

whose primary function is the provision of telecommunication or other electronic communication services and whose services are available by design to all or a substantial portion of the members of the community.

*Total assets, less deferred expenses* means Line 26 of Part C of RUS Form 7 less assets properly recordable in Account 182.2, Unrecovered Plant and Regulatory Study Costs, and Account 182.3, Other Regulatory Assets.

*Total outstanding long-term debt* means Part C, Line 38 of RUS Form 7.

*Transaction costs* means the reasonable cost of legal advice, accounting fees, filing fees, recording fees, call premiums and prepayment penalties, financing costs (including, for example, underwriting commissions, letter of credit fees and bond insurance), and printing associated with borrower financing.

*Water and waste disposal system* means any system of community infrastructure whose primary function is the supplying of water and/or the collection and treatment of waste water and whose services are available by design to all or a substantial portion of the members of the community.

*Weighted average life of the loan* means the average life of the loan based on the proportion of original loan principal paid during each year of the loan. It shall be determined by calculating the sum of all loan principal payments, expressed as a fraction of the original loan principal amount, times the number of years and fractions of years elapsed at the time of each payment since issuance of the loan. For example, given a \$5 million loan, with a maturity of 5 years and equal principal payments of \$1 million due on the anniversary date of the loan, the weighted average life would be:  $(.2)(1 \text{ year}) + (.2)(2 \text{ years}) + (.2)(3 \text{ years}) + (.2)(4 \text{ years}) + (.2)(5 \text{ years}) = .2 \text{ years} + .4 \text{ years} + .6 \text{ years} + .8 \text{ years} + 1.0 \text{ years} = 3.0 \text{ years}$ . If instead the loan had a balloon payment of \$5 million at the end of 5 years, the weighted average life would be:  $(\$5 \text{ million}/\$5 \text{ million})(5 \text{ years}) = 5 \text{ years}$ .

[58 FR 53843, Oct. 19, 1993, as amended at 59 FR 3986, Jan. 28, 1994; 60 FR 67409, Dec. 29, 1995]

#### § 1717.852 Financing purposes.

(a) *Purposes eligible.* The following financing purposes, except as excluded in paragraph (b) of this section, are eligible for a lien accommodation from RUS, or in certain circumstances a subordination of RUS's lien on specific assets, provided that all applicable provisions of this subpart are met:

(1) The acquisition, construction, improvement, modification, and replacement (less salvage value) of systems, equipment, and facilities, including real property, used to supply electric and/or steam power to:

(i) RE Act beneficiaries; and/or

(ii) End-user customers of the borrower who are not beneficiaries of the RE Act. Such systems, equipment, and facilities include those listed in 7 CFR 1710.251(c) and 1710.252(c), as well as others that are determined by RUS to be an integral component of the borrower's system of supplying electric and/or steam power to consumers, such as, for example, coal mines, coal handling facilities, railroads and other transportation systems that supply fuel for generation, programs of demand side management and energy conservation, and on-grid and off-grid renewable energy systems;

(2) The purchase, rehabilitation and integration of existing distribution facilities, equipment and systems, and associated service territory;

(3) The following types of community infrastructure substantially located within the electric service territory of the borrower: water and waste disposal systems, solid waste disposal systems, telecommunication and other electronic communications systems, and natural gas distribution systems;

(4) Front-end costs, when and as the borrower has obtained a binding commitment from the non-RUS lender for the financing required to complete the procurement or construction of the facilities;

(5) Transaction costs included as part of the cost of financing assets or refinancing existing debt, provided, however, that the amount of transaction costs eligible for lien accommodation or subordination normally shall not exceed 5 percent of the principal amount of financing or refinancing provided, net of all transaction costs;

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(6) The refinancing of existing debt secured under the mortgage;

(7) Interest during construction of generation and transmission facilities if approved by RUS, case by case, depending on the financial condition of the borrower, the terms of the financing, the nature of the construction, the treatment of these costs by regulatory authorities having jurisdiction, and such other factors deemed appropriate by RUS; and

(8) Lien subordinations for certain rural development investments, as provided in § 1717.858.

(b) *Purposes ineligible.* The following financing purposes are not eligible for a lien accommodation or subordination from RUS:

(1) Working capital, including operating funds, unless in the judgment of RUS the working capital is required to ensure the repayment of RUS loans and/or other loans secured under the mortgage;

(2) Facilities, equipment, appliances, or wiring located inside the premises of the consumer, except:

(i) Certain load-management equipment (see 7 CFR 1710.251(c));

(ii) Renewable energy systems and RUS-approved programs of demand side management and energy conservation; and

(iii) As determined by RUS on a case by case basis, facilities included as part of certain cogeneration projects to furnish electric and/or steam power to end-user customers of the borrower;

(3) Investments in a lender required of the borrower as a condition for obtaining financing; and

(4) Debt incurred by a distribution or power supply borrower to finance facilities, equipment or other assets that are not part of the borrower's electric system or one of the four community infrastructure systems cited in paragraph (a)(3) of this section, except for certain rural development investments eligible for a lien subordination under § 1717.858.

(c) *Lien subordination for electric utility investments.* RUS will consider subordinating its lien on specific electric utility assets financed by the lender, when the assets can be split off without materially reducing the stability, safety, reliability, operational efficiency,

or liquidation value of the rest of the system.

[58 FR 53843, Oct. 19, 1993, as amended at 59 FR 3986, Jan. 28, 1994; 60 FR 67409, Dec. 29, 1995]

**§ 1717.853 Loan terms and conditions.**

(a) *Terms and conditions.* A loan, bond or other financing instrument, for which a lien accommodation or subordination is requested from RUS, must comply with the following terms and conditions:

(1) The maturity of the loan or bond used to finance facilities or other capital assets must not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(2) The loan or bond must have a maturity of not less than 5 years, except for loans or bonds used to refinance debt that has a remaining maturity of less than 5 years;

(3) The principal of the loan or bond must be amortized at a rate that will yield a weighted average life not greater than the weighted average life that would result from level payments of principal and interest; and

(4) The loan, or any portion of the loan, may bear either a variable (set annually or more frequently) or a fixed interest rate.

(b) *RUS approval.* Loan terms and conditions and the loan agreement between the borrower and the lender are subject to RUS approval. However, RUS will usually waive its right of approval for distribution borrowers that meet the conditions for advance approval of a lien accommodation or subordination set forth in § 1717.854. RUS may also waive its right of approval in other cases. RUS's decision to waive its right of approval will depend on the adequacy of security for RUS's loans, the current and projected financial strength of the borrower and its ability to meet its financial obligations, RUS's familiarity with the lender and its lending practices, whether the transaction is ordinary or unusual, and the uncertainty and credit risks involved in the transaction.