

§ 1782.10 Audit requirements.

Audits for loans will be required in accordance with §1780.47 of this chapter. If the borrower becomes delinquent or is experiencing problems, the servicing official will require an audit or other documentation deemed necessary to resolve the delinquency. The provisions of 7 CFR 3052 address audit requirements for recipients of Federal grants.

§ 1782.11 Refinancing requirements.

If at any time it appears to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

§ 1782.12 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth in this section.

(a) *Approval conditions.* Approval may be given when the servicing official determines that:

(1) The consideration is for the full amount of the debt or the present fair market value as determined by an appraisal completed by a qualified Rural Development employee or an independent appraiser as determined appropriate by the approval official;

(2) The sale or exchange will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan and the transaction will not adversely affect the Agency's security position;

(4) If the property to be sold or exchanged will be used for similar purposes that the loan was made, the purchaser will:

(i) Execute Form RD 400-4, "Assurance Agreement." The instrument of conveyance will contain the civil

rights covenant referenced in 7 CFR 1901.202(e); and

(ii) Provide the Agency with a written agreement assuming all rights and obligations of the original borrower, and

(5) Proceeds remaining after paying any reasonable and necessary selling expenses are to be used for one or more of the following purposes:

(i) To pay Agency debt, pay on debts secured by a prior lien, and pay on debts secured by a parity or subsequent lien if it is to the Agency's advantage;

(ii) To purchase or acquire property more suited to the borrower's needs, providing the Agency's security position is maintained; and

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability, place the operation on a sounder financial basis, or further the loan objectives and purposes.

(b) *Sale of assets financed with Agency grants.* The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

(c) *Release from liability.* If a borrower can no longer meet the objectives of the loan, the property may be sold. If the full amount of the borrower's debt is paid or assumed, the State Director may release the borrower from liability.

§ 1782.13 Transfer of security and assumption of loans.

It is the Agency's policy to approve transfers and assumptions to transferees that will continue the original purpose of the loan. Assistant Administrator written concurrence is required when the transfer exceeds the State Director's loan approval authority. The transfer will be approved in accordance with the following requirements:

(a) *General requirements for transferees.* The fulfillment of the following requirements for transfers will be determined by the approval official, in his or her discretion:

(1) The transferees must meet the eligibility requirements of 7 CFR part 1780 and provide the same information

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required in 7 CFR part 1780, subpart B, for application processing.

(2) The transfer will not be disadvantageous to the Government as determined by the approval official.

(3) If the Agency debt(s) exceeds the present market value of the security as determined by an appraisal, the transferee will assume an amount at least equal to the present market value.

(4) The Agency must concur in plans for disposition of funds in any reserve account, including project construction bank accounts. A reserve account may be considered as a transferable asset.

(5) The transferee will assume all of the borrower's responsibilities regarding loans. The transferee will also agree to accept the original loan conditions plus any conditions set forth by the Agency with regard to the transfer.

(6) A current appraisal will be completed to establish the present market value of the security when the full debt is not being assumed.

(7) There must be no lien, judgement, or similar claims of other parties against the Agency security being transferred unless the transferee is willing to accept such claims. The Agency must also determine that the claims will not prevent the transferee from repaying the Agency debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(8) A letter of conditions establishing requirements to be met in connection with the transfer will be issued, and the transferee will be required to execute Form RD 1942-46, "Letter of Intent to Meet Conditions," prior to closing of the transfer.

(9) The transferee will obtain insurance according to Agency requirements.

(10) The effective date of the transfer is the date the transfer is closed, which is the same date Form RD 1951-15, "Community Programs Assumption Agreement," or other appropriate assumption agreement which is executed and delivered by all necessary parties.

(11) Title to all assets will be conveyed from the transferor to the transferee unless all parties concerned, including the Agency, agree upon other

arrangements. All instruments of conveyance will contain the necessary nondiscrimination covenant as referred to in § 1782.5.

(12) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the Government.

(13) The State Director is authorized to approve transfers to eligible transferees at the same interest rate as on the borrower's note(s) or bond(s). The maturity of the debt instrument for the assumed debt may not exceed the lesser of the repayment period authorized in 7 CFR part 1780 for a "new" loan or the expected life of the facility.

(14) Agency National Office concurrence is required for transfers not in compliance with paragraphs (a)(1) through (13) of this section.

(b) *Loan requirements for eligible transferees.* If a loan is evidenced and secured by a note and lien on real or chattel property, Form RD 1951-15, or other appropriate assumption agreement will be executed by the transferee. If a bond secures a loan, transfer documents will be developed by bond counsel and approved by the Office of the General Counsel (OGC), USDA.

(1) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, 7 CFR part 1780 will govern the preparation of any new debt instruments required.

(2) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(3) Any development funds remaining in a bank account that are not refunded to the Agency will be transferred to a bank account for the transferee. This will occur simultaneously with the closing of the transfer, and the funds will be used in completing planned development.

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(c) *Release from liability.* Transferors may be released from liability when their debt is paid in full or when the debt is settled in accordance with § 1782.20 of this part.

(d) *Transfer of facility financed with Agency grants.* The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

§ 1782.14 Protection of service areas— 7 U.S.C. 1926(b).

(a) 7 U.S.C. 1926(b) was enacted to protect the service area of Agency borrowers with outstanding loans, or those loans sold in the sale of assets authorized by the “Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub. L. 99-591, 100 Stat. 3341 (1986),” from loss of users due to actions or activities of other entities in the service area of the Agency financed system. Without this protection, other entities could extend service to users within the service area, and thereby undermine the purpose of the congressionally mandated water and waste loan and grant programs and jeopardize the borrower’s ability to repay its Agency debt.

(b) Responsibility for initiating action in response to those actions prohibited by 7 U.S.C. 1926(b) rests with the borrower.

§ 1782.15 Mergers and consolidations.

Mergers and consolidations will be processed the same as a transfer and assumption, although approvals by the Agency will give consideration to the differences under the applicable law regarding the type of transaction under consideration and the unique facts involved in each transaction. Mergers occur when two or more entities combine in such a manner that only one remains in existence. Consolidations occur when two or more entities combine to form a new consolidated entity, and the original entities cease to exist. In both mergers and consolidations, the surviving or emerging entity acquires the assets and assumes the liabilities of the entity or entities that ceased to exist.

§ 1782.16 Defeasance of Agency indebtedness.

Defeasance, or amending outstanding loan instruments and agreements to permit defeasance of Agency debt instruments, is prohibited.

§ 1782.17 Parity lien.

In order for the Agency to agree to a parity lien position, the borrower must submit a written request to the servicing office.

(a) The written request for parity must contain the following items:

(1) An explanation of the purpose of the request for parity; amount of loan for which parity is requested; description of security property; type of security instrument; name and address of financial institution requesting the transaction; and other information determined necessary by the servicing official to evaluate the request.

(2) Current financial statements or an audit, if available or determined necessary by the servicing official.

(3) An annual operating budget which projects income and expenses for a typical year’s operation. If construction is involved, the budget must be projected through the first full year of operation following completion of the planned improvements.

(4) A copy of the proposed security instrument.

(5) A certification from the borrower that the Agency debt cannot be refinanced at reasonable rates and terms.

(6) An appraisal, when the primary security is real estate or determined necessary by the servicing official in order to determine the adequacy of loan security or repayment ability.

(7) A certification that any development work will comply with subpart C of part 1780 of this chapter.

(b) Requests for parity must comply with requirements of paragraph (a) of this section, requirements as specified in the bond or loan documents, the requirements as specified in 7 CFR part 1780, subpart D, and as provided in applicable State law.

(c) If the borrower has met all of the requirements in paragraphs (a) and (b) of this section and the proposal is determined to be in the Government’s interest, the Agency will then grant approval of the borrower’s request for