

§ 1786.100

7 CFR Ch. XVII (1-1-08 Edition)

(b) The borrower must agree to prepay all of its outstanding RUS Notes;

(c) The borrower must identify the source of financing that will be used directly or indirectly to refinance its outstanding RUS Notes. The borrower must certify in writing whether such financing will be tax exempt and, if so, shall furnish all information on the financing as RUS may request to enable RUS to adjust the discount to the equivalent to fully taxable financing;

(d) The borrower must have expended all funds advanced on account of the RUS Notes for the purposes for which such funds were advanced or repaid RUS for all unexpended funds;

(e) The borrower must agree to a rescission of the unadvanced balance of any RUS Notes outstanding as of the date of its application for prepayment;

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the RUS Notes between the amount outstanding on the RUS Note and the Discounted Present Value of the RUS Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective Notes; and

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier. The borrower must also specifically agree to the following limitation: The borrower agrees that, for so long as the Wholesale Power Contract shall be in effect between the borrower and the power supplier, the borrower will not, without the approval in writing of the power supplier and the Administrator, take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. Notwithstanding the foregoing, the bor-

rower may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired, so long as the borrower shall pay such portion of the outstanding indebtedness evidenced by the power supplier's Notes at the time outstanding as shall be determined by the power supplier with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and the Power Supplier shall require.

§ 1786.100 Application procedure.

Any borrower seeking to prepay its RUS Notes under this Subpart should apply to the appropriate RUS Area Director not less than 60 days prior to one year after the effective date of the merger or consolidation by submitting:

(a) A board resolution that:

(1) Requests approval of the prepayment of the borrower's outstanding RUS Notes;

(2) States the intent of the borrower to comply with all eligibility criteria set forth in §1786.99 of this subpart; and

(3) Identifies the source of financing.

(b) A list of all RUS Notes together with the outstanding amount on such notes.

(c) An opinion of counsel as to the effective date of the merger or consolidation.

(d) Such additional information as the Administrator will request.

§ 1786.101 Approval of application.

The applications will be reviewed and, if satisfactory, approved. Closing will be scheduled upon approval.

§ 1786.102 Prepayment agreement.

Upon approving an application for prepayment under this subpart, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The RUS Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place, date and conditions for closing.

(c) Agreement that the unadvanced balance of RUS Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the RUS Notes between the amount outstanding on the RUS Note and the Discounted Present Value of the prepaid RUS Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective RUS Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

§ 1786.103 Security.

If, after prepayment of RUS Notes, the Government should continue to hold liens on the borrower's property, the Administrator of RUS will consider a request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay RUS Notes. Such lien accommodations shall be limited in amount to the Discounted Present Value of the RUS Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

§ 1786.104 Loan fund audit.

RUS shall have the right to audit within 6 months of closing, transactions involving the RUS construction fund established and maintained by the borrower pursuant to the terms of the RUS Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should RUS determine that the borrower has made disbursements of funds advanced pursuant to RUS Notes which do not comply with the requirements of the RUS Loan Agreement, the borrower shall be required to pay the Government an amount equal to the

difference between the amount which the borrower prepaid on such RUS Notes evidencing RUS loans funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of non-compliance if the borrower had not prepaid such RUS Notes. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.105 Closing.

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement, including such approvals as may be required by regulatory bodies and other lenders.

(b) The RUS Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement. RUS shall designate the date of closing which in no event shall be later than one year after the effective date of the merger or consolidation. At closing, in addition to paying all current interest due on the date of prepayment, a borrower shall prepay the RUS Notes by paying to the Government an amount equal to the lesser of the outstanding balance or the Discounted Present Value of the RUS Notes. The closing shall otherwise be conducted as prescribed in the prepayment agreement.

§ 1786.106 Other prepayments.

RUS loan documentation generally permits borrowers to prepay RUS Notes by paying the outstanding balance due thereon. Nothing in this subpart shall prohibit any borrower from prepaying its outstanding RUS Notes in accordance with the terms thereof. The provisions of this subpart shall not be applicable to such prepayment.

APPENDIX A TO SUBPART E OF PART 1786—LISTING OF ELIGIBLE BORROWERS

State	Borrower name and address
Colorado	Colorado-Ute Electric Assn., Inc., Montrose.
Florida	Lee County Electric Coop. Inc., North Fort Myers.
Indiana	Clark County Rural Elec. Memb. Corp., Sellersburg.
Louisiana	Beauregard Electric Cooperative, Inc., Deridder.