

§ 1717.859 Application process and timeframes.

(a) *General.* (1) Borrowers are responsible for ensuring that their applications for a lien accommodation or subordination are complete and sound as to substance and form before they are submitted to RUS. RUS will not accept any application that, on its face, is incomplete or inadequate as to the substantive information required by this subpart. RUS will notify borrowers in writing when their applications are complete and in form and substance satisfactory to RUS. A copy of all notifications of borrowers cited in this section will also be sent to the private lender.

(2) It is recommended that borrowers consult with RUS staff before submitting their applications to determine whether they will likely qualify for advance approval or normal review, and to obtain answers to any questions about the information and documents required for the application.

(3) A borrower shall, after submitting an application, promptly notify RUS of any changes that materially affect the information contained in its application.

(4) After submitting an application and having been notified by RUS of additional information and documents and other changes needed to complete the application, if the required information and documents are not supplied to RUS within 30 calendar days of the borrower's receipt of the notice, RUS may return the application to the borrower. The borrower may resubmit the application when the required additional information and documents are available.

(5) *Timeframes.* The timeframes for review of applications set forth in this section are based on the following conditions:

(i) The types of lien accommodations or subordinations requested are of the "standard" types that RUS has approved previously, i.e., the so-called Type I, II and III lien accommodations. Future revisions of the RUS mortgage may result in other "standard" types of lien accommodations and lien subordinations acceptable to RUS. Requests for lien accommodations or subordinations that are substantially different

than the "standard" types previously approved by RUS may require additional time for review and action;

(ii) The requested lien accommodation or subordination does not require the preparation of an environmental assessment or an Environmental Impact Statement. Preparation of these documents often will require additional time beyond the timeframes cited in this section; and

(iii) The timeframes set forth in this section, except for paragraph (b)(4) of this section, which deals only with approval of a new mortgage or mortgage amendment, include RUS review and/or approval of a loan contract, if required as part of the application, and required supporting documents, such as a CWP.

(b) *Advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.* (1) Applications that qualify under § 1717.854 for advance approval of a lien accommodation or subordination for 100 percent private financing of distribution, subtransmission, and headquarters facilities are submitted to the general field representative (GFR). The GFR will work with the borrower to ensure that all components of the application are assembled. Once the application is satisfactory to the GFR, it will be sent promptly to the Washington office for further review and action. If a new mortgage or mortgage amendment is required, a draft of these documents must be included in the application, unless the borrower has been notified that RUS wishes to prepare the documents itself.

(2) If no additional or amended information is needed for RUS to complete its review of the application once it is received in the Washington Office, RUS will, within 45 calendar days of receiving the application in the Washington Office, either:

(i) Approve the lien accommodation or subordination if the borrower has demonstrated satisfactorily to RUS that all requirements of this subpart applicable to advance approval have been met, and send written notice to the borrower. RUS's approval, in this case and all other cases, will be conditioned upon execution and delivery by the borrower of a satisfactory security

instrument, if required, and such additional information, documents, and opinions of counsel as RUS may require;

(ii) If all requirements have not been met, so notify the borrower in writing. The application will be returned to the borrower unless the borrower requests that it be reconsidered under the requirements and procedures for normal review set forth in paragraph (c) of this section and in §1717.856; or

(iii) Send written notice to the borrower explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(3) If additional or amended information is needed after the application is received in the Washington Office, RUS will so notify the borrower in writing within 15 calendar days of receiving the application in the Washington Office. If RUS subsequently becomes aware of other deficiencies in the application, additional written notice will be sent to the borrower. Within 30 calendar days of receiving all of the information required by RUS to complete its review, RUS will act on the application as described in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

(4) If a new mortgage or mortgage amendment is required, within 30 days of receiving such documents satisfactory to RUS, including required execution counterparts, RUS will execute the documents and send them to the borrower, along with instructions pertaining to recording of the mortgage, an opinion of borrower's counsel, and other matters. RUS will promptly notify the borrower upon receiving satisfactory evidence that the borrower has complied with said instructions.

(c) *Normal review—100 percent private financing of distribution, transmission, and/or generation facilities—(1) Distribution borrowers.* (i) Applications from distribution borrowers for a lien accommodation or subordination for 100 percent private financing of distribution, transmission, and/or generation facilities (including other eligible electric utility purposes) that do not meet the criteria for advance approval, are also submitted to the GFR. Procedures at this stage are the same as in paragraph (b)(1) of this section.

(ii) If no additional or amended information is needed for RUS to complete its review of the application once it is received in the Washington office, RUS will, within 90 calendar days of receiving the application in the Washington office, send written notice to the borrower either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(iii) If additional or amended information is needed after the application is received in the Washington Office, RUS will so notify the borrower in writing within 15 calendar days of receiving the application in the Washington Office. If RUS subsequently becomes aware of other deficiencies in the application, additional written notice will be sent to the borrower. Within 90 calendar days of receiving all of the information required by RUS to complete its review, RUS will act on the application as described in paragraph (c)(1)(ii) of this section.

(iv) If a new mortgage or mortgage amendment is required, the procedures and timeframes of paragraph (b)(4) of this section will apply.

(2) *Power supply borrowers.* (i) Applications from power supply borrowers for a lien accommodation or subordination for 100 percent private financing of distribution, transmission, and/or generation facilities, and other eligible electric utility purposes, are submitted to the RUS Power Supply Division, or its successor, in Washington, DC.

(ii) Within 30 calendar days of receiving the borrower's application containing the information and documents required by §1717.856, RUS will send written notice to the borrower of any deficiencies in its application as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if RUS subsequently becomes aware of other deficiencies in the borrower's application.

(iii) Within 90 calendar days of receiving all of the information required by RUS to complete its review, RUS will act on the application as described in paragraph (c)(1)(ii) of this section.

(iv) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(d) *Refinancing of existing debt.* All requests for a lien accommodation or subordination for refinancing are sent directly to the Washington office.

(1) *Advance approval.* (i) Within 15 calendar days of receiving the borrower's application containing the information and documents required by §1717.857(c), RUS will send written notice to the borrower of any deficiencies in its application as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if RUS subsequently becomes aware of other deficiencies in the borrower's application.

(ii) Within 15 calendar days of receiving all of the required information and documents, in form and substance satisfactory to RUS, RUS will either:

(A) Approve the lien accommodation or subordination if the borrower has demonstrated satisfactorily to RUS that all requirements of §1717.857(a) and (c) have been met, and send written notice to the borrower;

(B) If all requirements have not been met, so notify the borrower in writing. The application will be returned to the borrower unless the borrower requests that it be reconsidered under the requirements and procedures for normal review set forth in paragraph (d)(2) of this section and in §1717.857; or

(C) Send written notice to the borrower explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(iii) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(2) *Normal review.* (i) Within 20 calendar days of receiving the borrower's application containing the information and documents required by §1717.857(d), RUS will send written notice to the borrower of any deficiencies in its application as to completeness and acceptable form and substance. Addi-

tional written notices may be sent to the borrower if RUS subsequently becomes aware of other deficiencies in the borrower's application.

(ii) Within 30 calendar days of receiving all of the required information and documents, in form and substance satisfactory to RUS, RUS will notify the borrower in writing either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected. If the proposed refinancing involves complicated transactions such as interest rate swaps or forward delivery contracts, additional time may be required for RUS review and final action.

(iii) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(e) *Rural development investments.* (1) Applications for a lien subordination for rural development investments are submitted by distribution borrowers to the GFR and by power supply borrowers to the RUS Power Supply Division, or its successor, in Washington, DC.

(2) The GFR will work with the borrower to ensure that all components of the application are assembled. Once the application is satisfactory to the GFR, it will be sent promptly to the Washington Office for further review and action. After the application is received in the Washington Office, if additional or amended information is needed for RUS to complete its review, RUS will so notify the borrower in writing within 15 calendar days of receiving the application.

(3) Applications from power supply borrowers containing the information and documents required by §1717.858(c) will be reviewed in the Washington office and the borrower given written notice within 30 calendar days of receiving the application of any deficiencies as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if RUS subsequently becomes aware of other deficiencies in the borrower's application.

(4) Within 60 calendar days of receiving in the Washington office all of the required information and documents, in form and substance satisfactory to RUS, RUS will give written notice to the borrower either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(5) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

§ 1717.860 Lien accommodations and subordinations under section 306E of the RE Act.

(a) *General.* Under section 306E of the RE Act, when requested by a private lender providing financing for capital investments by a borrower whose net worth exceeds 110 percent of the outstanding principal balance of all loans made or guaranteed to the borrower by RUS, the Administrator will, without delay, offer to share the government's lien on the borrower's system or subordinate the government's lien on the property financed by the private lender, provided that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate. To qualify for a lien accommodation or subordination under this section, the investment must be an original capital investment, i.e., not a refinancing or re-funding. (See §1717.851 for the definition of capital investment.)

(b) *Determination of net worth to RUS debt ratio.* (1) In the case of applications for a lien accommodation, a borrower's net worth will be based on the borrower's most recent financial and statistical report, the data in which shall not be more than 60 days old at the time the application is received by RUS, and the outstanding debt owed to or guaranteed by RUS will be based on latest RUS records available. The financial and statistical reports (Form 7 for distribution borrowers and Form 12a for power supply borrowers) are subject to RUS review and revision, and they must comply with RUS's sys-

tem of accounts and accounting principles set forth in 7 CFR part 1767. Since sinking fund depreciation is not approved under part 1767, net worth for borrowers using sinking fund depreciation will be calculated as if the borrower had been using straight line depreciation.

(2) Net worth shall be calculated by taking total margins and equities (Line 33 of Part C of RUS Form 7 for distribution borrowers, or Line 34 of Section B of RUS Form 12a for power supply borrowers) and subtracting assets properly recordable in account 182.2, Unrecovered Plant and Regulatory Study Costs, and account 182.3, Other Regulatory Assets, as defined in 7 CFR part 1767.

(c) *Application requirements and process.* (1) If a borrower's net worth to RUS debt ratio exceeds 110 percent, as determined by RUS, and the borrower is in compliance with all requirements of its mortgage, loan agreement with RUS, and any other agreement with RUS that have not been exempted in writing by RUS, if requested RUS will expeditiously approve a lien accommodation or subordination for 100 percent private financing of capital investments, provided that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate. RUS's approval will be conditioned upon execution and delivery by the borrower of a security instrument satisfactory to RUS, if required, and such additional information, documents, and opinions of counsel as RUS may require.

(2) The application must include the following:

(i) A resolution of the borrower's board of directors requesting the lien accommodation 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;

(ii) A certification by an authorized official of the borrower that the borrower is in compliance with all requirements of its mortgage, loan agreement with RUS, and any other agreement