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306(A) of the RE Act and section 633 of the continuing resolution as modified by section 637 of the 1989 Appropriations Act. Furthermore, consistent with the RE Act, the continuing resolution and the 1989 Appropriations Act, it is the policy of RUS to implement the objectives of the prepayment program in a manner which does not result in an increase in loan guarantee risk or an inappropriate increase in the administrative burden on RUS.

§ 1786.27 Definitions and rules of construction.

(a) *Definitions.* For the purposes of this subpart, the following terms shall have the following meanings:

Administrator means the Administrator of RUS.

Application Category shall have the meaning set forth in § 1786.29(c).

Application period means a period during which RUS is accepting applications to make prepayments pursuant to this subpart, and initially means:

(1) In the case of telephone borrowers, the period commencing on February 12, 1990 and ending on March 12, 1990;

(2) In the case of financially distressed borrowers, the period commencing October 1, 1990 and ending on July 30, 1993; or

(3) In the case of other borrowers, the period to be announced by RUS.

Borrower means any organization which has an outstanding FFB loan guaranteed by RUS under the RE Act.

Business Day means any day other than a Saturday, a Sunday, a legal public holiday under 5 U.S.C. section 6103 for the purposes of statutes relating to pay and leave of employees, or any other day declared to be legal holiday for the purposes of statutes relating to pay and leave of employees by Federal statute or Federal Executive Order.

Continuing Resolution means section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202).

Date Received means the date inscribed on the Notice of Intent to Prepay the Federal Financing Bank, by an authorized official of RUS, as the date the application was received.

Documentation means all or part of the agreements relating to a prepayment under this part, irrespective of whether RUS is a party to each agreement, including all exhibits to such agreements.

Electric Program Applications shall have the meaning specified in § 1786.29(c)(1).

Existing Loan Guarantee means a guarantee of payment issued by RUS to FFB pursuant to the RE Act for an FFB loan made on or before July 2, 1986.

Fees means any fees, costs or charges, incurred in connection with obtaining the private loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees (including fees and disbursements charged by counsel representing the borrower), printing costs, recording fees, trustee fees, underwriting fees, capital stock purchases or other equity investment requirements of the lender, and other related transaction expenses.

Financially Distressed Borrower means an RUS-financed electric system determined by the Administrator to be either (1) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (2) participating in a work out or debt restructuring plan with RUS, either as the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring.

Financially Viable Lender means:

(1) A lender (i) which has a capital and surplus of at least \$50 million; (ii) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of \$50 million; (iii) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of \$50 million from a lending institution with a capital and surplus of at least \$50 million; or (iv) has other credit support, in form and substance satisfactory to the Administrator, in the amount of \$50 million; or

(2) In the event of a prepayment totalling less than \$100 million, a lender (i) which has a capital and surplus of at

least \$10 million; (ii) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of \$10 million; (iii) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of \$10 million from a lending institution with a capital and surplus of at least \$10 million; or (iv) has other credit support, in form and substance satisfactory to the Administrator, in the amount of \$10 million;

FFB means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

FFB Loan means one or more advances, or a part of one or more advances, made on or before July 2, 1986, by FFB on a promissory note or notes executed by a borrower and guaranteed by RUS pursuant to section 306 of the RE Act (7 U.S.C. 936).

Guarantee means the original endorsement, in the form specified by RUS which is executed by the Administrator and shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

Increase in Loan Guarantee Risk means the change in any of the components of loan guarantee risk associated with the private loan which in the judgment of RUS increases the magnitude or duration of the loan guarantee risk currently assumed by RUS in connection with the existing loan guarantee;

Internally Generated Funds means money belonging to the borrower other than: (1) Proceeds of loans made or guaranteed under the RE Act or (2) funds on deposit in the cash construction trustee account;

Lender means the organization making and servicing the private loan which is to be guaranteed under the provisions of this subpart and used to prepay the FFB loan. The term *lender* does not include the FFB, or any other Government agency.

Loan Guarantee Agreement means the written contract by and among the lender, the borrower, the Adminis-

trator, and such other parties that RUS may require, setting forth the terms and conditions of a guarantee issued pursuant to the provisions of this subpart.

Loan Guarantee Risk means the risk as determined by RUS associated with guaranteeing a loan for a particular borrower. Components of loan guarantee risk include the following:

(1) The outstanding principal balance of a loan;

(2) The dollar weighted average interest rate (stated as an annual percentage rate) on a loan;

(3) The final maturity date of a loan;

(4) The annual principal amortization of the loan; and

(5) Any other factor that as determined by RUS increases the magnitude or duration of the guarantee.

Mortgage means the mortgage and security agreements by and among the borrower and RUS, as from time to time supplemented, amended and restated.

1989 Appropriations Act means the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460).

Notice of Intent to Prepay the Federal Financing Bank means the notice in the form specified in §1786.33 hereof.

Prepayment Authority shall have the meaning specified in §1786.29(a).

Private Loan means a loan or loans to be guaranteed under the provisions of this part and used to prepay an FFB loan.

Pro-rated Percentage shall have the meaning specified in §1786.30(b)(1).

RE Act means the Rural Electrification Act of 1936 (7 U.S.C. 901-950b), as amended.

REA means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to

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administering certain electric and telephone programs. See 7 CFR 1700.1.

Service or *Servicing* means the following activities:

- (1) The billing and collecting of the private loan payments from the borrower;
- (2) Notifying the Administrator promptly of any default in the payment of principal and interest on the private loan and submitting a report, as soon as possible thereafter, setting forth the servicer's views as to the reasons for the default, how long the servicer expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;
- (3) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, loan guarantee agreement, the mortgage, or related security instruments, or conditions of which the servicer or the lender is aware which might lead to nonpayment, violation or other default; and
- (4) Such other activities as may be specified in the loan guarantee agreement.

Settlement Date means the date the borrower disburses funds to the FFB in order to complete a prepayment pursuant to this subpart, and shall be a date agreed to by RUS, and a date on which both the FFB and the Federal Reserve Bank of New York are open for business.

Standard Electric Program Application shall have the meaning specified in §1786.29(c)(1).

Telephone Borrower means a borrower that provides telephone service as defined in 7 CFR 1735.2(a).

Telephone Program Applications shall have the meaning specified in §1786.29(c)(2).

(b) *Rules of Construction.* Unless the context shall otherwise indicate, the terms defined in §1786.27(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this subpart as a whole.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35426, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990, and amended at 59 FR 66440, Dec. 27, 1994]

§ 1786.28 Qualifications.

(a) *Borrowers.* To qualify to prepay an FFB loan pursuant to this subpart, the borrower must:

- (1) Demonstrate that the FFB loan was outstanding on July 2, 1986;
- (2) Prepay the FFB loan by:
 - (i) Using a private loan with the existing loan guarantee;
 - (ii) Using internally generated funds; or
 - (iii) Using a combination of a private loan with the existing loan guarantee and internally generated funds; and
- (3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship.

(b) *Lenders.* To participate pursuant to this subpart, in a borrower's prepayment of an FFB loan by means of a private loan, the lender must:

- (1) Be a private legally organized lender, or a lender established pursuant to the Farm Credit Act of 1971, as amended;
- (2)(i) Be subject to credit examination and supervision by either an agency of the United States or a state and be in good standing with its licensing authority and have met the requirements, if any, of licensing, lending and loan servicing in the state where the collateral for the Loan is located;
- (ii) Be a financially viable lender; or
- (iii) Be a trust administered, by an entity meeting the requirements of paragraph (b)(2) (i) or (ii) of this section; and

(3) Have the capability to adequately service the private loan either by using its own resources or by contracting for such resources with a financially viable lender. Under no circumstances may the borrower or an affiliate of the borrower service the private loan. A qualified lender may participate out each private loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator.

(c) *Private Loans.* A borrower who qualifies pursuant to §1786.28(a) may at its option elect to use a private loan to make a prepayment, or a portion of a prepayment, pursuant to this subpart.