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prior written approval of RUS, a borrower shall not deposit funds from loans made or guaranteed by RUS in any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS, or in any account not so insured.

§ 1717.613 RUS approval of data processing and system control equipment.

If a borrower's mortgage or loan contract requires the borrower to obtain approval from RUS before purchasing data processing equipment or system control equipment, such approval is hereby granted if the equipment will not be financed by RUS.

§ 1717.614 Notification of rate changes.

If a distribution borrower is required by its loan documents to notify RUS in writing of proposed changes in electric rates more than 30 days prior to the effective date of such rates, the required notification period shall be 30 days. Moreover, such notification shall be required only upon the request of RUS.

§ 1717.615 Consolidations and mergers.

A distribution or power supply borrower may without the prior approval of RUS, consolidate or merge with any other corporation or convey or transfer the mortgaged property substantially as an entirety if the following conditions are met:

(a) Such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security of the RUS mortgage and the rights and powers of the mortgagees;

(b) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall execute and deliver to the mortgagees a mortgage supplemental in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the outstanding notes and the performance and observance of every covenant and condition of the mortgage;

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(c) Immediately after giving effect to such transaction, no default under the mortgage shall have occurred and be continuing;

(d) The borrower shall have delivered to the mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the mortgagees, which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this section and that all conditions precedent herein provided for relating to such transaction have been complied with;

(e) The borrower shall have delivered to the mortgagees an opinion of counsel in form and substance satisfactory to each of the mortgagees; and

(f) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall be an entity having:

(1) Equity equal to at least 27% of its total assets on a pro forma basis after giving effect to such transaction;

(2) A pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years;

(3) Net utility plant equal to or greater than 1.0 times its total long-term debt on a pro forma basis.

[60 FR 67405, Dec. 29, 1995, as amended at 65 FR 51748, Aug. 25, 2000; 67 FR 70153, Nov. 21, 2002]

§ 1717.616 Sale, lease, or transfer of capital assets.

A distribution borrower may without the prior approval of RUS sell, lease, or transfer any capital asset if the following conditions are met:

(a) The borrower is not in default;

(b) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1 in each case based on the average or the best 2 out of the 3 most recent years;

(c) The sale, lease, or transfer of assets will not reduce the borrower's existing or future requirements for energy or capacity being furnished to the borrower under any wholesale power

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contract which has been pledged as security to the government;

(d) Fair market value is obtained for the assets;

(e) The aggregate value of assets sold, leased, or transferred in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the transaction;

(f) The proceeds of such sale, lease, or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately:

(1) Applied as a prepayment of all notes secured under the mortgage equally and ratably;

(2) In the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the borrower's utility business; or

(3) Applied to the acquisition of construction of utility plant.

[60 FR 67405, Dec. 29, 1995, as amended at 65 FR 51748, Aug. 25, 2000]

§ 1717.617 Limitations on distributions.

If a distribution or power supply borrower is required by its loan documents to obtain prior approval from RUS before declaring or paying any dividends, paying or determining to pay any patronage refunds, or retiring any patronage capital, or making any other cash distributions, such approval is hereby given if the following conditions are met:

(a) After giving effect to the distribution, the borrower's equity will be greater than or equal to 30 percent of its total assets;

(b) The borrower is current on all payments due on all notes secured under the mortgage;

(c) The borrower is not otherwise in default under its loan documents; and

(d) After giving effect to the distribution, the borrower's current and accrued assets will be not less than its current and accrued liabilities.

Subpart N—Investments, Loans, and Guarantees by Electric Borrowers

AUTHORITY: 7 U.S.C. 901-950b; Pub.L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*); Title I, Subtitle D, Pub.L. 100-203, 101 Stat. 1330.

SOURCE: 60 FR 48877, Sept. 21, 1995, unless otherwise noted.

§ 1717.650 Purpose.

This subpart sets forth general regulations for implementing and interpreting provisions of the RUS mortgage and loan contract regarding investments, loans, and guarantees made by electric borrowers, as well as the provisions of the Rural Electrification Act of 1936, as amended, including section 312 (7 U.S.C. 901 *et seq.*) (RE Act), permitting, in certain circumstances, that electric borrowers under the RE Act may, without restriction or prior approval of the Administrator of the Rural Utilities Service (RUS), invest their own funds and make loans or guarantees.

§ 1717.651 General.

(a) *Policy.* RUS electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to RUS and other lenders. In considering whether to make loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve. RUS assumes that borrowers will use the latitude afforded them by section 312 of the RE Act primarily to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection services, etc.) and in job creation activities (such as providing technical, financial, and managerial assistance) and other activities to promote business development and economic diversification in rural communities. Nonetheless, RUS believes that borrowers should continue to give primary consideration to safety and liquidity in the management of their funds.

(b) *Applicability of this subpart.* This subpart applies to all distribution and power supply borrowers regardless of when their loan contract or mortgage was executed.