

§ 1717.855

7 CFR Ch. XVII (1–1–08 Edition)

§ 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

(4) The amount of the proposed loan does not exceed the lesser of \$10 million or 10 percent of the borrower's current net utility plant;

(d) [Reserved]

(e) As applicable to the type of facilities being financed, a CWP, related engineering and cost studies, a power cost study, and a resolution of the borrower's board of directors adopting these documents. These documents must meet the requirements of 7 CFR part 1710, subpart F and, as applicable, subpart G;

(f) Unless the requirement has been waived in writing by RUS, a current, RUS-approved power requirements study, which must meet the requirements of 7 CFR part 1710, subpart E, to the same extent as if the loan were being made by RUS, and a resolution of the borrower's board of directors adopting the study; and

(g) A discussion of the borrower's compliance with RUS requirements on accounting, financial reporting, record keeping, and irregularities (see §1717.854(c)(5)). RUS will review the case and determine the effect of any noncompliance on the feasibility and security of RUS's loans, and whether the requested lien accommodation or subordination can be approved.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 3735, Jan. 19, 1995; 60 FR 67410, Dec. 29, 1995]

§ 1717.857 Refinancing of existing secured debt—distribution and power supply borrowers.

(a) *Advance approval.* All applications for a lien accommodation or subordination for the refinancing of existing secured debt that meet the qualification criteria of this paragraph, except applications from borrowers in default under their mortgage or loan contract with RUS, are eligible for advance approval. Such lien accommodations and subordinations are deemed to be in the Government's interest, and RUS will approve them once RUS is satisfied that the requirements of this paragraph and paragraph (c) of this section have been met. The qualification criteria are as follows:

(1) The refinancing is a current re-funding and does not involve interest rate swaps, forward delivery contracts, or similar features;

(2) The principal amount of the refinancing loan does not exceed the sum of the outstanding principal amount of the debt being refinanced plus the