

7 CFR Ch. XVII (1-1-01 Edition)

adding the principal amount of the proposed loan to the existing outstanding long-term debt of the borrower;

(4) There are no actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition;

(5) The borrower is current on all debt payments and all other financial obligations, and is not in default under the RUS mortgage, the RUS loan contract, the borrower's wholesale power contract, any debt restructuring agreement, or any other agreement with RUS;

(6) The borrower has:

(i) Submitted the annual auditor's report, report on compliance, report on internal controls, and management letter in accordance with 7 CFR part 1773;

(ii) Received an unqualified opinion in the most recent auditor's report;

(iii) Resolved all material findings and recommendations made in the most recent Loan Fund and Accounting Review;

(iv) Resolved all material findings and recommendations made in the most recent financial statement audit, including those material findings and recommendations made in the report on internal control, report on compliance, and management letter;

(v) Resolved all outstanding material accounting issues with RUS; and

(vi) Resolved any significant irregularities to RUS's satisfaction; and

(7) If the borrower has a power supply contract with a power supply borrower, the power supply borrower is current on all debt payments and all other financial obligations, and is not in default under the RUS mortgage, the loan contract, any debt restructuring agreement, or any other agreement with RUS.

(d) *Right of normal review reserved.* RUS reserves the right to review any request for lien accommodation or subordination under its normal review process rather than under advance approval procedures if RUS, in its sole discretion, determines there is reasonable doubt as to whether the requirements of paragraphs (b) and (c) of this section have been or will be met, or

whether the borrower will be able to meet all of its present and future financial obligations.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 67410, Dec. 29, 1995; 65 FR 51748, Aug. 25, 2000]

**§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, sub-transmission and headquarters facilities, and certain other community infrastructure.**

Applications for a lien accommodation or subordination that meet the requirements of § 1717.854 must include the following information and documents:

(a) A certification by an authorized official of the borrower that the borrower and, as applicable, the loan are in compliance with all conditions set forth in § 1717.854(c) and all applicable provisions of §§ 1717.852 and 1717.853;

(b) A resolution of the borrower's board of directors requesting the lien accommodation or subordination and including the amount and maturity of the proposed loan, a general description of the facilities or other purposes to be financed, the name and address of the lender, and an attached term sheet summarizing the terms and conditions of the proposed loan;

(c) The borrower's financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by RUS;

(d) Draft copy of any new mortgage or mortgage amendment (supplement) required by RUS or the lender, unless RUS has notified the borrower that it wishes to prepare these documents itself;

(e) A copy of the loan agreement, loan note, bond or other financing instrument, unless RUS has notified the borrower that these documents need not be submitted;

(f) Borrower's environmental report and/or other environmental documentation, if required by 7 CFR part 1794;

(g) RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, and RUS Form 740g, Application for Headquarters Buildings;

(h) A CWP or CWP amendment covering the proposed project, in accordance with 7 CFR part 1710, subpart F, and subject to RUS approval, and a resolution of the borrower's board of directors adopting the CWP;

(i) The certification by the project architect for any buildings to be constructed, as required by §1717.850(i);

(j) A certification by an authorized official of the borrower that flood hazard insurance will be obtained for the full value of any buildings, or other facilities susceptible to damage if flooded, that will be located in a flood hazard area;

(k) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 7 CFR part 3017;

(l) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and the reasons therefor; and a certification, if not previously provided, that the borrower has been informed of the Government's collection options;

(m) The written acknowledgement from a registered engineer or architect regarding compliance with seismic provisions of applicable model codes for any buildings to be constructed, as required by 7 CFR 1792.104; and

(n) Other information that RUS may require to determine whether all of the applicable provisions of this subpart have been met.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 67410, Dec. 29, 1995]

**§ 1717.856 Application contents: Normal review—100 percent private financing.**

Applications for a lien accommodation or subordination for 100 percent private financing for eligible purposes that do not meet the requirements of §1717.854 must include the following information and documents:

(a) A certification by an authorized official of the borrower that:

(1) The borrower and, as applicable, the loan are in compliance with all applicable provisions of §§1717.852 and 1717.853; and

(2) There are no actions or proceedings against the borrower, pending

or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition. If this certification cannot be made, the application must include:

(i) An opinion of borrower's counsel regarding any actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition. The opinion shall address the merits of the claims asserted in the actions or proceedings, and include, if appropriate, an estimate of the amount or range of any potential loss; and

(ii) A certification by an authorized official of the borrower as to the amount of any insurance coverage applicable to any loss that may result from the actions and proceedings addressed in the opinion of borrower's counsel;

(b) The information and documents set forth in §1717.855 (b) through (n);

(c) A long-range financial forecast providing financial projections for at least 10 years, which demonstrates that the borrower's system is economically viable and that the proposed loan is financially feasible, and a resolution of the borrower's board of directors adopting the long-range financial forecast. The financial forecast must comply with the requirements of 7 CFR part 1710 subpart G. RUS may, in its sole discretion, waive the requirement of this paragraph that a long range financial forecast be provided, if:

(1) The borrower is current on all of its financial obligations and is in compliance with all requirements of its mortgage and loan agreement with RUS;

(2) In RUS's judgment, granting a lien accommodation or subordination for the proposed loan will not adversely affect the repayment and security of outstanding debt of the borrower owed to or guaranteed by RUS;

(3) The borrower has achieved the TIER and DSC and any other coverage ratios required by its mortgage or loan contract in each of the two most recent calendar years; and