

**OMB Control No. 0572-NEW
2013**

SUPPORTING STATEMENT

New Equipment Contract (Form 395) for Telecommunications and Broadband Borrowers

NOTE TO REVIEWER: The burden addressed in this supporting statement is part of a Proposed Rulemaking for a new information collection package. This collection should be reviewed and filed with comment

A. Justification

1. Explain the circumstances that make the collection of information necessary.

The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended (RE Act), in Title I, sec. 2, The Administrator is authorized and empowered 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, and for the purpose of furnishing and improving telephone service in rural areas, as hereinafter provided; to make or cause to be made, studies, investigations, and reports concerning the condition and progress of the electrification of and the furnishing of adequate telephone service in rural areas in the several States and Territories; and to publish and disseminate information with respect thereto.

The RE Act was amended in 2002 by Title IV, Rural Broadband Access, by Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (“2002 Farm Bill”), authorizes and empowers the Administrator of the Rural Utilities Service (Agency), an agency that administers rural utilities programs for USDA Rural Development, to provide loan and guarantees to fund the cost of construction, improvement, or acquisition for facilities and equipment for the provision of broadband service in eligible rural communities in the States and Territories of the United States.

The term of the loans is based on the expected composite economic life based on the depreciation rates of the facilities financed. The term of the loan can be as high as 25 years or longer. These loans are secured by a first mortgage on the borrower’s broadband system. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural broadband service access, Title VI of the RE Act further requires that the Agency make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed.

In the interest of protecting loan security and accomplishing the statutory objective of a sound program of telecommunication, Title II, sec. 201 further states that loans shall not be made unless the Administrator finds and certifies that in his judgment the security therefore is reasonably adequate and such loan will be repaid within the time agreed.

In order to facilitate the programmatic interests of the RE Act, and, in order to assure that loans made or guaranteed by the Agency are adequately secured, the Agency, as a secured

lender, has established certain standards and specifications for materials, equipment, and the construction of telecommunications systems. The use of standards and specifications for materials, equipment and constructions units helps assure the Agency that:

- a. Appropriate standards and specifications are maintained;
- b. Agency loan security is not adversely affected; and
- c. Loan and loan guarantee funds are used effectively and for the intended purposes.

These procedures apply to procurement and construction for all projects which will or may be financed, in whole or in part, with loans made or guaranteed by the Agency. These requirements are set forth in the standard form of the Agency mortgage.

In an effort to improve customer service to the RUS rural borrowers, the Agency has proposed to revise and streamline its current contracts. RUS has and will continue to work with industry groups to obtain their input as to what types of changes the borrowers may want to see made to the contracts. Details on Agency consultations have been addressed in Question 8.

This is a new collection associated with a proposed rule. The collection of information from the public is necessary in order for the Rural Utilities Service (RUS) to identify projects eligible for RUS Telecommunication Program loan and loan guarantees. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS has included a 60 day notice for public comment on this information collection within the proposed rule.

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

Contract terms and obligations in the RUS' new Equipment Contract, RUS Form 395, reflects present business and RUS practices, as well as changes in technology, services and equipment. The new Equipment Contract, RUS Form 395 and the associated close-out documents (Forms 395a, 395b, 395c, and 395d) will replace the current Equipment Specific Contracts, RUS Forms 397, 398, 525, 545, and the associated documents (Forms 231, 396, 396a, 397b, 397c, 397d, 397f, 397g, 397h, 517, 525a, 744, 752a, 754), and addendums which were cleared in collection package 0572-0059. Standard program requirement forms (Forms 213, 238, AD1048, and the Telephone Lobbying Certification) are still necessary and must be included with the new RUS Form 395 to complete the contract. The new RUS forms will streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project.

RUS also proposes to revise 7 CFR 1753, Post-loan Construction Policies to reflect the use of the new contract and forms and other administrative updates. Specifically, §1753.38c, The Software License Agreement, will be updated and incorporated into the new Equipment Contract, RUS Form 395. It will no longer be a "stand-alone" form. RUS will be eliminating

several forms that are no longer used by RUS borrowers. These forms were used to obtain, when required by RUS, a Contractor's Bond. Each of the forms is associated with a particular contract form. Instead, borrowers were approved by RUS to use a generic form, RUS Form 168b, that can be used with any of the RUS Standard Contract Forms to obtain such a bond. Therefore, the following contract forms currently found in 7 CFR 1755.30 will be rescinded: RUS Form 257a, "Contractor's Bond," RUS Form 397f, "Contractor's Bond (Special Telephone Equipment)," and RUS Form 525a, "Contractor's Bond (Central Office Equipment).

RUS is also revising the list of contract forms found at 7 CFR 1755.30 by deleting the following forms which will no longer be used: RUS Form 397, "Special Equipment Contract (Including Installation)," RUS Form 398, "Special Equipment Contract (Not Including Installation)," RUS Form 517, "Results of Acceptance Tests," RUS Form 525, "Central Office Equipment Contract (Including Installation)" and RUS Form 545, "Central Office Equipment Contract (Not Including Installation)." These forms will not be needed and replaced with the new RUS Form 395 and associated new Forms 395a, 395b, 395c, and 395d. Any actions with regard to changes in forms will be addressed in the corresponding approved collection(s).

This information is used to implement certain provisions of the Agency standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its broadband system by contract. This collection of information will be used by Agency borrowers and their contractors. In the Telecommunications industry, when a cooperative or company enters into contracts for services, some type of contract form is used. The Agency has developed the specific forms cleared with this package to be used by its borrowers when entering into contracts for goods or services. Standardization of forms by the Agency results in substantial savings to:

- a. Borrowers: If standard forms were not used, borrowers would need to prepare their own documents at a significant expense; and
- b. Government: If standard forms were not used, each document submitted by a borrower would require more extensive and more costly review by both the Agency and the Office of the General Counsel.

The following information/forms are collected and accounted for under this collection package:

Written – Letter for pre-construction review of nonconforming standards and specifications

§1753.3 and §1753.6 requires a borrower to write a letter to the Agency requesting approval to incorporate used materials and equipment or for any construction and materials/equipment which are not in conformance with Agency standards and specifications or detailed on the Loan Design that the Agency has approved. This provides the Agency with the means to review proposed construction to be certain that the quality and design will provide for effective and proficient facilities and preserve loan security.

The Agency requires the submission of a form contract only when the contract is subject to Agency approval. The Agency also requires that the borrower follow generally accepted accounting practices as part of its contract record retention system.

RUS Form 395, Equipment Contract

This form will be used for equipment purchases.

The following forms are new and associated with the new RUS Form 395:

RUS Form 395a, Certificate of Completion (Equipment Contract Including Installation)

This form will be used for the closeout of RUS Form 395 when the contract includes installation.

RUS Form 395b, Certificate of Completion (Equipment Contract Not Including Installation)

This form will be used to amend contracts except for distribution line construction contracts.

RUS Form 395c, Certificate of Contractor and Indemnity Agreement

This form will be used in the closeout of RUS Form 395.

RUS Form 395d, Results of Acceptance Tests

This is a suggestive form to be used to report results of acceptance testing of equipment for purposes of closing out the contract

Form AD-1048, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters -Lower Tier Covered Transactions.”

Form AD-1048 will be signed by the applicant’s suppliers, auditors, contractors, etc., and retained by the applicant in their files.

The following information/forms are collected and accounted for under other collection packages:

SF-LLL, “Disclosure of Lobbying Activities” (approved under 0348-0046)

Applicant will complete all items on the form that apply for both the initial filing and material change report.

RUS Form 213, Certificate (“Buy American”) (approved under 0572-0107)

This form is used to document compliance with the "Buy American" requirement.

RUS Form 238, Construction for Equipment-Contract Amendment (approved under 0572-0107)

This form allows borrowers to alter contract scope, terms and conditions; provides legal validation for alterations; legal adjustments to the contractor’s bond; and provides the Agency with evidence of the adjusted amount so funds can be advanced properly. This form provides the Agency loan security by tracking changes affecting project scope and costs. Except for the

inclusion of terms and conditions related to Public Laws and Executive Orders, etc., this type of contract form would be used by respondents under normal business practice.

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 and responses, and the basis for the decision for adopting this means of collection.

RUS is in the process of reviewing its short and long range electronic plans and needs. We are currently identifying options for using electronics to collect data from our borrowers. After the new contract forms are approved, the Agency plans to place an electronic version on the RUS Web Page in a fillable PDF format. Since the agency is not a party to the contract, the web version will be printable and require signatures.

RUS encourages borrowers to use the most advanced technology to prepare the required information. Since computer capabilities differ widely, there is at present no feasible alternative to requiring that the information be submitted to RUS in hard copy with computer generated drawings, charts, and graphs as supporting documentation where appropriate.

4. Describe efforts to identify duplication.

RUS has reviewed all financial assistance programs it administers to determine which programs may be similar in intent and purpose. If applicants or borrowers are applying to or participating in more than one RUS program simultaneously, the Agency would make every effort to accommodate the requests within the same set of applications and processing forms. If applicants are applying for or receiving a loan or other financial assistance from another Federal agency, RUS would use the forms and documents furnished by the other agency as much as possible.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

Information to be collected is in a format designed to minimize the paperwork burden on small businesses and other small entities. The new RUS forms will streamline the contractual process for the RUS Borrower and all other parties including small businesses and other small entities. The information collected is the minimum needed by the Agency to approve loans and monitor borrower performance.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The information collected under these programs is the minimum necessary to conform to the requirements of the program regulations established by law. Information is collected when needed and cannot be collected less frequently to meet the requirements of the programs. Failure

to collect proper information could result in improper determinations of eligibility or improper use of funds.

7. Explain any special circumstances that would require an information collection to be conducted in a manner:

- a. Requiring written responses in less than 30 days. There are no information requirements for written responses in less than 30 days. In the event, where a borrower's income or financial situation has declined, the borrower should provide RUS information as soon as possible to support the borrower and continue to receive program benefits..
- b. Requiring more than an original and two copies. There are no specific requirements.
- c. Requiring respondents to retain records for more than 3 years. There are no such requirements.
- d. Not utilizing statistical sampling. There are no such requirements.
- e. Requiring use of statistical sampling which has not been reviewed and approved by OMB. There are no such requirements.
- f. Requiring a pledge of confidentiality. There are no such requirements.
- g. Requiring submission of proprietary trade secrets. There are no such requirements.

8. Describe efforts to consult with persons outside the Agency to obtain their views on availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

This is a new collection. A sixty (60) day comment notice is embedded in the proposed rule.

In developing the new contracts, RUS invited input from the Association of Communications Engineers (ACE). ACE is a nonprofit organization of registered, professional consulting engineering firms committed to supporting the Consulting Engineer working in the field of telecommunications. RUS also obtained the views from the following individuals:

- 1) Bob Tupper, Chief Telecommunications Engineer, RVW, Inc., Columbus, NE.
Mr. Tupper stated that having Liquidated Damages available as an option is a real benefit of the proposed Form 395. However, he stated including these concepts as proposed would add at least an hour of legal time to each Form 395. He further asserts the Association of Communications Engineers (ACE) proposed changes bring this back down to dealing with determining some reasonable basis for cost per day for lack of timely performance. Telephone: (402) 564-2876.
- 2) Mike Riley, P.E., VP Engineering, Mid State Consultants.
Mr. Riley stated the paper burden and reporting requirements associated with RUS contract forms themselves is not excessive, except perhaps for some of the ancillary requirements such as that the lobbying addendum is to be printed on the contractor's letterhead. This step adds complexity without any (or minimal) corresponding advantage in the contract. Also, he elaborates that the RUS close-out documents are mostly straightforward but collecting them into

a single set of documents that captures the appropriate requirements will be very helpful.
Telephone: (435) 623-8601.

3) Joel O. Williams P.E., President, Mid-South Consulting Engineers, Charlotte, NC.
Mr. Williams has 35 years experience with RUS forms and states he found many issues that he had to work around in order to get the job done. However, he felt that the process to apply was easy and that he did not feel any of the information requested was burdensome. Telephone: (704) 357-0004.

9. Explain any decision to provide any payment or gift to respondents, other than renumeration of contractors of grantees.

RUS has not made any such decisions or payments.

10. Describe any assurance of confidentiality provided to respondents, and the basis for the assurance in statute, regulation, or agency policy.

No assurance of confidentiality is provided. Under the Freedom of Information Act, the public can request most data collected from respondents. The information collected under the provisions of these programs is not considered to be confidential. Organizations such as nonprofit entities and public bodies from which the information is collected ordinarily are required to make their activities available for public scrutiny.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The information collected does not contain any questions of a sensitive nature such as sexual behavior, religious beliefs, or other matters commonly considered private.

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

See the attached spreadsheet for details.

Professional time

279 responses @ \$43.96/hr x 223 hrs x 29.4% benefits (\$8,041) \$ 35,391

Clerical time

279 responses @ \$19.98/hr. x 667 hrs x 29.4% benefits (\$10,931) \$ 48,112

Total \$ 83,503

RUS estimates a cost of \$83,503 for respondents to comply with this regulation. The cost is based on 279 respondents filing the new RUS Form 395 and receiving RUS approval.

RUS used a labor rate of \$43.96 per hour based on information from the program's professional services contracts used by the same respondents. Primary individuals for an equipment contract respondent would normally be a consultant and a clerical staff member earning \$19.98 per hour plus 29.4% in benefits.

Benefits as a percentage of total compensation for Private trade, transportation, and utilities industry workers were 29.4% of total hourly compensation. See, <http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf>, Page 91. The Department of Labor, Bureau of Labor Statistics, Standard Occupational Classification wage rates were considered in the cost estimates.¹

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

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

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

The cost to the Federal Government is estimated as follows:²

Contract review phase	
1 hour X 279 responses X \$43.96 X 36.25% benefit (\$4,446)	= \$16,710
Clerical processing phase	
.5 hour X 279 responses X \$20.03 X 36.25% benefit (\$1,012)	= \$ 3,806

Total estimated cost to the Federal Government is: \$ 20,516

The salary of \$43.96 per hour is based on an Office Engineer (GS 13, step 5).

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

This is a new collection.

¹Historical data provided by the Bureau of Labor Statistics, Employer Cost for Employee Compensation Supplemental Tables Historical Data December 2006 – September 2012 is utilized to calculate the total cost of benefits.

² Cost of total benefits as a percentage of total hourly compensation for Federal Government employees has been calculated by multiplying 36.25% by the hourly OPM wage in accordance with OMB Memorandum M-08 13.

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

RUS has no plans to publish the information collected under the provisions of this program.

17. If seeking approval to not display the expiration date for OMB approval of the information collected, explain the reasons that display would be inappropriate.

No such approval is requested.

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 collection does not employ statistical methods.