

Rural Utilities Service, USDA

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in accordance with §1703.147 of this subpart.

§ 1703.147 Appeals.

Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

Subpart H—Deferments of RUS Loan Payments for Rural Development Projects

SOURCE: 58 FR 21639, Apr. 23, 1993, unless otherwise noted. Redesignated at 64 FR 14356, Mar. 25, 1999.

§ 1703.300 Purpose.

This subpart E sets forth RUS's policies and procedures for making loan deferments of principal and interest payments on direct loans or insured loans made for electric or telephone purposes, but not for loans made for rural economic development purposes, in accordance with subsection (b) of section 12 of the RE Act. Loan deferments are provided for the purpose of promoting rural development opportunities.

§ 1703.301 Policy.

It is RUS's policy to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. Borrowers are encouraged to use this program to promote economic, business and community development projects that will benefit rural areas.

§ 1703.302 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this subpart, the following terms will have the following meanings:1

Administrator means the Administrator of RUS.

Borrower means any organization which has an outstanding direct loan or insured loan made by RUS for the provision of electric or telephone service.

Cushion of credit payment means a voluntary unscheduled payment on an RUS note made after October 1, 1987, credited to the cushion of credit account of a borrower.

Deferment means a re-amortization of a payment of principal and/or interest on an RUS direct loan or insured loan for over either a 5- or 10 year period, with the first payment beginning on the date of the deferment.

Direct loan means a loan that is made by the Administrator pursuant to section 4 or section 201 of the RE Act (7 U.S.C. 901 *et seq.*) for the provision of electric or telephone service in rural areas and does not include a loan made to promote economic development in rural areas.

Financially distressed borrower means an RUS-financed borrower determined by the Administrator to be either:

(i) In default or near default on interest or principal payments due on loans made or guaranteed under the RE Act;

(ii) A borrower that was in default or near default, but is currently participating in a workout or debt restructuring plan with RUS; or

(iii) Experiencing a financial hardship.

Insured loan means a loan that is made, held, and serviced by the Administrator, and sold and insured by the Administrator, pursuant to Section 305 of the RE Act (7 U.S.C. 901 *et seq.*) for the provision of electric or telephone service in rural areas and does not include a loan made to promote economic development in rural areas.

Job creation means the creation of jobs in rural areas, or in close enough proximity to rural areas so that it is likely that the majority of the jobs created will be held by residents of rural areas.

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Project means a rural development project that a borrower proposes and the Administrator approves as qualifying under this subpart.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

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.

RTB means the Rural Telephone Bank (telephone bank), a body corporate and an instrumentality of the United States, that obtains supplemental funds from non-Federal sources and utilizes them in making loans, operating on a self-sustaining basis to the extent practicable (section 401, RE Act).

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

Technical assistance means market research, product or service improvement, feasibility studies, environmental studies, and similar activities that benefit rural development or rural job creation projects.

(b) *Rules of construction.* Unless the context otherwise indicates; "includes" and "including" are not limiting, and "or" is not exclusive. The terms defined in §1703.302(a) include both the plural and the singular.

[58 FR 21639, Apr. 23, 1993, as amended at 59 FR 66440, Dec. 27, 1994]

§ 1703.303 Eligibility criteria for deferment of loan payments.

The deferment of loan payments may be granted to any borrower that is not financially distressed, delinquent on any Federal debt, or in bankruptcy proceedings. However, the deferment of loan payments will not be granted to a borrower during any period in which the Administrator has determined that no additional financial assistance of any nature should be provided to the

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borrower pursuant to any provision of the RE Act. The determination to suspend eligibility for the deferment of loan payments under this subpart will be based on:

(a) The borrower's demonstrated unwillingness to exercise diligence in repaying loans made by RUS or RTB or guaranteed by RUS that results in the Administrator being unable to find that such loans, would be repaid within the time agreed; or

(b) The borrower's demonstrated unwillingness to meet the requirements in RUS's or RTB's legal documents or regulations.

§ 1703.304 Restrictions on the deferment of loan payments.

(a) The deferment must not impair the security of any loans made RUS or RTB, or guaranteed by RUS, pursuant to the RE Act.

(b) At no point in time may the amount of the debt service payments deferred exceed 50 percent of the total cost of a community, business, or economic development project for which a deferment is provided.

(c) A borrower may defer debt service payments only in an amount equal to the investment made by such borrower in a rural development project. The investment must not be made from:

(1) Proceeds of loans made or guaranteed pursuant to the RE Act, or grants made pursuant to the RE Act or section 2331 through section 2335A of the Rural Economic Development Act of 1990 (7 U.S.C. 950aaa *et seq.*);

(2) Funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien accommodated pursuant to the RE Act;

(3) Insurance proceeds from mortgaged property;

(4) Damage awards and sale proceeds resulting from eminent domain and similar proceedings involving mortgaged property;

(5) Sale proceeds from mortgaged property sales requiring specific Administrator approval; and

(6) Funds which are restricted by RUS or RTB loan instruments to be held in trust for the Government or to be held for any other specific purpose.

(d) Any investment made in a rural development project prior to the date

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of the application for a deferment based on such project cannot be used to satisfy the requirements of this section.

§ 1703.305 Requirements for deferment of loan payments.

(a) Except as otherwise provided in paragraph (b) of this section, the borrower must make a cushion of credit payment equal to the amount of the payment deferred and subject to the following rules:

(1) Cushion of credit payments made prior to the date that an application for deferral has been approved by RUS cannot be used to satisfy the requirements of this section;

(2) Once a cushion of credit payment has been made to satisfy the requirements of paragraph (a) of this section, it must remain on deposit in the cushion of credit account on the date of the deferral or the deferral will not take place; and

(3) The cushion of credit payment must be received by RUS on the date the payment being deferred is due, or within 30 days prior to this date.

(b) A borrower may elect to consolidate in one application filed pursuant to §1703.311, all of the related deferrals it wishes to receive in a twelve month period following application approval. In such a case, the requirement contained in paragraph (a)(1) of this section may alternatively be satisfied by depositing an amount equal to the aggregate deferrals covered by such application into the cushion of credit account at the time the first cushion of credit payment is due under paragraph (a)(1) of this section.

§ 1703.306 Limitation on funds derived from the deferment of loan payments.

Funds derived from the deferment of loan payments will not be used:

(a) To fund or assist projects which would, in the judgement of the Administrator, create a conflict of interest or the appearance of a conflict of interest. The borrower must disclose to the Administrator information regarding any potential conflict of interest or appearance of a conflict of interest;

(b) For any purpose not reasonably related to the project as determined by the Administrator;

(c) To transfer existing employment or business activities from one area to another; or

(d) For the borrower's electric or telephone operations, nor for any operations affiliated with the borrower unless the Administrator has specifically informed the borrower in writing that the affiliated operations are part of the approved purposes.

§ 1703.307 Uses of the deferments of loan payments.

The deferment of loan payments will be made to enable the borrower to provide funding and assistance for rural development and job creation projects. This includes, but is not limited to, the borrower providing financing to local businesses, community development assistance, technical assistance to businesses, and other community, business, or economic development projects that will benefit rural areas.

§ 1703.308 Amount of deferment funds available.

(a) The total amount of deferments made available for each fiscal year under this program will not exceed 3 percent of the total payments due during fiscal year 1993 from all borrowers on direct loans and insured loans made under the RE Act. For each subsequent fiscal year after 1993, the total amount of deferments will not exceed 5 percent of the total payments due for the year from all borrowers on direct loans and insured loans.

(b) The total amount of annual deferments are subject to limitations established by appropriations Acts.

§ 1703.309 Terms of repayment of deferred loan payments.

(a) Deferments made to enable the borrower to provide financing to local businesses will be repaid over a period of 60 months, in equal installments, with payments beginning on the date of the deferment, and continuing in such a manner until the total amount of the deferment is repaid. The deferment payments will be made on either a monthly or quarterly basis depending on the existing repayment

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terms of the direct loan or insured loan being deferred. The deferment will not accrue interest.

(b) In the case of deferments made to enable the borrower to provide community development assistance, technical assistance to businesses, and for other community, business, or economic development projects not included in paragraph (a) of this section, the deferment will be repaid over a period of 120 months, in equal installments, with payments beginning on the date of the deferment and continuing in such a manner until the total amount of the deferment is repaid. The deferment payments will be made on either a monthly or quarterly basis depending on the existing repayment terms of the direct loan or insured loan being deferred. The deferment will not accrue interest.

(c) The maturity date of a loan may not be extended as a result of a deferment.

(d) If the required payment is not made by the borrower or received by the Administrator when due, the Administrator will reduce the borrower's cushion of credit account established under this subpart in an amount equal to the deferment payment required.

(e) The balance in a borrower's cushion of credit account shall not be reduced by the borrower below the level of the unpaid balance of the payment deferred.

§ 1703.310 Environmental considerations.

Prospective recipients of funds received from the deferment of loan payments are encouraged to consider the potential environmental impact of their proposed projects at the earliest planning stage and plan development in a manner that reduces, to the extent practicable, the potential to affect the quality of the human environment adversely.

§ 1703.311 Application procedures for deferment of loan payments.

(a) A borrower applying for a deferment must:

(1) Submit a certified board resolution to the Administrator requesting a deferment of principal and interest. The resolution must:

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(i) Be signed by the president or vice president of the borrower;

(ii) Contain information on the total amount of deferment requested for each specific project;

(iii) Contain information on the type of project and the length of deferment requested as defined in § 1703.309; and

(iv) Specify which officer of the borrower has been given the authority to certify to those matters required in this section;

(2) Submit certification by the appropriate officer to the Administrator that the proposed project will not violate the limitations set forth in § 1703.306 and disclose all information regarding any potential conflict of interest or appearance of a conflict of interest that would allow the Administrator to make an informed decision;

(3) Submit certification by the appropriate officer to the Administrator that an investment in the rural development project will be made by the borrower in an amount equal to the deferred debt service payment;

(4) Submit certification by the appropriate officer to the Administrator that the amount of the deferment will not exceed 50 percent of the total cost of the project for which the deferment is provided;

(5) Submit certification by the appropriate officer to the Administrator that it will make a cushion of credit payment necessary to satisfy the requirement of § 1703.305(a);

(6) Submit certification by the appropriate officer to the Administrator that it will comply with § 1703.313 and provide documentation showing that its total investments, including the proposed investment, will not exceed the investment limitations specified in 7 CFR part 1717, Subpart N, Investments, Loans and Guarantees by Electric Borrowers, or 7 CFR Part 1744, Post Loan Policies and Procedures Common to Guaranteed and Insured Loans. The documentation must provide a list of each rural development project the borrower has invested in to date, including the investment amounts;

(7) Submit to the Administrator written identification of the direct loan(s) and/or insured loan(s) for which payments are to be deferred;

(8) Submit to the Administrator a written narrative which contains information regarding the proposed rural development or job creation project such as the manner in which the project will promote community, business, or economic development in rural areas, the nature of the project, its location, the primary beneficiaries, and, if applicable, the number and type of jobs to be created; and

(9) Submit to the Administrator a letter of approval from the state regulatory authority, if applicable, granting its approval for the borrower to defer direct loan payment(s) and/or insured loan payment(s) and invest the amount in a rural development project.

(b) The Administrator reserves the right to determine that special circumstances require additional data from borrowers before acting on a deferment. The Administrator also reserves the right to require, as a condition of approving a loan payment deferment pursuant to this subpart, that the borrower execute and deliver any amendments or supplements to its loan documents that may be necessary or appropriate to achieve the purposes outlined in §1703.300.

(c) The Administrator will decide whether the borrower is eligible for the deferment and will notify the borrower of the decision.

§1703.312 RUS review requirements.

Borrowers shall ensure that funds are invested in the rural development project as approved by RUS. The Administrator reserves the right to review the books and copy records of borrowers receiving loan payment deferments as necessary to ensure that the investments in the rural development project are in accordance with this subpart and the representations and purposes stated in the borrower's completed application. If an audit discloses that the amount deferred was not used for the purposes stated in the completed application, the borrower shall be required to promptly repay the amount deferred and the benefits of the deferment to the borrower will be recaptured by RUS. The borrower is responsible for ensuring that disbursements and expenditures of funds covering the investment in the rural de-

velopment project are properly supported with certifications, invoices, contracts, bills of sale, cancelled checks, or any other forms of evidence determined appropriate by the Administrator and that such supporting material is available at the borrower's premises for review by the RUS field accountant, borrower's certified public accountant, the Office of Inspector General, the General Accounting Office and any other accountant conducting an audit of the borrower's financial statements for this rural development program.

§1703.313 Compliance with other regulations.

(a) Investments in a rural economic development project made by an electric borrower under this subpart are subject to the provisions of 7 CFR part 1717, Subpart N, Investments, Loans and Guarantees by Electric Borrowers.

(b) Investments in a rural economic development project made by a telephone borrower under this subpart are subject to the provisions of 7 CFR Part 1744, Post Loan Policies and Procedures Common to Guaranteed and Insured Loans.

PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

Subpart A—General Requirements

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