

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

amount of transactions costs included in the refinancing loan that are eligible for lien accommodation or subordination under § 1717.852(a)(4);

(3) The weighted average life of the refinancing loan is not greater than the weighted average remaining life of the loan being refinanced; and

(4) The present value of the cost of the refinancing loan, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the loan being refinanced, as determined by a method acceptable to RUS. The discount rate used in the present value analysis shall be equal to either:

(i) The current rate on Treasury securities having a maturity equal to the weighted average life of the refunding loan, plus one-eighth percent, or

(ii) A rate approved by RUS based on documentation provided by the borrower as to its marginal long-term borrowing cost.

(b) *Other applications.* Applications for a lien accommodation or subordination for refinancing that do not meet the requirements of paragraph (a) of this section will be reviewed by RUS under normal review procedures for these applications. In the case of either advance approval or normal review, a lien subordination would be authorized only if the lien of the mortgage was subordinated with respect to the assets securing the loan being refinanced.

(c) *Application contents—advance approval of refinancing.* Applications for a lien accommodation or subordination for refinancing of existing secured debt that meet the qualification criteria for advance approval set forth in paragraph (a) of this section, must include the following information and documents:

(1) A certification by an authorized official of the borrower that the application meets the requirements of paragraph (a) of this section and all applicable provisions of §§ 1717.852 and 1717.853;

(2) Documentation and analysis demonstrating that the application meets the qualification criteria set forth in paragraph (a) of this section;

(3) 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 debt to be refinanced, the name and address of the lender, and an attached term sheet summarizing the terms and conditions of the proposed loan;

(4) 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;

(5) 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;

(6) 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;

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

(8) 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; and

(9) Other information, documents and opinions that RUS may require to determine whether all of the applicable provisions of this subpart have been met.

(d) *Application contents—normal review of refinancing.* Applications for a lien accommodation or subordination for refinancing of existing secured debt that do not meet the requirements for advance approval set forth in paragraph (a) of this section, must include the following information and documents:

(1) The information and documents set forth in paragraphs (c)(3) through (9) of this section;

(2) A complete description of the refinancing loan and the outstanding debt to be refinanced;

(3) An analysis comparing the refinancing loan with the loan being refinanced as to the weighted average life

and the net present value of the costs of the two loans; and

(4) If the present value of the cost of the refinancing loan is greater than the present value of the cost of the debt being refinanced, financial forecasts for at least 5 years comparing the borrower's debt service and other costs, revenues, margins, cash flows, TIER, and DSC, with and without the proposed refinancing.

(e) *Application process and timeframes.* The application process and timeframes for RUS review and action for refinancings are set forth in §1717.859(d).

(f) *Prepayments of concurrent RUS insured loans.* If the loan being refinanced was made concurrently as supplemental financing required by RUS in connection with an RUS insured loan, the refinancing will not be considered a prepayment under the RUS mortgage, and no proportional prepayment of the concurrent RUS insured loan will be required, provided that the principal amount of the refinancing loan is not less than the amount of loan principal being refinanced, and the weighted average life of the refinancing loan is materially equal to the weighted average remaining life of the loan being refinanced. The refinancing loan shall be considered a concurrent loan.

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

§ 1717.858 Lien subordination for rural development investments.

(a) *Policy.* RUS encourages borrowers to consider investing in financially sound projects that are likely to have a positive effect on economic development and employment in rural areas. In addition to the guidance set forth in §1717.651, RUS recommends that such investments be made through a subsidiary of the borrower in order to clearly separate the financial risks and the revenues and costs of the rural development enterprise from those of the borrower's electric utility business. This should reduce credit risks to the borrower's primary business, and minimize the possibility of undisclosed cross subsidization of the rural development enterprise by electric rate payers.

(b) *Lien subordination.* RUS will consider subordinating or releasing its lien on the stock held by a borrower in a subsidiary whose primary business directly contributes to or supports economic development and employment in rural areas, as defined in section 13 of the RE Act, when requested by a lender to the subsidiary, other than the borrower. To be eligible for said lien subordination or release:

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

(2) In the judgment of RUS, the borrower must be able to repay all of its outstanding debt, and the security for all outstanding loans made to the borrower by RUS, including loans guaranteed by RUS, must be adequate, after taking into account the proposed subordination or release of lien.

(c) *Application contents.* Applications for a lien subordination or release of lien for rural development investments must include the following information and documents:

(1) A resolution of the borrower's board of directors requesting the lien subordination or release of lien;

(2) A certification by an authorized official of the borrower that the borrower is current on all of its financial obligations and is in compliance with all provisions of its mortgage and loan agreement with RUS;

(3) A description of the facilities or other purposes to be financed and the projected effects on economic development and employment in rural areas;

(4) 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;

(5) If requested by RUS, a long-range financial forecast providing financial projections for at least 10 years, in form and substance satisfactory to RUS, which demonstrates that the borrower's system is economically viable and that the borrower will be able to repay all of its outstanding debt and meet all other financial obligations;

(6) A discussion of the borrower's compliance with RUS requirements on accounting, financial reporting, record