

May 2009

**U.S. Department of Agriculture
Rural Development Rural Utilities Programs**

**SUPPORTING STATEMENT
Use of Consultants Funded by Borrowers
0572-0115**

OMB Terms of Clearance: None

A. Justification

1. Explain the circumstances that make the collection of information necessary.

USDA Rural Development administers rural utilities programs through the Rural Utilities Service (Agency) and is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. The Agency loan portfolio totals nearly \$42 billion. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by Office of Management and Budget (OMB) Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivable, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

The Rural Utilities Service Administrator, acting on behalf of the United States and the Agency, signs the official mortgage and loan documents as the Mortgagee on behalf of the Federal government and, thereby, attests to the feasibility and security of the loan. In order to protect and ensure the Government's security interest in loans, and in the exercise of due diligence as custodian and guardian of the Government's interest, in accordance with sections 4 and 201 of the RE Act "... shall not be made unless the Administrator finds and certifies that in his judgment the security therefore is reasonably adequate and such loan will be repaid within the time agreed." The Agency Administrator must exercise prudent management and oversight of loans.

The Agency has a tremendous amount of interest in loan security and protection of the Government's interest over the long term life of a loan, which is generally secured by a first mortgage and amortized over a period up to 35 years. Therefore, The Agency necessarily has a strong interest in the business, financial, and operating aspects of its borrowers. Accordingly, the RE Act of 1936 provides authorities for the agency to carry out its obligations and responsibilities.

On November 1, 1993, Public Law 103-129 amended Section 18 of the RE Act (7 U.S.C. 918 (c) to provide a mechanism for expediting these RUS reviews. As amended, Section

18 (c) authorizes the Agency to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. The consultants may be used to facilitate timely action on applications by borrowers for financial assistance and for approvals required by the Agency pursuant to the terms of outstanding loan or security instruments or otherwise. The Agency may not require borrowers to fund consultants. The provisions of Section 18 (c) may be utilized only at the borrower's request. Section 18 (c) is promulgated at 7 CFR 1789.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.

The business, regulatory, and technological environments of the electrical and telecommunications industries continue to change rapidly. The success of the Agency programs in supporting rural infrastructure and economic development is directly tied to the ability of borrowers to respond quickly and aggressively to new challenges. In such an environment, many transactions requiring the Agency approval may be highly time sensitive; any delays may jeopardize the transaction or reduce the benefits of the transaction to the borrower.

These transactions may involve highly technical issues in areas where the Agency has limited expertise. In some cases the transactions are very important to the borrower, but, because of constraints on agency resources, cannot be given corresponding priority by the Agency. Expedited, but thorough review of such transactions is in the interest of both the borrower and the Agency.

All Agency borrowers are eligible to fund consultant services under 7 CFR Part 1789. After discussions with a borrower to review the nature of an application and the projected review period, if the Agency concludes that the projected review period will not result in timely action on the application, the Agency will notify the borrower in writing that it may fund consultant services to facilitate Agency review. The borrower will submit to the Agency Regional Director or the Director of the Power Supply Division the following information for review as stipulated in 7 CFR Part 1789.156:

- (1) Identification in the heading or caption as a Notice of Proposal to Fund Consulting Services;
- (2) Borrower's REA/RUS designation;
- (3) Borrower's legal name and address;
- (4) A description of the application, critical issues and concerns relating to the consequences of any delays in Agency review;
- (5) A description of the consulting service(s) that would facilitate timely Agency review of the application; and
- (6) Such additional documents and information as the Agency may request.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.

RDUP is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The Agency continues to research alternatives in order to develop a system to collect this information electronically. The borrowers are still required to mail in the requested information.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information required by the Agency to act on requests for borrower funded consultants pursuant to Section 18 (c) of the RE Act is specific to each project and each borrower request. There is no similar information available.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The Agency believes that the information requested is the minimum necessary for the Agency to meet statutory requirements with respect to both large and small entities. The Agency headquarters and field staff are available to assist borrowers in preparing documents.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or conducted less frequently, as well as any technical or legal obstacles to reducing burden.

This information is collected only when borrowers wish to take advantage of the provisions of Section 18 (c) of the REA Act. It is collected only once for each application. If the information was not submitted, the Agency would be unable to determine if the specific application process could be accelerated by using a consultant.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- a. Requiring respondents to report information more than quarterly.

There is no requirement to report more than quarterly.

- b. Requiring written responses in less than 30 days.

There is no requirement to respond in less than 30 days.

- c. Requiring more than an original and two copies.

There is no requirement for more than an original and two copies.

- d. Requiring respondents to retain records for more than 3 years.

The Agency requires borrowers to maintain records in accordance with 7 CFR 1767.

- e. That is not designed to produce valid and reliable results that can be generalized to the universe of study.

This collection does not involve a survey.

- f. Requiring use of statistical sampling which has not been reviewed and approved by OMB.

There is no use of statistical sampling involved with this collection.

- g. Requiring a pledge of confidentiality.

There is no requirement of a pledge of confidentiality.

- h. Requiring submission of proprietary trade secrets.

There is no such requirement.

8. **If applicable, identify the date and page number of publication in the Federal Register of the agency's notice soliciting comments on the information collection. Summarize public comments received and describe actions taken by the agency in response to these comments. Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, reporting format (if any), and on data elements to be recorded, disclosed, or reported.**

As required by 5 CFR 1320.8(d), a Notice to request public comments was published on September 18, 2008, at 73 FR 54136 (copy attached). No public comments were received.

The Agency maintains close contact with borrowers through general field representatives and a headquarters staff. The Agency also conducts seminars for its borrowers. Suggestions are always considered by the Agency.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

Payments or gifts are not provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.

This information collection does not require confidentiality. Information submitted to the Agency by borrowers is covered by provisions of the Freedom of Information Act 5 U.S.C. 552.

11. Provide additional justification for any question of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

The information collection includes no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

***Number of respondents.** The Agency estimates that approximately 1 borrower will utilize the provisions of Section 18 (c) of the RE Act each year.

***Burden hours.** This information collection consists of a funding proposal describing the proposed borrower action and consulting services that the borrower believes will expedite Agency review, and any relevant and supporting documentation. The supporting documentation must be prepared by the borrower as part of its customary and usual business practice whether or not Section 18 (c) of the RE Act is utilized. The type and amount of documentation will depend on the nature of the borrower request. The Agency estimates that preparation of the proposal will require an average of 2 hours.

***Annualized cost to respondents.** The Agency estimates that approximately 80 percent of the time required to prepare and submit this information is professional time costing \$42 per hour, and the balance of 20 percent is clerical costing \$20.35 per hour. The cost to respondents is therefore estimated to be:

$$1 \text{ responses} \times 2 \text{ hours} = 2 \text{ hours}$$

80 percent of 2 hours = 96 minutes @ \$42/hour =	\$ 403
20 percent of 2 hours = 24 minutes @ \$20.35/hour =	<u>\$ 488</u>
 Total Annualized Cost to the respondents	 \$ 891

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

(a) Total capital and start-up cost component (annualized over its expected useful life); and

There are no capital or start-up costs associated with this collection.

(b) Total operation and maintenance and purchase of services component.

There are no operation and maintenance or purchase of services costs associated with this collection.

14. Provide estimates of annualized cost to the Federal Government.

RUS estimates that agency review of borrower requests to utilize the provisions of Section 18 (c) of the RE Act will require approximately 10 hours of agency time. RUS estimates that approximately 80 percent of the time required to review this information is professional time costing \$47 per hour, and the balance of 20 percent is clerical costing \$22 per hour. Cost estimates are based on historical experience, and hourly rates are based on GS-13/5 and GS-7/5 levels. The cost to the Federal government is therefore:

1 response X 2 hours = 2 hours	
80 percent of 2 hours = 96 minutes @ \$47/hour =	\$451
20 percent of 2 hours = 24 minutes @ \$22/hour =	<u>\$528</u>

Total annualized cost to the Federal government = \$979

Section 18 (c) of the RE Act allows borrowers to voluntarily fund consultants to expedite certain RUS actions. Otherwise the government would bear the full cost of reviewing such actions. These provisions will result in a net savings to the Federal government.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

This is an extension of a currently approved collection. Although there was a decline in the number of respondents during the past collection cycle, the Agency expects that

borrowers will use consultants' services to assist with timely action on borrowers' loan applications for financial assistance and for RUS approvals during the next collection cycle.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

There are no plans to publish this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

No such approval is sought.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-1.

There are no exceptions to the certification statements.

B. Collection of Information Employing Statistical Methods.

This information collection does not employ statistical methods.