

## 2009 - SUPPORTING STATEMENT

OMB Control No. 0572 – 0116

### Settlement of Debt Owed by Electric Borrowers 7 CFR Part 1717, Subpart Y

#### A. JUSTIFICATION

##### **1. Circumstances that make this collection of information necessary.**

The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.,)[RE Act].

This information collection requirement stems from passage of P.L. 104-127, on April 4, 1996, which amended section 331 (b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.,)[Con Act] to extend to the RUS' loans and loan guarantees the Secretary of Agriculture's authority to compromise, adjust, reduce, or charge-off debts or claims owed to the Government (collectively, debt settlement) with respect to loans made or guaranteed by RUS. Only those electric borrowers that are unable to fully repay their debts to the government and who apply to RUS for relief are affected by this information collection. The amendment also extended to the security instruments, leases, contracts, and agreements administered by RUS, the Secretary's authority to adjust, modify, subordinate, or release the terms of those documents.

The settlement authority granted to the Secretary of Agriculture by P.L. 104-127 is in addition to, rather than a replacement of, the settlement authority of the Attorney General. The RUS Administrator is required to notify the Attorney General whenever the Administrator intends to use his or her settlement authority. The Attorney General retains the authority under existing law to settle debts and claims against a borrower that is in bankruptcy or that has filed for protection under the bankruptcy laws or other laws. In addition, any debt or claim that has been referred in writing to the Attorney General would not be settled under the Administrator's authority unless the Attorney General approves.

RUS' regulation (7 CFR 1717, subpart Y, Settlement of Debt Owed by Electric Borrowers)[copy attached] stipulates the policies, standards, and procedures the Administrator would use in settling (restructuring) debts and claims arising from loans made or guaranteed to rural electric borrowers under the RE Act. As defined in the regulation, *claim* means any claim of the government arising from loans made or guaranteed under the RE Act to a rural electric borrower; *debt* means outstanding debt of a rural electric borrower (including, but not necessarily limited to, principal, accrued interest, penalties, and the government's cost of debt collection) arising from loans made or guaranteed under the RE Act; and *settle* means to reamortize, adjust, compromise, reduce, or charge-off a debt or claim.

## **2. Purposes and uses of the information**

This information collection will only require information from those RUS electric borrowers that seek to settle a debt or claim owed to the Government arising from loans made or guaranteed or administered by RUS. The information which will be required from the borrower is only that which would be essential for determining: the need for debt settlement; the amount of the debt the borrower can repay; the future scheduling of debt repayment; and, range of opportunities for enhancing the amount of the debt that can be recovered. The information collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed. Since the need for relief is expected to vary substantially from borrower to borrower, so will the required information collected.

It is RUS' policy that, wherever possible, all debt owed to the government, including but not limited to principal and interest, shall be collected in full in accordance with the terms of the borrower's loan documents. The determination of a borrower's ability to meet its financial obligations will be based on analyses and documentation by RUS of the borrower's historical, current, and projected costs, revenues, cash flows, assets, opportunities to reduce costs and/or increase revenues, and other factors that may be relevant on a case by case basis.

## **3. Uses of improved information technology.**

The RUS 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, for other purposes. RUS encourages borrowers to use the most advanced technology to prepare the required information. There is at present no feasible alternative to requiring that the information be submitted to RUS in hard copy, with computer-generated charts and graphs as supporting data where appropriate. RUS recognizes that computer capabilities differ widely among the diverse small and large rural electric borrowers.

## **4. Efforts to identify duplication.**

There is no duplication because required information is specific to each borrower involved. There is no similar information available for a particular borrower from other sources. For example, a borrower must submit an in-depth analysis supporting the borrower's contention that it is unable or will not be able to meet its financial obligations; an explanation and analysis of the causes of the borrower's inability to meet its financial obligations within the period of 24 months following the month the borrower submits its application for debt settlement; and, other analyses and documentation prescribed by RUS on a case by case basis. RUS does encourage borrowers to submit copies of relevant analyses which may have been prepared for their own use or for their State

regulatory commissions, where such information is available. Thus, RUS will accept whenever possible copies of current relevant information a borrower may have prepared for another purpose.

**5. Impact on small business or other small entities.**

RUS believes that the information requested is the minimum necessary for RUS to meet statutory requirements with respect to both large and small entities. RUS headquarters and field staff are available to assist borrowers in preparing documents. In addition, RUS has designated the Policy Analysis and Risk Management (PARM) office primary responsibility for 'settlement of debt' matters with affected electric borrowers. PARM also coordinates with the RUS electric program officials/staff throughout the entire 'settlement of debt' process. It must be emphasized that 'settlement of debt' is a process that is initiated by an individual borrower when the borrower feels it is unable or will not be able to meet its financial obligations in accordance with loans made or guaranteed by the Rural Utilities Service as stated in detail above.

**6. Consequences to Federal program if collection were conducted less frequently.**

This information is collected only from the limited number of electric borrowers which decide to seek settlement of its RUS debt.

**7. Explain special circumstances that would cause an information collection to be conducted other than those specified in 5 CFR 1320.5(d)(2).**

This collection of information does not involve any special circumstances outlined in 5 CFR 1320.5(d)(2).

**8. a. Identify agency's Notice in the Federal Register and summarize public comments received.**

As required by 5 CFR 1320.8(d), a Notice to request comments was published on April 30, 2009, at 74 FR 19929. No comments were received.

**b. Describe efforts to consult with persons outside the agency.**

RUS maintains close contact with borrowers through both general field representatives (GFR) and field accountants (FA) located throughout the country, and through a headquarters staff. GFR's and FA's have direct personal contact with the approximately 800 active electric borrowers on a regular basis in connection with the fulfillment of RUS pre and post loan requirements and in providing technical assistance. RUS borrowers are located throughout the United States, Guam, Puerto Rico, Virgin Islands, Micronesia, Northern Mariana Islands, and Palau.

RUS conducts seminars for borrowers and participates in statewide, regional, and national organizations' meetings of borrowers. RUS staff maintains contact with and serves on committees of national organizations representing borrowers, e.g., the National Rural Electric Cooperative Association.

RUS also works closely with lending institutions such as the National Rural Utilities Cooperative Finance Corporation and CoBank, a nationwide network of lending institutions and part of the Farm Credit System, which provide supplemental loan funds to rural electric borrowers.

RUS also works closely with state and other Federal agencies including the National Association of Regulatory Utility Commissions, Department of Energy, U.S. Environmental Protection Agency, Federal Communications Commission, Department of Justice, Treasury Department and others.

External suggestions and comments are always considered by RUS as it continues its ongoing regulatory reform initiative. The RUS' on-going initiative is meant to provide flexibility for RUS electric borrowers to remain competitive in an industry that is experiencing marked changes in fuel and environmental costs. As these concerns evolve, RUS' electric borrowers will need to react quickly to take advantage of market opportunities. Therefore, the RUS Electric Program is continuing to review, revise, and/or eliminate procedures in light of the competitive challenges and changes in the electric industry. RUS recognizes that success of the public-private partnership between RUS and its borrowers depends on the ability of borrowers to respond quickly to changing conditions. Therefore, RUS continues to streamline its policies, offering borrowers more flexibility in financing and daily operations while ensuring the Federal Government's security interest in loans.

For the past several years, the RUS Electric Program has published a number of regulations that have established a new lending relationship with RUS borrowers. These regulations and RUS' new mortgage and loan contract go a long way toward reducing RUS oversight and technical assistance to those areas that have the greatest relationship to loan security and program objectives.

The RUS remains committed to pursuing further reductions in both the burdens place upon borrowers/customers and total volume of regulations imposed. Suggestions and comments are always considered by the RUS.

#### **9. Payment or gift to respondents.**

Payments or gifts are not provided to respondents.

#### **10. Assurance of confidentiality**

All information submitted to RUS by its borrowers is covered by provisions of the Freedom of Information Act 5 U.S.C. 552.

**11. Questions of a sensitive nature.**

The information collection includes no questions of a sensitive nature. However, most of the financial information is sensitive and confidential.

**12. Estimate of burden of the collection of information.**

RUS estimates only one debt restructuring action will be submitted over the next three years. Based upon past experience and discussions with program staff, it is estimated that this information collection will involve a total of 2,000 burden hours per response. In accordance with RUS' regulation, there are certain things which the borrower must submit; however, the regulation stipulates that "Other analyses and documentation prescribed by RUS on a case-by-case basis" may be required. In addition, the regulation states the "RUS may require that an independent consultant provide analysis of the efficiency and effectiveness of the borrower's organization and operation, and those of its member systems in the case of a power supply borrower." Other requirements which may apply, depending on circumstances, include: corporate restructuring; sale of all or a portion of plant facilities, or other assets; replacement of senior management and/or hiring outside experts acceptable to the Administrator; credit support from its member systems, as well as pledges and action plans by the members to change their operations, management, and organizational structure; and, conveyance of some or all of a borrower's assets to the Government." Therefore, as indicated in the regulation, there are those things which a borrower must provide and there are other things that RUS may require a borrower to provide on a case-by-case basis.

Annualized cost to respondents. RUS estimates that approximately 80 percent of the time required to prepare and submit this information is professional with an average cost of \$53 per hour split between a senior manager and a lower level professional. The balance of 20 percent is clerical costing \$20 per hour. Below are estimates are base on discussions with program staff:

Professional time

1. Sr.Manager	2,000	X	20%	=	400	X	\$ 55	=	\$ 22,000
2. Prof.-Other	2,000	X	60%	=	1,200	X	\$ 50	=	\$ 60,200
3. Clerical time	2,000	X	20%	=	400	X	\$ 20	=	\$ 8,000

Total cost to the Public        \$ 90,200

**13. Annual cost burden to respondents or recordkeepers resulting from this collection of information.**

This information collection is required only when an electric borrower wishes to seek RUS settlement of the borrower's debt. It results in no recordkeeping burdens, start up costs, purchases or similar components.

**14. Annualized cost to the Federal Government**

All documents submitted to RUS must be carefully reviewed by the RUS staff. RUS estimates that the annualized cost to the Federal government involves approximately 80% of professional time and 20% of a secretary's time for each borrower submittal. The estimates are based on discussions with staff concerning their experience, and professional time is allocated according to the information provided below:

Professional time

SL 1130 level	2,000 hours	X 20%	= 400 hours	x \$78/hour	= \$31,200
GS 14/5	2,000 hours	X 20%	= 400 hours	x \$56/hour	= \$22,400

Total cost to the Government                      \$53,600

**15. Change in burden.**

This is a revision of a currently approved collection. This submission represents a decrease in the total annual burden hours from 3,000 to 2,000 hours. The anticipated reduction in the total annual burden hours is due to the fact that the borrower has a small isolated electrical system in a remote part of the country and PARM's understanding of the expected borrower's size and complexity. A decrease of approximately \$51,800 is anticipated in the annual cost to respondents due to reduction in the total hours spent to prepare a response over the previous submission.

The total cost to the Government has been reduced by \$82,000 given current and anticipated staffing levels within PARM. In addition, a smaller percentage of time will be allocated to this project in order to meet the demands of several other projects within PARM, as well as to the expected complexity involved with this particular borrower's situation.

**16. Plans for publication.**

There are no plans to publish this information collection.

**17. Request for approval not to display the expiration date.**

This is not applicable to this collection.

**18. Exception to the certification statement identified in Item 19 of OMB Form 83-I.**

This information collection includes no exceptions to Item 19.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This information collection does not employ statistical methods.