

[Code of Federal Regulations]
[Title 7, Volume 11]
[Revised as of January 1, 2009]
From the U.S. Government Printing Office via GPO Access
[CITE: 7CFR1744.60]

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TITLE 7--AGRICULTURE

CHAPTER XVII--RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1744_POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS--Table of Contents

Subpart C_Advance and Disbursement of Funds

Sec. 1744.60 General.

Source: 54 FR 12186, Mar. 24, 1989, unless otherwise noted.
Redesignated at 55 FR 39396, Sept. 27, 1990.

(a) The standard loan documents (as defined in 7 CFR part 1758) contain provisions regarding advances and disbursements of loan funds by telephone borrowers. This part implements certain of the provisions by setting forth requirements and procedures to be followed by borrowers in obtaining advances and making disbursements of loan and nonloan funds.

(b) This part supersedes any sections of RUS Bulletins with which it is in conflict.

Sec. 1744.62 Introduction.

RUS is under no obligation to make or approve advances of loan funds unless the borrower is in compliance with all terms and conditions of the loan documents. The borrower shall use funds in its construction fund only to make disbursements approved by RUS.

Sec. 1744.63 The telephone loan budget.

When the loan is made, RUS provides the borrower a Telephone Loan Budget, RUS Form 493. This budget divides the loan into budget accounts such as ``Engineering.'' When a contract or other document is approved by RUS, funds are encumbered from the appropriate budget account. See 7 CFR part 1753.

Sec. 1744.64 Budget adjustment.

(a) If more funds are required than are available in a budget account, the borrower may request RUS's approval of a budget adjustment to use funds from another account. The request shall include an explanation of the change, the budget account to be used, and a

description of how the adjustment will affect loan purposes. RUS will not approve a budget adjustment that affects other loan purposes unless the borrower satisfies RUS that the additional funds are available from another source, requests a deficiency loan, or scales back the project.

(b) RUS may make a budget adjustment without a formal request by the borrower when a budget account is insufficient to encumber funds for a contract that otherwise would be approved by RUS. See 7 CFR part 1753.

Sec. 1744.65 The construction fund.

(a) The construction fund is used by the borrower primarily to hold advances until disbursed.

(b) All advances shall be deposited in the construction fund.

(c) RUS may require that other funds be deposited in the construction fund. These may include equity or general fund contributions to construction, service termination payments, proceeds from the sale of property, amounts recovered from insurance for losses during the construction period, and interest received on loan funds in savings or interest bearing checking accounts, and similar receipts. Deposit slips for any deposit to the construction fund shall show the source and amount of funds deposited and be executed by an authorized representative of the bank.

(d) Funds shall be disbursed only up to the amount approved for advance on the FRS as described in Sec. 1744.66. No funds may be withdrawn from the fund except for loan purposes approved by RUS.

(e) The disbursement of nonloan funds requires the same RUS approvals as loan funds.

(f) Disbursements must be evidenced by canceled checks. The invoices and supporting documentation needed for construction contracts are specified in the contracts and in 7 CFR part 1753. Disbursements to reimburse the borrower's general funds shall be documented by a reimbursement schedule, to be retained in the borrower's files, that lists the construction fund check number, date, and an explanation of amounts reimbursed by budget account.

Sec. 1744.66 The financial requirement statement (FRS).

(a) To request advances, the borrower must submit to RUS an FRS, a description of the advances desired, and other information related to the transactions when required by RUS.

(b) The FRS is used by RUS and the borrower to record and control transactions in the construction fund. Approved contracts and other items are shown on the FRS under ``Approved Purposes.'' Except as noted below, the amount approved for advance is 100 percent of the amount encumbered for that item. Funds are approved for advance as follows:

(1) Construction--(i) Construction contracts and force account proposals. Ninety percent of the encumbered amount (95 percent for outside plant), with the final 10 percent (5 percent) approved when RUS approves the closeout documents. When a contract contains supplement ``A'' (See 7 CFR part 1753), 90 percent (95 percent) of the contract is approved less materials supplied by the borrower. For the Supplement ``A'' materials, which are a separate entry on the FRS, 100 percent of the material cost is approved.

(ii) Work orders. The portion of the work order summary (See 7 CFR part 1753) determined by RUS to be for approved loan purposes.

(iii) Work order fund. Based on a borrower's request as described in 7 CFR part 1753.

(iv) Real estate. Upon request by the borrower after submission of evidence of a valid title.

(v) Right of way procurement. Based on the borrower's itemized costs.

(vi) Joint use charges. Based on copies of invoices from the other utility.

(2) Engineering--(i) Preloan engineering. Based on a final itemized invoice from the engineer.

(ii) Postloan engineering contracts. The amount shown on the engineering estimate, RUS Form 506, less the amount estimated for construction contract closeouts. The balance is approved when the engineering contract is closed.

(iii) Force account engineering. Ninety percent of the total amount of the RUS approved force account engineering proposal. The balance is approved when the force account engineering proposal is closed.

(3) Office equipment, vehicles and work equipment. Based on copies of invoices for the equipment.

(4) General--(i) Organization and loan expenditures. Based on an itemized list of requirements prepared by the borrower.

(ii) Construction overhead. Based on an itemized list of expenditures. If funds are required for employee salaries, the itemization shall include the employee's position, the period covered, total compensation for the period, and the portion of compensation attributable to the itemized construction.

(iii) Legal fees. Based on itemized invoices from the attorney.

(iv) Bank stock. Based on the requirements for purchase of class B Rural Telephone Bank stock established in the loan. Funds for class B stock will be advanced in an amount equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance.

(5) Operating expenses--(i) Working capital--new system. Based on the borrower's itemized estimate.

(ii) Current operating deficiencies. Based on a current and projected balance sheet submitted by the borrower.

(6) Debt retirement and refinancing. Upon release of the loan, based on the amount in the approved budget.

(7) Acquisitions. Based on final itemized costs, but cannot exceed the amount in the approved loan budget.

(c) Funds other than loan funds deposited in the construction fund, which shall include proceeds from the sale of property on which RUS has a lien, (lines 10 and 11 on the FRS) are reported as a credit under total disbursements. Disbursements of these funds are subject to the same RUS approvals as loan funds.

(d) The borrower shall request advances as needed to meet its obligations promptly. Generally, RUS does not approve an advance requested more than 60 days before the obligation is payable.

(e) Funds should be disbursed for the item for which they were advanced. If the borrower needs to pay an invoice for which funds have not been advanced, and disbursement of advanced funds for another item has been delayed, the latter funds may be disbursed to pay the invoice up to the amount approved for advance for that item on the FRS. The borrower shall make erasable entries on the next FRS showing the changes under "Total Advances to Date" and shall explain the changes in writing before RUS will process the next FRS.

(f) Advances will be rounded down to the nearest thousands of dollars except for final amounts.

(g) The certification on each of the three copies of the FRS sent to RUS shall be signed by a corporate officer of manager authorized by resolution of the board of directors to sign such statements. At the time of such authorization a certified copy of the resolution and one copy of RUS Form 675, Certificate of Authority, shall be submitted to RUS.

(h) The documentation required for the FRS transactions are the deposit slips, the canceled construction fund checks and the supporting invoices or reimbursement schedules. These shall be kept in the borrower's files for periodic audits by RUS.

[54 FR 12186, Mar. 24, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 56 FR 26600, June 10, 1991]

Sec. 1744.67 Temporary excess construction funds.

(a) When unanticipated events delay the borrower's disbursement of advanced funds, the funds may be used as follows:

(1) With RUS loan funds for loans approved prior to November 1, 1993, or hardship loan funds, the borrower may invest the funds in 5 percent Treasury Certificates of Indebtedness--RUS Series.

(2) With RUS cost-of-money, FFB or RTB loan funds, the following apply:

(i) The borrower may invest the funds in short term securities issued by the United States Treasury.

(ii) If permitted by state law, the borrower may deposit the funds in savings accounts, including certificates of deposit, of federally insured savings institutions.

(3) Funds advanced by a guaranteed lender other than the FFB may, if so permitted by such lender, be invested under the terms and conditions described above for FFB advances.

(4) Any security or investment made under this authorization shall identify the borrower by its corporate name followed by the words "Trustee, Rural Utilities Service."

(5) All temporary investments and all income derived from them shall be considered part of the construction fund and be subject to the same controls as cash in that account.

(6) Securities and other investments shall have maturity dates or liquidating provisions that ensure the availability of funds as required for the completion of projects and the payment of obligations.

(7) Any instrument evidencing a security or other investment herein authorized to be purchased or made, may not be sold, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

(8) The Administrator may, at his sole discretion, require a borrower to pledge any security or other evidence of investment authorized hereby by forwarding to him all pertinent instruments and related documentation as he may reasonably require.

(9) Borrowers shall be responsible for the safekeeping of securities and other investments.

(b) All interest and income received from investments of temporary excess funds, as described in this section, shall be deposited in the Construction Fund.

(c) The borrower shall account for investment proceeds on the next FRS submitted to RUS. RUS will make the necessary adjustments on budgetary records.

(d) The Administrator reserves the right to suspend any borrower's authorization to invest temporary excess funds contained herein if the borrower does not comply with the requirements.

(e) For RUS loans approved prior to October 1, 1991, the borrower may return advanced funds to RUS as a refund of an advance. Interest stops accruing on the refunded advance upon receipt by RUS. A refunded advance may be readvanced. A refund of an advance shall be sent to the Rural Utilities Service, United States Department of Agriculture, Collections and Custodial Section, Washington, DC, 20250. The borrower should clearly indicate that this is a refund of an advance, and not a loan payment or prepayment.

[54 FR 12186, Mar. 24, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 58 FR 66257, Dec. 20, 1993]

Sec. 1744.68 Order and method of advances of telephone loan funds.

(a) Borrowers may specify the sequence of advances of funds under any combination of approved telephone loans from RUS, RTB, or FFB, except that for all loans approved on or after November 1, 1993, the borrower may use loan funds:

(1) Only for purposes for which that type of loan (i.e. Hardship, RUS cost-of-money, RTB, or FFB) may be made; and

(2) Only in exchanges that qualify for the type of loan from which the funds are drawn.

(b) The first or subsequent advances of loan funds may be conditioned on the satisfaction of certain requirements stated in the borrower's loan contract.

(c) Normally, only one payment is made by the Automatic Clearing House (ACH) for an advance of funds.

(d) Borrowers of RUS and RTB funds may request advances by wire service only for amounts greater than \$500,000 or for advances to borrowers outside the Continental United States. FFB advances in any amount over \$100,000 can be sent by wire service.

(e) The following information shall be included with the FRS:

(1) Name and address of borrower's bank.

(2) If borrower's bank is not a member of the Federal Reserve System, the name and address of its correspondent bank that is a member of the Federal Reserve System.

(3) American Bankers Association (ABA) nine digit identifier of the receiving banks (routing number and check digit).

(4) Borrower's bank account title and number.

(5) Any other necessary identifying information.

[54 FR 12186, Mar. 24, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 58 FR 66257, Dec. 20, 1993]