

October 19, 2012

**SUPPORTING STATEMENT
OMB Control No. 0572-0100**

**7 CFR Part 1717, Subparts R and S,
Lien Accommodations and Subordinations**

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, hereafter known as RUS or the Agency. The Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et. seq.*, as amended, authorizes and empowers the RUS Administrator to make loans in the several States and Territories of the United States for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service. The RE Act also authorizes and empowers the Agency Administrator to provide financial assistance to borrowers for purposes provided in the RE Act by accommodating or subordinating loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies.

OMB Circular A-129, Policies for Federal Credit Programs and Non-tax Receivables, requires Government lending agencies to prescreen loan applicants to determine credit worthiness and ability to repay. Agencies shall manage credit programs and all non-tax receivables in accordance with their statutory authorities and the provisions set forth in OMB Circular A-129 to protect the Government's assets, and to minimize losses in relation to social benefits provided ((I)(4)(a)).

Furthermore, the RE Act authorizes and empowers the Agency Administrator to make, or cause to be made, studies, investigations, and reports concerning the condition and progress of the electrification of the several States and Territories; and to publish and disseminate information with respect thereto. Information supplied by borrowers forms the basis of many of these reports.

A key component in the Agency's objective is to facilitate and support borrowers' efforts to obtain private sector financing of their capital needs, to allow borrowers greater flexibility in the management of their business' affairs without compromising Agency loan security, and to reduce the cost to borrowers, in terms of time, expense and paperwork, of obtaining lien accommodations and subordinations.

Lien accommodations and subordinations, 7 CFR 1717, is divided into two subparts. Subpart R deals with lien accommodations and subordinations for 100 percent private financing of electric facilities and other purposes.

There are three different types of private financing: 1) financing of electric facilities, including equipment and systems; 2) refinancing of existing secured debt; and, 3) financing of rural development investments.

Subpart S deals with lien accommodations for concurrent supplemental loans required in connection with the Agency insured loans.

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

Borrowers for lien accommodations and/or subordinations use the following forms which are accounted for in OMB information collection 0572-0032: “Financial and Operating Report Electric Distribution;” “Financial and Operating Report Electric Power Supply,” Form 740c, “Cost Estimates and Loan Budget for Electric Borrowers;” Form 740g, “Application for Headquarters Facilities;” and Form AD-1047, “Certification Regarding Debarment, Suspension.”

This information is used by the Agency to:

- a. Determine an applicant's eligibility for a lien accommodation or lien subordination under the RE Act;
- b. Facilitate an applicant's solicitation and acquisition of non-Agency loans as to converse available Government funds;
- c. Monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; and,
- d. Subsequent to granting the lien accommodation or lien subordination, administer each so as to minimize its cost to the Government.

Advance and Normal Approval of 100 Percent Private Financing

Parts of 7 CFR 1717 provide criteria whereby distribution borrowers are able to receive advance approval for a lien accommodation or subordination for 100 percent private financing of distribution and sub-transmission facilities. Advance approval means that RUS approves the request automatically once the Agency is satisfied that the borrower meets requirements for advance approval. In all cases, if other lenders secured under the Agency mortgage have the right of approval of lien accommodations and subordinations, their approval would also be required.

The qualification criteria include financial tests in terms of equity, Times Interest Earned Ratio (TIER), Debt Service Coverage (DSC), and the ratio of net utility plant to total outstanding long-term debt.

In addition, the borrower's board of directors must agree to implement any required increases in rates. There must be no pending litigation against the borrower and no

threatened action by third parties that would have a material adverse effect. The borrower must be current on all financial obligations and not in default under the Agency mortgage or loan contract and the borrower must be in compliance with Agency requirements on accounting, irregularities, and financial reporting and recordkeeping.

Advance approval is not authorized for lien accommodations or subordinations for financing bulk transmission and generation facilities mainly because such construction may require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Preparation of these documents normally require additional time beyond that allowed for advance approval. Power supply borrowers are not eligible for advance approval because few, if any of them, are able to meet the financial tests, and also because the financial conditions and requirements of these borrowers generally are more complex and diverse than is the case of distribution borrowers.

Approximately 48 percent of distribution borrowers qualify for advanced approval. The information and documents required in the application are significantly less than in the case of “normal review”. Since the Agency’s review is limited to verifying that the borrower meets requirements for advance approval, the time required for Agency review and action is also substantially reduced. The regulation states that the Agency acts on these applications within 45 days of receiving a complete application satisfactory to the Agency.

7 CFR 1717 is responsive to public comment that the Agency retain the flexibility to grant lien accommodations and subordinates in the case of borrowers that are not able to meet the objective criteria for advance approval. These borrowers must demonstrate, in a long-range financial forecast, that their system is economically viable and that the proposed loan is financially feasible. The timeframe for Agency action in these cases is 90 days after receiving a complete application satisfactory to the Agency. In both the case of advance approval and normal review, if a new mortgage or mortgage amendment is required, the proposed timeframe for the Agency to execute these documents is 30 days, once satisfactory documents are received.

Refinancing of Existing Secured Debt

A portion of 7 CFR 1717 establishes criteria whereby both distribution and power supply borrowers may qualify for advance approval for a lien accommodation or subordination for loans to refinance existing debt secured under the Agency mortgage. Under the advance approval process, the Agency automatically approves the request once satisfied that the borrower met the requirements for advance approval. This would eliminate uncertainty and substantially reduce the time requirement for qualified applicants to obtain a lien accommodation or subordination for refinancing. A subordination is available only if the lien of the mortgage has been subordinated with respect to the assets securing the debt being refinanced.

The qualification criteria for advanced approval in the case of refinancing are designed to identify those refinancing that are a priority in the Government’s interest. The criteria are designed to limit the Agency’s credit exposure to the point it was before the refinancing;

to prevent the repayment of loan principal from being pushed off into the future, which could increase the borrower's future debt burden and increase uncertainty about its ability to repay; to ensure that the borrower's annual cost of the debt, on a present value basis, is reduced as a result of the refinancing to strengthen the borrower's repayment ability; and, to limit uncertainty about the Agency's credit exposure and risk.

The timeframe for the Agency to act on an application for advance approvals is 15 days upon receipt of a complete and satisfactory application. The timeframe for Agency action on applications subject to normal review is 30 days.

A supplemental loan made concurrently with an Agency insured loan is refinanced and the refinancing is not deemed a prepayment if the principal amount of the refinancing loan is not less than the principal amount of the loan being refinanced, and the weighted average life of the refinancing loan is materially equal to the weighted average remaining life of the loan being refinanced. Under these circumstances, no proportional prepayment of the concurrent Agency insured loan is required. The refinancing loan, once made, is itself considered a concurrent loan with regard to provisions of the mortgage and Agency regulations, including provisions governing any future prepayments.

Lien Subordination for Rural Development Investments

Under 7 CFR 1717, the Agency borrower is encouraged to consider investing in financially sound projects likely to have a substantial effect on economic development and employment in rural areas. It is recommended that such investments be made through an independent subsidiary of the borrower in order to clearly separate the financial risks and the revenues and costs of the rural development enterprise from those of the borrower's electric utility business. The separation of financial interests and risks is consistent with requirements of most state public service commissions.

The Agency subordinates or releases its lien on the stock held by a borrower in a subsidiary whose primary business directly contributes to or supports economic development and employment in rural areas, as defined in Section 13 of the RE Act, when requested by a lender to the subsidiary, other than the borrower. This provides support to provide financing of rural development investments by allowing the lender to obtain a first lien on the stock held by the borrower in the subsidiary. To limit the financial risks to a borrower's utility system and to discourage possible undisclosed cross subsidization of rural development activities by electric rate payers, the Agency does not lien accommodate or subordinate for loans made directly to a borrower for rural development purposes.

Early Approval of Lien Accommodations for Supplemental Financing

Supplemental lenders may request a lien accommodation early in the process for concurrent supplemental loans required in connection with an Agency insured loan, rather than waiting until funding is available for the loan.

The borrower must request early approval and certify that the funds are needed and will be drawn before insured loan funds are expected to be available, assuming the concurrent

insured loan is approved. Since the early approval process involves some duplication of Agency effort in reviewing first the lien accommodation request, and later the insured loan request, it would not be necessary for the Agency to incur this extra expense unless the borrower actually needed the supplemental funds as soon as the accommodation was approved. If the borrower intends to wait until the concurrent insured loan is approved and its funds advanced, there is little or no justification for early approval of a lien accommodation for the concurrent supplemental loan.

The timeframe for the Agency to act on a lien accommodation is 90 days upon receipt of the request for early approval and a complete and satisfactory application. The Agency's approval of the lien accommodation ensures that the concurrent insured loan would also be approved.

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.

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, and for other purposes. The Agency has identified this collection as one that will offer the public the ability to provide some of the required information to the Agency electronically. Borrowers may electronically submit Form 7, Financial and Statistical Report and Form 12, Operating Report – Financial. The Agency must receive original copies of all other forms.

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 required information is available only from individual borrowers, and a great deal of it is project specific. Much of the information is collected and analyzed by any prudent business in the course of its operations, and some is prepared by an electric utility as part of a petition to its State Regulatory Authority. Whenever possible, the Agency merely requires copies of information the borrower has prepared for another purpose.

Also, much of the information necessary to make a determination on a lien accommodation or lien subordination application has already been submitted by the applicant when the applicant originally applied for Agency loans. When this is the case, RUS does not require that the applicant re-submit the information.

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

All but 10% of the electric borrowers meet the Small Business Administration criteria for a small business. RUS has made every effort to ensure that the burden on these small entities is the minimum necessary to effectively administer the agency programs.

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.

The required documents are prepared by the borrower, the lender, and the Agency only when a borrower applies for a lien accommodation or lien subordination, or to give the Agency notice of actions that affect the Government's guarantee. Less frequent collection would prevent the Agency from accomplishing statutory goals.

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

a. Requiring respondent to report information more than quarterly.

There is no requirement to respond more frequently than quarterly.

b. Requiring written response 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 of more than original and two copies to be submitted.

d. Requiring respondent to retain records for more than 3 years.

Record retention requirements shall be in accordance with 7 CFR 1767.

e. In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.

This collection is not a survey.

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

There are no such requirements.

a. Requiring a pledge of confidentiality.

This is no requirement of a pledge of confidentiality.

b. Requiring submission of proprietary trade secrets.

There is no requirement to submit propriety trade secrets.

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.

A notice requesting comments was published on July 9, 2012, at 77 FR 40324, and no comments were received.

The Agency's regional offices maintain close contact with borrowers through both general field representatives and a headquarters staff and conducts seminars for borrowers. Suggestions and comments are always considered by the Agency. In addition, the following individuals were contacted for comments:

Lori Barry
Harrison County REC
P.O. Box 2
Woodbine, IA 51579-0002
712-647-2727

The borrower stated they found the information they need to submit to be readily available. The instructions are clear concerning what is needed to request a Lien Accommodation.

Karla Durrant
The Victory Electric Cooperative Assoc., Inc.
P.O. Box 1335
Dodge City, KS 67801-1335
620-371-7712

The borrower stated that the RUS and CFR Websites are very accessible. Instructions and record keeping instructions are explained by RUS GFR or program staff are clear and useful.

Danny Shelley
Horry Electric Cooperative
P.O. Box 119
Conway, SC 29528-0119
843-369-6353

Overall the borrower believes that the collection of information requested is necessary and not too burdensome.

9. Explain any decision to provide any payment or gift to respondents, other than re-enumeration 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.

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.

This information collection includes no questions of a sensitive nature.

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

See the attached spreadsheet. The collection is summarized as follows:

Regulation	Number of Respondents	Total Annual Responses	Total Annual Hours
7 CFR 1717	15	21	290

RUS estimates the cost to be \$11,907.40 to the respondents to comply with this regulation. The cost is based on receiving approximately 21 requests for lien accommodations and subordinations per year.

The Agency estimates that for each request, approximately 80 percent of the required time is professional time and 20 percent is clerical time. If an hourly rate of \$46.86 is attributed to professional time, and \$17.86 to clerical time, the costs to the public are as follows:

Cost to the Public:

Professional	232 hours x \$46.86/hr.	=	\$10,871.52
Clerical	58 hours x \$17.86/hr.	=	<u>1,035.88</u>
Total cost to the Public			\$11,907.40

The Department of Labor, Bureau of Labor Statistics, Standard Occupational Classification wage rates from the “May 2011 Occupational Employment and Wage Estimates” at http://www.bls.gov/oes/oes_dlm.htm were used as the basis for the cost estimates. The National Industry was NAICS 221100 Electric Power Generation, Transmission and Distribution. The hourly earnings for Professional Administrative Services Managers of \$46.86 was used for professionals and Administrative Support Workers wage of \$17.86 was utilized to calculate clerical.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information: (a) Total capital and start-up cost component (annualized over its expected useful life); and (b) Total operation and maintenance and purchase of services component.

There are no capital/start-up or operation/maintenance costs and purchase of services components involved with this collection.

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

The Agency will spend approximately 60 hours processing each request for a lien accommodation or subordination, for a total of 900 hours per year of Agency time. The agency further estimates that approximately 80 percent of this time, or 720 hours, is professional time, and the balance of 180 hours is clerical time. Attributing an hourly

rate of \$48.35 to professional time (grade 13, step 5) and \$20.63 (grade 6, step 5) to clerical time, the costs to the government are as follows:

Cost to the Federal Government:

Professional	48 hours x \$48.35/hr. x 15 requests =	\$34,812.00
Clerical	12 hours x \$20.63/hr. x 15 requests =	<u>3,713.40</u>
Total cost to the Federal Government:		\$38,525.40

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

This is an extension of a previously approved collection with no change from the prior submission in 2009 other than salary rates.

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

Rural Development has no plans to publish the information collected under the provisions of these programs.

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.

We are requesting not to display the expiration date because the forms used in this collection are cleared and approved under 0572-0032. Having different expiration dates would cause confusion for respondents.

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

There are no exceptions requested.

19. Collection of information Employing Statistical Methods.

This information collection does not employ statistical methods.