

Rural Utilities Service, USDA

§ 1744.204

(c) A rural development investment will not be considered to be a qualified investment to the extent that the amount of such investments exceeds the borrower's maximum investment ratio.

(d) A rural development investment is an investment, extension of credit, advance, or guarantee by a borrower for a period longer than one year and for one or more of the following purposes:

(1) Improve the economic well-being of rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

(2) Improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

(3) Improve state and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for state and local officials, particularly in small rural communities;

(4) Strengthen the family farm system; or

(5) Maintain and protect the environment and natural resources of rural areas.

(e) As used in paragraph (d) of this section, the term rural development investment shall include investments by a borrower in its own name, in affiliated companies, and in entities not affiliated with the borrower.

§ 1744.203 Establishing amount of rural development investment.

For purposes of determining whether a rural development investment is within the limits of the borrower's maximum investment ratio or the minimum total assets ratio, the amount of the qualified investment shall be the total amount of funds committed to the rural development project as of the

date of determination. The total amount of funds committed to the rural development project includes:

(a) The principal amount of loans and advances made by the borrower;

(b) Guarantees made by the borrower; and

(c) A reasonable estimate of the amount the borrower is committed to provide to the rural development project in future years.

§ 1744.204 Rural development investments that do not meet the ratio requirements.

(a) Each borrower is authorized to make investments other than qualified investments only in accordance with the provisions of the borrower's mortgage with RUS. Without RUS's approval, the portion of any investment of funds or commitment to invest funds for any rural development investment that will exceed the borrower's maximum investment ratio or cause the borrower to fall below the minimum total assets ratio, must comply with the provisions of the RUS mortgage.

(b) RUS will consider, on a case-by-case basis, requests for approval of rural development investments not constituting qualified investments. RUS may condition such approval, if granted, on such requirements and restrictions as RUS may determine to be in the best interests of the Government, including, without limitation, the borrower's agreement to limit dividends or distributions of capital by an amount specified by RUS. Requests for such approvals must be submitted in writing to the relevant RUS regional office and shall include:

(1) A description of the rural development project and the type of investment to be made, such as a loan, guarantee, stock purchase or equity investment;

(2) A reasonable estimate of the amount the borrower is committed to provide to the rural development project including investments that may be required in the future; and

(3) A pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to the rural development project.

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(c) In determining whether to approve a rural development investment that may cause the borrower to exceed the maximum investment ratio or to fall below the minimum total assets ratio in the future, RUS will consider annual increases to the borrower's net worth and total assets as might be reasonably anticipated from the borrower's normal operations.

§ 1744.205 Determinations and application of limitations described in § 1744.202.

(a) RUS will not include qualified investments, including qualified investments in affiliated companies, in calculating the amount of dividend or capital distributions a borrower may make under its RUS mortgage.

(b) A borrower's investment in its net plant shall not be considered a rural development investment for purposes of calculating the maximum investment ratio or the minimum total assets ratio.

(c) The borrower's net worth and total assets shall be determined using the balances of the respective accounts of the borrower as of December 31 of the last complete calendar year preceding the date on which the borrower's maximum investment ratio and minimum total assets ratio are calculated.

(d) All determinations required to be made under 7 U.S.C. 926 or this subpart will be made in accordance with the Uniform System of Accounts (USoA)(47 CFR part 32). References to specific USoA accounts shall include revised or replacement accounts.

§ 1744.206 Effect of subsequent failure to maintain ratios.

If an expenditure constitutes a qualified investment under the terms of this subpart, it does not cease to be a qualified investment merely because subsequently the borrower fails to maintain the maximum investment ratio or the minimum total assets ratio.

§ 1744.207 Investment not to jeopardize loan security.

A borrower shall not make a qualified investment or a rural development investment which jeopardizes:

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(a) The security of loans made or guaranteed by RUS; or

(b) The borrower's ability to repay such loans under the terms and conditions as agreed.

§ 1744.208 Rural development investments before November 28, 1990.

All investments made by a borrower shall be subject to the provisions of this subpart, regardless of when the investment was made or whether it has been approved by RUS. Any restrictions required by RUS as a condition to approving a rural development investment before November 28, 1990, shall continue to be in effect to the extent that such investment exceeds the maximum investment ratio or causes the borrower to fall below the minimum total assets ratio.

§ 1744.209 Records.

(a) The records of borrowers, including records relating to qualified investments, shall be subject to the auditing procedures prescribed in part 1773 of this chapter. RUS reserves the right to review the records of the borrower relating to qualified investments to determine if the borrower is in compliance with this subpart.

(b) Borrowers shall report to RUS on the end-of-year operating report, RUS Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

(Approved by the Office of Management and Budget under control number 0572-0098.)

§ 1744.210 Effect of this subpart on RUS loan contract and mortgage.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with RUS, its notes issued to RUS, and the RUS mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a