

Rural Utilities Service, USDA

§ 1717.850

§§ 1717.750-1717.799 [Reserved]

Subpart Q [Reserved]

§§ 1717.800-1717.849 [Reserved]

Subpart R—Lien Accommodations
and Subordinations for 100
Percent Private Financing

SOURCE: 58 FR 53843, Oct. 19, 1993, unless
otherwise noted.

§ 1717.850 General.

(a) *Scope and applicability.* (1) This subpart R establishes policies and procedures for the accommodation, subordination or release of the Government's lien on borrower assets, including approvals of supporting documents and related loan security documents, in connection with 100 percent private sector financing of facilities and other purposes. Policies and procedures regarding lien accommodations for concurrent supplemental financing required in connection with an RUS insured loan are set forth in subpart S of this part.

(2) This subpart and subpart S of this part apply only to debt to be secured under the mortgage, the issuance of which is subject to the approval of the Rural Utilities Service (RUS) by the terms of the borrower's mortgage with respect to the issuance of additional debt or the refinancing or refunding of debt. If RUS approval is not required under such terms of the mortgage itself, a lien accommodation is not required. If the loan contract or other agreement between the borrower and RUS requires RUS approval with respect to the issuance of debt or making additions to or extensions of the borrower's system, such required approvals do not by themselves result in the need for a lien accommodation.

(b) *Overall policy.* (1) Consistent with prudent lending practices, the maintenance of adequate security for RUS's loans, and the objectives of the Rural Electrification Act (RE Act), it is the policy of RUS to provide effective and timely assistance to borrowers in obtaining financing from other lenders by sharing RUS's lien on a borrower's assets in order to finance electric facili-

ties, equipment and systems, and certain other types of community infrastructure. In certain circumstances, RUS may facilitate the financing of such assets by subordinating its lien on specific assets financed by other lenders.

(2) It is also the policy of RUS to provide effective and timely assistance to borrowers in promoting rural development by subordinating RUS's lien for financially sound rural development investments under the conditions set forth in § 1717.858.

(c) *Decision factors.* In determining whether to accommodate, subordinate, or release its lien on property pledged by the borrower under the RUS mortgage, RUS will consider the effects of such action on the achievement of the purposes of the RE Act, the repayment and security of RUS loans secured by the mortgage, and other factors set forth in this subpart. The following factors will be considered in assessing the effects on the repayment and security of RUS loans:

(1) The value of the added assets compared with the amount of new debt to be secured;

(2) The value of the assets already pledged under the mortgage, and any effects of the proposed transaction on the value of those assets;

(3) The ratio of the total outstanding debt secured under the mortgage to the value of all assets pledged as security under the mortgage;

(4) The borrower's ability to repay debt owed to the Government, as indicated by the following factors:

(i) Revenues, costs (including interest, lease payments and other debt service costs), margins, Times Interest Earned Ratio (TIER), Debt Service Coverage (DSC), and other case-specific economic and financial factors;

(ii) The variability and uncertainty of future revenues, costs, margins, TIER, DSC, and other case-specific economic and financial factors;

(iii) Future capital needs and the ability of the borrower to meet those needs at reasonable cost;

(iv) The ability of the borrower's management to manage and control its system effectively and plan for future needs; and

(5) Other factors that may be relevant in individual cases, as determined by RUS.

(d) *Environmental considerations.* Under certain circumstances, such as when the project does not qualify for a categorical exclusion, the environmental requirements of 7 CFR part 1794 may apply to applications for lien accommodations, subordinations, and releases.

(e) *Co-mortgagees.* Other mortgagees under existing mortgages shared with RUS may have the right to approve requests for lien accommodations, subordinations and releases. In those cases, borrowers would have to obtain the approval of such mortgagees in order for the lien of the mortgage to be accommodated, subordinated or released. Any reference in this subpart to waiving by RUS of any of its rights under the mortgage shall apply only to the rights of RUS and shall not apply to the rights of any other co-mortgagee.

(f) *Safety and performance standards.* (1) To be eligible for a lien accommodation or subordination from RUS, a borrower must comply with RUS standards regarding facility and system planning and design, construction, procurement, and the use of materials accepted by RUS, as required by the borrower's mortgage, loan contract, or other agreement with RUS, and as further specified in RUS regulations.

(2) RUS "Buy American" requirements shall not apply.

(g) *Advance of funds.* (1) The advance of funds from 100 percent private loans lien accommodated or subordinated by RUS will not be subject to RUS approval. It is the private lender's responsibility to adopt reasonable measures to ensure that such loan funds are used for the purposes for which the loan was made and the lien accommodation or subordination granted. RUS encourages lenders to adopt the following measures:

(i) Remit loan advances to a separate subaccount of the Cash-Construction Fund-Trustee Account;

(ii) Obtain a certification from a registered professional engineer, for each year during which funds from the separate subaccount are utilized by the borrower, that all materials and equipment purchased and facilities con-

structed during the year from said funds comply with RUS safety and performance standards, as required by paragraph (f) of this section, and are included in an CWP or CWP amendment approved by the borrower's board of directors;

(iii) Obtain an auditor's certification from a Certified Public Accountant, for each year during which funds are advanced to or remitted from the separate subaccount, certifying:

(A) The amount of loan funds advanced to and remitted from the separate subaccount during the period of review;

(B) That based on the auditor's review of construction work orders and other records, all moneys disbursed from the separate subaccount during the period of review were used for purposes contemplated in the loan agreement and the lien accommodation; and

(iv) Immediately notify RUS in writing if the lender is unable to obtain the certifications cited in paragraphs (g)(1)(ii) and (g)(1)(iii) of this section.

(2) The measures listed in paragraph (g)(1) of this section will normally be sufficient to meet the lender's responsibility provided that additional measures are not reasonably required based on the particular circumstances of an individual case. Should a lender fail to carry out its responsibility in the manner described in this paragraph (g) or in another manner acceptable to RUS, RUS may disqualify such lender from participation in advance approval under §§ 1717.854 and 1717.857 and condition the lender's receipt of a lien accommodation or subordination upon the lender providing satisfactory evidence that it will fulfill its responsibility under this paragraph (g).

(h) *Contracting and procurement procedures.* (1) Facilities financed with debt obtained entirely from non-RUS sources, without an RUS loan guarantee, are not subject to RUS post-loan requirements regarding contracting, procurement and bidding procedures; contract close-out procedures pertaining to project completion, final payment of contractor, and related matters; and standard forms of construction and procurement contracts listed in 7 CFR 1726.300.

(2) To the extent that provisions in a borrower's loan contract or mortgage in favor of RUS may be inconsistent with paragraphs (g)(1) and (h)(1) of this section, paragraphs (g)(1) and (h)(1) of this section are intended to constitute an approval or waiver under the terms of such instruments, and in any regulations implementing such instruments, with respect to facilities financed with debt obtained entirely from non-RUS sources without an RUS guarantee.

(i) *Access of handicapped to buildings and seismic safety.* A borrower must meet the following requirements to be eligible for a lien accommodation or subordination for 100 percent private financing of the construction of buildings:

(1) The borrower must provide RUS with a certification by the project architect that the buildings will be designed and constructed in compliance with Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794), as applicable under that Act, and that the facilities will be readily accessible to and usable by persons with handicaps in accordance with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 CFR part 101.19, subpart 101-19.6). The certification must be included in the borrower's application for a lien accommodation or subordination. In addition to these requirements, building construction may also be subject to requirements of The Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*); and

(2) The borrower must comply with RUS's seismic safety requirements set forth in 7 CFR part 1792, subpart C.

(j) *Breach of warranty.* Any breach of any warranty or agreement or any material inaccuracy in any representation, warranty, certificate, document, or opinion submitted pursuant to this subpart, including, without limitation, any agreement or representation regarding the use of funds from loans lien accommodated or subordinated pursuant to this subpart, shall constitute a default by the borrower under the terms of its loan agreement with RUS.

(k) *Guaranteed loans.* The provisions of this subpart do not apply to lien accommodations or subordinations sought for loans guaranteed by RUS.

Such lien accommodations and subordinations are governed by RUS regulations on guaranteed loans.

(l) *Release of lien.* To avoid repetition, release of lien is not mentioned in every instance where it may be an acceptable alternative to subordination of RUS's lien. Generally, lien subordination is favored over release of lien, and any decision to release RUS's lien is at the sole discretion of RUS.

(m) *Waiver authority.* Consistent with the RE Act and other applicable laws, any requirement, condition, or restriction imposed by this subpart, or subpart S of this part, on a borrower, private lender, or application for a lien accommodation or subordination may be waived or reduced by the Administrator, if the Administrator determines that said action is in the Government's financial interest with respect to ensuring repayment and reasonably adequate security for loans made or guaranteed by RUS.

(n) *Liability.* It is the intent of this subpart that any failure on the part of RUS to comply with any provisions hereof, including without limitation, those provisions setting forth specified timeframes for action by RUS on applications for lien accommodations or lien subordinations, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of a borrower, private lender or any other party.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 67408, Dec. 29, 1995]

§ 1717.851 Definitions.

Terms used in this subpart have the meanings set forth in 7 CFR 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this subpart:

Borrower's financial and statistical report means RUS Form 7, Parts A

through D, for distribution borrowers, and RUS Form 12a for power supply borrowers.

Calendar day means any day of the year, except a Federal holiday that falls on a work day.

Capital investment. For the purposes of § 1717.860, capital investment means an original investment in an asset that is intended for long-term continued use or possession and, for accounting purposes, is normally depreciated or depleted as it is used. For example, such assets may include land, facilities, equipment, buildings, mineral deposits, patents, trademarks, and franchises. Original investments do not include refinancings or refundings.

Current refunding means any refunding of debt where the proceeds of the new debt are applied to refund the old debt within 90 days of the issuance of the new debt.

Default under the RUS mortgage, loan contract, restructuring agreement, or any other agreement between the borrower and RUS means any event of default or any event which, with the giving of notice or lapse of time or both, would become an event of default.

Equity, less deferred expenses, means Line 33 of Part C of RUS Form 7 less assets properly recordable in Account 182.2, Unrecovered Plant and Regulatory Study Costs, and Account 182.3, Other Regulatory Assets.

Front-end costs means the reasonable cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities and other investments eligible for a lien accommodation or subordination under this subpart.

Lien accommodation means the sharing of the Government's (RUS's) lien on property, usually all property, covered by the lien of the RUS mortgage.

Lien subordination means allowing another lender to take a first mortgage lien on certain property covered by the lien of the RUS mortgage, and the Government (RUS) taking a second lien on such property.

Natural gas distribution system means any system of community infrastructure whose primary function is the distribution of natural gas and whose services are available by design to all

or a substantial portion of the members of the community.

Net utility plant means Part C, Line 5 of RUS Form 7 (distribution borrowers) or Section B, Line 5 of RUS Form 12a (power supply borrowers).

Power cost study means the study defined in 7 CFR 1710.303.

Solid waste disposal system means any system of community infrastructure whose primary function is the collection and/or disposal of solid waste and whose services are available by design to all or a substantial portion of the members of the community.

Telecommunication and other electronic communication system means any system of community infrastructure whose primary function is the provision of telecommunication or other electronic communication services and whose services are available by design to all or a substantial portion of the members of the community.

Total assets, less deferred expenses means Line 26 of Part C of RUS Form 7 less assets properly recordable in Account 182.2, Unrecovered Plant and Regulatory Study Costs, and Account 182.3, Other Regulatory Assets.

Total outstanding long-term debt means Part C, Line 38 of RUS Form 7.

Transaction costs means the reasonable cost of legal advice, accounting fees, filing fees, recording fees, call premiums and prepayment penalties, financing costs (including, for example, underwriting commissions, letter of credit fees and bond insurance), and printing associated with borrower financing.

Water and waste disposal system means any system of community infrastructure whose primary function is the supplying of water and/or the collection and treatment of waste water and whose services are available by design to all or a substantial portion of the members of the community.

Weighted average life of the loan means the average life of the loan based on the proportion of original loan principal paid during each year of the loan. It shall be determined by calculating the sum of all loan principal payments, expressed as a fraction of the original loan principal amount, times the number of years and fractions of years elapsed at the time of each payment

Rural Utilities Service, USDA

§ 1717.852

since issuance of the loan. For example, given a \$5 million loan, with a maturity of 5 years and equal principal payments of \$1 million due on the anniversary date of the loan, the weighted average life would be: $(.2)(1 \text{ year}) + (.2)(2 \text{ years}) + (.2)(3 \text{ years}) + (.2)(4 \text{ years}) + (.2)(5 \text{ years}) = .2 \text{ years} + .4 \text{ years} + .6 \text{ years} + .8 \text{ years} + 1.0 \text{ years} = 3.0 \text{ years}$. If instead the loan had a balloon payment of \$5 million at the end of 5 years, the weighted average life would be: $(\$5 \text{ million}/\$5 \text{ million})(5 \text{ years}) = 5 \text{ years}$.

[58 FR 53843, Oct. 19, 1993, as amended at 59 FR 3986, Jan. 28, 1994; 60 FR 67409, Dec. 29, 1995]

§ 1717.852 Financing purposes.

(a) *Purposes eligible.* The following financing purposes, except as excluded in paragraph (b) of this section, are eligible for a lien accommodation from RUS, or in certain circumstances a subordination of RUS's lien on specific assets, provided that all applicable provisions of this subpart are met:

(1) The acquisition, construction, improvement, modification, and replacement (less salvage value) of systems, equipment, and facilities, including real property, used to supply electric and/or steam power to:

(i) RE Act beneficiaries; and/or

(ii) End-user customers of the borrower who are not beneficiaries of the RE Act. Such systems, equipment, and facilities include those listed in 7 CFR 1710.251(c) and 1710.252(c), as well as others that are determined by RUS to be an integral component of the borrower's system of supplying electric and/or steam power to consumers, such as, for example, coal mines, coal handling facilities, railroads and other transportation systems that supply fuel for generation, programs of demand side management and energy conservation, and on-grid and off-grid renewable energy systems;

(2) The purchase, rehabilitation and integration of existing distribution facilities, equipment and systems, and associated service territory;

(3) The following types of community infrastructure substantially located within the electric service territory of the borrower: water and waste disposal systems, solid waste disposal systems, telecommunication and other elec-

tronic communications systems, and natural gas distribution systems;

(4) Front-end costs, when and as the borrower has obtained a binding commitment from the non-RUS lender for the financing required to complete the procurement or construction of the facilities;

(5) Transaction costs included as part of the cost of financing assets or refinancing existing debt, provided, however, that the amount of transaction costs eligible for lien accommodation or subordination normally shall not exceed 5 percent of the principal amount of financing or refinancing provided, net of all transaction costs;

(6) The refinancing of existing debt secured under the mortgage;

(7) Interest during construction of generation and transmission facilities if approved by RUS, case by case, depending on the financial condition of the borrower, the terms of the financing, the nature of the construction, the treatment of these costs by regulatory authorities having jurisdiction, and such other factors deemed appropriate by RUS; and

(8) Lien subordinations for certain rural development investments, as provided in § 1717.858.

(b) *Purposes ineligible.* The following financing purposes are not eligible for a lien accommodation or subordination from RUS:

(1) Working capital, including operating funds, unless in the judgment of RUS the working capital is required to ensure the repayment of RUS loans and/or other loans secured under the mortgage;

(2) Facilities, equipment, appliances, or wiring located inside the premises of the consumer, except:

(i) Certain load-management equipment (see 7 CFR 1710.251(c));

(ii) Renewable energy systems and RUS-approved programs of demand side management and energy conservation; and

(iii) As determined by RUS on a case by case basis, facilities included as part of certain cogeneration projects to furnish electric and/or steam power to end-user customers of the borrower;

(3) Investments in a lender required of the borrower as a condition for obtaining financing; and

§ 1717.853

7 CFR Ch. XVII (1-1-12 Edition)

(4) Debt incurred by a distribution or power supply borrower to finance facilities, equipment or other assets that are not part of the borrower's electric system or one of the four community infrastructure systems cited in paragraph (a)(3) of this section, except for certain rural development investments eligible for a lien subordination under § 1717.858.

(c) *Lien subordination for electric utility investments.* RUS will consider subordinating its lien on specific electric utility assets financed by the lender, when the assets can be split off without materially reducing the stability, safety, reliability, operational efficiency, or liquidation value of the rest of the system.

[58 FR 53843, Oct. 19, 1993, as amended at 59 FR 3986, Jan. 28, 1994; 60 FR 67409, Dec. 29, 1995]

§ 1717.853 Loan terms and conditions.

(a) *Terms and conditions.* A loan, bond or other financing instrument, for which a lien accommodation or subordination is requested from RUS, must comply with the following terms and conditions:

(1) The maturity of the loan or bond used to finance facilities or other capital assets must not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(2) The loan or bond must have a maturity of not less than 5 years, except for loans or bonds used to refinance debt that has a remaining maturity of less than 5 years;

(3) The principal of the loan or bond must be amortized at a rate that will yield a weighted average life not greater than the weighted average life that would result from level payments of principal and interest; and

(4) The loan, or any portion of the loan, may bear either a variable (set annually or more frequently) or a fixed interest rate.

(b) *RUS approval.* Loan terms and conditions and the loan agreement between the borrower and the lender are subject to RUS approval. However, RUS will usually waive its right of approval for distribution borrowers that meet the conditions for advance approval of a lien accommodation or sub-

ordination set forth in § 1717.854. RUS may also waive its right of approval in other cases. RUS's decision to waive its right of approval will depend on the adequacy of security for RUS's loans, the current and projected financial strength of the borrower and its ability to meet its financial obligations, RUS's familiarity with the lender and its lending practices, whether the transaction is ordinary or unusual, and the uncertainty and credit risks involved in the transaction.

§ 1717.854 Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

(a) *Policy.* Requests for a lien accommodation or subordination from distribution borrowers for 100 percent private financing of distribution, subtransmission and headquarters facilities, and for community infrastructure listed in § 1717.852(a)(3), qualify for advance approval by RUS if they meet the conditions of this section and all other applicable provisions of this subpart. Advance approval means RUS will approve these requests once RUS is satisfied that the conditions of this section and all other applicable provisions of this subpart have been met.

(b) *Eligible purposes.* Lien accommodations or subordinations for the financing of distribution, subtransmission, and headquarters facilities and community infrastructure listed in § 1717.852(a)(3) are eligible for advance approval, except those that involve the purchase of existing facilities and associated service territory.

(c) *Qualification criteria.* To qualify for advance approval, the following requirements, as well as all other applicable requirements of this subpart, must be met:

(1) The borrower has achieved a TIER of at least 1.25 and a DSC of at least 1.25 for each of 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

(2) The ratio of the borrower's equity, less deferred expenses, to total assets, less deferred expenses, is not less than 27 percent, after adding the principal

Rural Utilities Service, USDA

§ 1717.855

amount of the proposed loan to the total assets of the borrower;

(3) The borrower's net utility plant as a ratio to its total outstanding long-term debt is not less than 1.0, after adding the principal amount of the proposed loan to the existing outstanding long-term debt of the borrower;

(4) There are no actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition;

(5) The borrower is current on all debt payments and all other financial obligations, and is not in default under the RUS mortgage, the RUS loan contract, the borrower's wholesale power contract, any debt restructuring agreement, or any other agreement with RUS;

(6) The borrower has:

(i) Submitted the annual auditor's report, report on compliance, report on internal controls, and management letter in accordance with 7 CFR part 1773;

(ii) Received an unqualified opinion in the most recent auditor's report;

(iii) Resolved all material findings and recommendations made in the most recent Loan Fund and Accounting Review;

(iv) Resolved all material findings and recommendations made in the most recent financial statement audit, including those material findings and recommendations made in the report on internal control, report on compliance, and management letter;

(v) Resolved all outstanding material accounting issues with RUS; and

(vi) Resolved any significant irregularities to RUS's satisfaction; and

(7) If the borrower has a power supply contract with a power supply borrower, the power supply borrower is current on all debt payments and all other financial obligations, and is not in default under the RUS mortgage, the loan contract, any debt restructuring agreement, or any other agreement with RUS.

(d) *Right of normal review reserved.* RUS reserves the right to review any request for lien accommodation or subordination under its normal review process rather than under advance ap-

proval procedures if RUS, in its sole discretion, determines there is reasonable doubt as to whether the requirements of paragraphs (b) and (c) of this section have been or will be met, or whether the borrower will be able to meet all of its present and future financial obligations.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 67410, Dec. 29, 1995; 65 FR 51748, Aug. 25, 2000]

§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

Applications for a lien accommodation or subordination that meet the requirements of § 1717.854 must include the following information and documents:

(a) A certification by an authorized official of the borrower that the borrower and, as applicable, the loan are in compliance with all conditions set forth in § 1717.854(c) and all applicable provisions of §§ 1717.852 and 1717.853;

(b) A resolution of the borrower's board of directors requesting the lien accommodation or subordination and including the amount and maturity of the proposed loan, a general description of the facilities or other purposes to be financed, the name and address of the lender, and an attached term sheet summarizing the terms and conditions of the proposed loan;

(c) The borrower's financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by RUS;

(d) Draft copy of any new mortgage or mortgage amendment (supplement) required by RUS or the lender, unless RUS has notified the borrower that it wishes to prepare these documents itself;

(e) A copy of the loan agreement, loan note, bond or other financing instrument, unless RUS has notified the borrower that these documents need not be submitted;

(f) Borrower's environmental report and/or other environmental documentation, if required by 7 CFR part 1794;

§ 1717.856

7 CFR Ch. XVII (1-1-12 Edition)

(g) RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, and RUS Form 740g, Application for Headquarters Buildings;

(h) A CWP or CWP amendment covering the proposed project, in accordance with 7 CFR part 1710, subpart F, and subject to RUS approval, and a resolution of the borrower's board of directors adopting the CWP;

(i) The certification by the project architect for any buildings to be constructed, as required by § 1717.850(i);

(j) A certification by an authorized official of the borrower that flood hazard insurance will be obtained for the full value of any buildings, or other facilities susceptible to damage if flooded, that will be located in a flood hazard area;

(k) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 7 CFR part 3017;

(l) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and the reasons therefor; and a certification, if not previously provided, that the borrower has been informed of the Government's collection options;

(m) The written acknowledgement from a registered engineer or architect regarding compliance with seismic provisions of applicable model codes for any buildings to be constructed, as required by 7 CFR 1792.104; and

(n) Other information that RUS may require to determine whether all of the applicable provisions of this subpart have been met.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 67410, Dec. 29, 1995]

§ 1717.856 Application contents: Normal review—100 percent private financing.

Applications for a lien accommodation or subordination for 100 percent private financing for eligible purposes that do not meet the requirements of § 1717.854 must include the following information and documents:

(a) A certification by an authorized official of the borrower that:

(1) The borrower and, as applicable, the loan are in compliance with all ap-

plicable provisions of §§ 1717.852 and 1717.853; and

(2) There are no actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition. If this certification cannot be made, the application must include:

(i) An opinion of borrower's counsel regarding any actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower's operations and/or financial condition. The opinion shall address the merits of the claims asserted in the actions or proceedings, and include, if appropriate, an estimate of the amount or range of any potential loss; and

(ii) A certification by an authorized official of the borrower as to the amount of any insurance coverage applicable to any loss that may result from the actions and proceedings addressed in the opinion of borrower's counsel;

(b) The information and documents set forth in § 1717.855 (b) through (n);

(c) A long-range financial forecast providing financial projections for at least 10 years, which demonstrates that the borrower's system is economically viable and that the proposed loan is financially feasible, and a resolution of the borrower's board of directors adopting the long-range financial forecast. The financial forecast must comply with the requirements of 7 CFR part 1710 subpart G. RUS may, in its sole discretion, waive the requirement of this paragraph that a long range financial forecast be provided, if:

(1) The borrower is current on all of its financial obligations and is in compliance with all requirements of its mortgage and loan agreement with RUS;

(2) In RUS's judgment, granting a lien accommodation or subordination for the proposed loan will not adversely affect the repayment and security of outstanding debt of the borrower owed to or guaranteed by RUS;

(3) The borrower has achieved the TIER and DSC and any other coverage ratios required by its mortgage or loan contract in each of the two most recent calendar years; and

(4) The amount of the proposed loan does not exceed the lesser of \$10 million or 10 percent of the borrower's current net utility plant;

(d) [Reserved]

(e) As applicable to the type of facilities being financed, a CWP, related engineering and cost studies, a power cost study, and a resolution of the borrower's board of directors adopting these documents. These documents must meet the requirements of 7 CFR part 1710, subpart F and, as applicable, subpart G;

(f) Unless the requirement has been waived in writing by RUS, a current, RUS-approved power requirements study, which must meet the requirements of 7 CFR part 1710, subpart E, to the same extent as if the loan were being made by RUS, and a resolution of the borrower's board of directors adopting the study; and

(g) A discussion of the borrower's compliance with RUS requirements on accounting, financial reporting, record keeping, and irregularities (see § 1717.854(c)(5)). RUS will review the case and determine the effect of any noncompliance on the feasibility and security of RUS's loans, and whether the requested lien accommodation or subordination can be approved.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 3735, Jan. 19, 1995; 60 FR 67410, Dec. 29, 1995]

§ 1717.857 Refinancing of existing secured debt—distribution and power supply borrowers.

(a) *Advance approval.* All applications for a lien accommodation or subordination for the refinancing of existing secured debt that meet the qualification criteria of this paragraph, except applications from borrowers in default under their mortgage or loan contract with RUS, are eligible for advance approval. Such lien accommodations and subordinations are deemed to be in the Government's interest, and RUS will approve them once RUS is satisfied that the requirements of this paragraph and paragraph (c) of this section

have been met. The qualification criteria are as follows:

(1) The refinancing is a current re-funding and does not involve interest rate swaps, forward delivery contracts, or similar features;

(2) The principal amount of the refinancing loan does not exceed the sum of the outstanding principal amount of the debt being refinanced plus the amount of transactions costs included in the refinancing loan that are eligible for lien accommodation or subordination under § 1717.852(a)(4);

(3) The weighted average life of the refinancing loan is not greater than the weighted average remaining life of the loan being refinanced; and

(4) The present value of the cost of the refinancing loan, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the loan being refinanced, as determined by a method acceptable to RUS. The discount rate used in the present value analysis shall be equal to either:

(i) The current rate on Treasury securities having a maturity equal to the weighted average life of the refunding loan, plus one-eighth percent, or

(ii) A rate approved by RUS based on documentation provided by the borrower as to its marginal long-term borrowing cost.

(b) *Other applications.* Applications for a lien accommodation or subordination for refinancing that do not meet the requirements of paragraph (a) of this section will be reviewed by RUS under normal review procedures for these applications. In the case of either advance approval or normal review, a lien subordination would be authorized only if the lien of the mortgage was subordinated with respect to the assets securing the loan being refinanced.

(c) *Application contents—advance approval of refinancing.* Applications for a lien accommodation or subordination for refinancing of existing secured debt that meet the qualification criteria for advance approval set forth in paragraph (a) of this section, must include the following information and documents:

§ 1717.858

7 CFR Ch. XVII (1-1-12 Edition)

(1) A certification by an authorized official of the borrower that the application meets the requirements of paragraph (a) of this section and all applicable provisions of §§1717.852 and 1717.853;

(2) Documentation and analysis demonstrating that the application meets the qualification criteria set forth in paragraph (a) of this section;

(3) A resolution of the borrower's board of directors requesting the lien accommodation or subordination and including the amount and maturity of the proposed loan, a general description of the debt to be refinanced, the name and address of the lender, and an attached term sheet summarizing the terms and conditions of the proposed loan;

(4) The borrower's financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by RUS;

(5) Draft copy of any new mortgage or mortgage amendment (supplement) required by RUS or the lender, unless RUS has notified the borrower that it wishes to prepare these documents itself;

(6) A copy of the loan agreement, loan note, bond or other financing instrument, unless RUS has notified the borrower that these documents need not be submitted;

(7) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 7 CFR part 3017;

(8) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and the reasons therefor; and a certification, if not previously provided, that the borrower has been informed of the Government's collection options; and

(9) Other information, documents and opinions that RUS may require to determine whether all of the applicable provisions of this subpart have been met.

(d) *Application contents—normal review of refinancing.* Applications for a lien accommodation or subordination for refinancing of existing secured debt that do not meet the requirements for

advance approval set forth in paragraph (a) of this section, must include the following information and documents:

(1) The information and documents set forth in paragraphs (c)(3) through (9) of this section;

(2) A complete description of the refinancing loan and the outstanding debt to be refinanced;

(3) An analysis comparing the refinancing loan with the loan being refinanced as to the weighted average life and the net present value of the costs of the two loans; and

(4) If the present value of the cost of the refinancing loan is greater than the present value of the cost of the debt being refinanced, financial forecasts for at least 5 years comparing the borrower's debt service and other costs, revenues, margins, cash flows, TIER, and DSC, with and without the proposed refinancing.

(e) *Application process and timeframes.* The application process and timeframes for RUS review and action for refinancings are set forth in §1717.859(d).

(f) *Prepayments of concurrent RUS insured loans.* If the loan being refinanced was made concurrently as supplemental financing required by RUS in connection with an RUS insured loan, the refinancing will not be considered a prepayment under the RUS mortgage, and no proportional prepayment of the concurrent RUS insured loan will be required, provided that the principal amount of the refinancing loan is not less than the amount of loan principal 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. The refinancing loan shall be considered a concurrent loan.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 67410, Dec. 29, 1995]

§ 1717.858 Lien subordination for rural development investments.

(a) *Policy.* RUS encourages borrowers to consider investing in financially sound projects that are likely to have a positive effect on economic development and employment in rural areas. In addition to the guidance set forth in §1717.651, RUS recommends that such

investments be made through a 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. This should reduce credit risks to the borrower's primary business, and minimize the possibility of undisclosed cross subsidization of the rural development enterprise by electric rate payers.

(b) *Lien subordination.* RUS will consider subordinating or releasing 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. To be eligible for said lien subordination or release:

(1) The borrower must be current on all of its financial obligations and be in compliance with all provisions of its mortgage and loan agreement with RUS; and

(2) In the judgment of RUS, the borrower must be able to repay all of its outstanding debt, and the security for all outstanding loans made to the borrower by RUS, including loans guaranteed by RUS, must be adequate, after taking into account the proposed subordination or release of lien.

(c) *Application contents.* Applications for a lien subordination or release of lien for rural development investments must include the following information and documents:

(1) A resolution of the borrower's board of directors requesting the lien subordination or release of lien;

(2) A certification by an authorized official of the borrower that the borrower is current on all of its financial obligations and is in compliance with all provisions of its mortgage and loan agreement with RUS;

(3) A description of the facilities or other purposes to be financed and the projected effects on economic development and employment in rural areas;

(4) The borrower's financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by RUS;

(5) If requested by RUS, a long-range financial forecast providing financial projections for at least 10 years, in form and substance satisfactory to RUS, which demonstrates that the borrower's system is economically viable and that the borrower will be able to repay all of its outstanding debt and meet all other financial obligations;

(6) A discussion of the borrower's compliance with RUS requirements on accounting, financial reporting, record keeping, and irregularities (see § 1717.854(c)(5)). RUS will review the case and determine the effect of any noncompliance on the feasibility and security of RUS's loans, and whether the requested lien subordination or release of lien can be approved;

(7) If any buildings are to be constructed with the proceeds of the loan to be made to the subsidiary:

(i) A certification by the project architect that the buildings will be designed and constructed in compliance with Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794), as applicable under that Act, and that the facilities will be readily accessible to and usable by persons with handicaps in accordance with the Uniform Federal Accessibility Standards; and

(ii) A written acknowledgement from a registered engineer or architect regarding compliance with seismic provisions of applicable model codes, as required by 7 CFR 1792.104;

(8) A certification by an authorized official of the borrower that flood hazard insurance will be obtained for the full value of any buildings, or other facilities susceptible to damage if flooded, that will be located in a flood hazard area;

(9) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 7 CFR part 3017;

(10) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and the reasons therefor; and a certification, if not previously provided, that the borrower has been informed of the Government's collection options; and

(11) Other information that RUS may require to determine whether all of the

§ 1717.859

7 CFR Ch. XVII (1-1-12 Edition)

applicable provisions of this subpart have been met.

§ 1717.859 Application process and timeframes.

(a) *General.* (1) Borrowers are responsible for ensuring that their applications for a lien accommodation or subordination are complete and sound as to substance and form before they are submitted to RUS. RUS will not accept any application that, on its face, is incomplete or inadequate as to the substantive information required by this subpart. RUS will notify borrowers in writing when their applications are complete and in form and substance satisfactory to RUS. A copy of all notifications of borrowers cited in this section will also be sent to the private lender.

(2) It is recommended that borrowers consult with RUS staff before submitting their applications to determine whether they will likely qualify for advance approval or normal review, and to obtain answers to any questions about the information and documents required for the application.

(3) A borrower shall, after submitting an application, promptly notify RUS of any changes that materially affect the information contained in its application.

(4) After submitting an application and having been notified by RUS of additional information and documents and other changes needed to complete the application, if the required information and documents are not supplied to RUS within 30 calendar days of the borrower's receipt of the notice, RUS may return the application to the borrower. The borrower may resubmit the application when the required additional information and documents are available.

(5) *Timeframes.* The timeframes for review of applications set forth in this section are based on the following conditions:

(i) The types of lien accommodations or subordinations requested are of the "standard" types that RUS has approved previously, i.e., the so-called Type I, II and III lien accommodations. Future revisions of the RUS mortgage may result in other "standard" types of lien accommodations and lien subor-

dinations acceptable to RUS. Requests for lien accommodations or subordinations that are substantially different than the "standard" types previously approved by RUS may require additional time for review and action;

(ii) The requested lien accommodation or subordination does not require the preparation of an environmental assessment or an Environmental Impact Statement. Preparation of these documents often will require additional time beyond the timeframes cited in this section; and

(iii) The timeframes set forth in this section, except for paragraph (b)(4) of this section, which deals only with approval of a new mortgage or mortgage amendment, include RUS review and/or approval of a loan contract, if required as part of the application, and required supporting documents, such as a CWP.

(b) *Advance approval—100 percent private financing of distribution, subtransmission, and headquarters facilities.* (1) Applications that qualify under § 1717.854 for advance approval of a lien accommodation or subordination for 100 percent private financing of distribution, subtransmission, and headquarters facilities are submitted to the general field representative (GFR). The GFR will work with the borrower to ensure that all components of the application are assembled. Once the application is satisfactory to the GFR, it will be sent promptly to the Washington office for further review and action. If a new mortgage or mortgage amendment is required, a draft of these documents must be included in the application, unless the borrower has been notified that RUS wishes to prepare the documents itself.

(2) If no additional or amended information is needed for RUS to complete its review of the application once it is received in the Washington Office, RUS will, within 45 calendar days of receiving the application in the Washington Office, either:

(i) Approve the lien accommodation or subordination if the borrower has demonstrated satisfactorily to RUS that all requirements of this subpart applicable to advance approval have been met, and send written notice to the borrower. RUS's approval, in this

case and all other cases, will be conditioned upon execution and delivery by the borrower of a satisfactory security instrument, if required, and such additional information, documents, and opinions of counsel as RUS may require;

(ii) If all requirements have not been met, so notify the borrower in writing. The application will be returned to the borrower unless the borrower requests that it be reconsidered under the requirements and procedures for normal review set forth in paragraph (c) of this section and in § 1717.856; or

(iii) Send written notice to the borrower explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(3) If additional or amended information is needed after the application is received in the Washington Office, RUS will so notify the borrower in writing within 15 calendar days of receiving the application in the Washington Office. If RUS subsequently becomes aware of other deficiencies in the application, additional written notice will be sent to the borrower. Within 30 calendar days of receiving all of the information required by RUS to complete its review, RUS will act on the application as described in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

(4) If a new mortgage or mortgage amendment is required, within 30 days of receiving such documents satisfactory to RUS, including required execution counterparts, RUS will execute the documents and send them to the borrower, along with instructions pertaining to recording of the mortgage, an opinion of borrower's counsel, and other matters. RUS will promptly notify the borrower upon receiving satisfactory evidence that the borrower has complied with said instructions.

(c) *Normal review—100 percent private financing of distribution, transmission, and/or generation facilities—(1) Distribution borrowers.* (i) Applications from distribution borrowers for a lien accommodation or subordination for 100 percent private financing of distribution, transmission, and/or generation facilities (including other eligible electric utility purposes) that do not meet the criteria for advance approval, are

also submitted to the GFR. Procedures at this stage are the same as in paragraph (b)(1) of this section.

(ii) If no additional or amended information is needed for RUS to complete its review of the application once it is received in the Washington office, RUS will, within 90 calendar days of receiving the application in the Washington office, send written notice to the borrower either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(iii) If additional or amended information is needed after the application is received in the Washington Office, RUS will so notify the borrower in writing within 15 calendar days of receiving the application in the Washington Office. If RUS subsequently becomes aware of other deficiencies in the application, additional written notice will be sent to the borrower. Within 90 calendar days of receiving all of the information required by RUS to complete its review, RUS will act on the application as described in paragraph (c)(1)(ii) of this section.

(iv) If a new mortgage or mortgage amendment is required, the procedures and timeframes of paragraph (b)(4) of this section will apply.

(2) *Power supply borrowers.* (i) Applications from power supply borrowers for a lien accommodation or subordination for 100 percent private financing of distribution, transmission, and/or generation facilities, and other eligible electric utility purposes, are submitted to the RUS Power Supply Division, or its successor, in Washington, DC.

(ii) Within 30 calendar days of receiving the borrower's application containing the information and documents required by § 1717.856, RUS will send written notice to the borrower of any deficiencies in its application as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if RUS subsequently becomes aware of other deficiencies in the borrower's application.

(iii) Within 90 calendar days of receiving all of the information required by RUS to complete its review, RUS

§ 1717.859

7 CFR Ch. XVII (1-1-12 Edition)

will act on the application as described in paragraph (c)(1)(ii) of this section.

(iv) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(d) *Refinancing of existing debt.* All requests for a lien accommodation or subordination for refinancing are sent directly to the Washington office.

(1) *Advance approval.* (i) Within 15 calendar days of receiving the borrower's application containing the information and documents required by § 1717.857(c), RUS will send written notice to the borrower of any deficiencies in its application as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if RUS subsequently becomes aware of other deficiencies in the borrower's application.

(ii) Within 15 calendar days of receiving all of the required information and documents, in form and substance satisfactory to RUS, RUS will either:

(A) Approve the lien accommodation or subordination if the borrower has demonstrated satisfactorily to RUS that all requirements of § 1717.857(a) and (c) have been met, and send written notice to the borrower;

(B) If all requirements have not been met, so notify the borrower in writing. The application will be returned to the borrower unless the borrower requests that it be reconsidered under the requirements and procedures for normal review set forth in paragraph (d)(2) of this section and in § 1717.857; or

(C) Send written notice to the borrower explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(iii) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(2) *Normal review.* (i) Within 20 calendar days of receiving the borrower's application containing the information and documents required by § 1717.857(d), RUS will send written notice to the borrower of any deficiencies in its ap-

plication as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if RUS subsequently becomes aware of other deficiencies in the borrower's application.

(ii) Within 30 calendar days of receiving all of the required information and documents, in form and substance satisfactory to RUS, RUS will notify the borrower in writing either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected. If the proposed refinancing involves complicated transactions such as interest rate swaps or forward delivery contracts, additional time may be required for RUS review and final action.

(iii) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

(e) *Rural development investments.* (1) Applications for a lien subordination for rural development investments are submitted by distribution borrowers to the GFR and by power supply borrowers to the RUS Power Supply Division, or its successor, in Washington, DC.

(2) The GFR will work with the borrower to ensure that all components of the application are assembled. Once the application is satisfactory to the GFR, it will be sent promptly to the Washington Office for further review and action. After the application is received in the Washington Office, if additional or amended information is needed for RUS to complete its review, RUS will so notify the borrower in writing within 15 calendar days of receiving the application.

(3) Applications from power supply borrowers containing the information and documents required by § 1717.858(c) will be reviewed in the Washington office and the borrower given written notice within 30 calendar days of receiving the application of any deficiencies as to completeness and acceptable form and substance. Additional written notices may be sent to the borrower if RUS subsequently becomes aware of

other deficiencies in the borrower's application.

(4) Within 60 calendar days of receiving in the Washington office all of the required information and documents, in form and substance satisfactory to RUS, RUS will give written notice to the borrower either approving the request, disapproving the request, or explaining why a decision cannot be made at that time and giving the estimated date when a decision is expected.

(5) If a new mortgage or mortgage amendment is required, these documents will be reviewed and executed pursuant to the procedures and timeframes of paragraph (b)(4) of this section.

§ 1717.860 Lien accommodations and subordinations under section 306E of the RE Act.

(a) *General.* Under section 306E of the RE Act, when requested by a private lender providing financing for capital investments by a borrower whose net worth exceeds 110 percent of the outstanding principal balance of all loans made or guaranteed to the borrower by RUS, the Administrator will, without delay, offer to share the government's lien on the borrower's system or subordinate the government's lien on the property financed by the private lender, provided that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate. To qualify for a lien accommodation or subordination under this section, the investment must be an original capital investment, i.e., not a refinancing or refunding. (See § 1717.851 for the definition of capital investment.)

(b) *Determination of net worth to RUS debt ratio.* (1) In the case of applications for a lien accommodation, a borrower's net worth will be based on the borrower's most recent financial and statistical report, the data in which shall not be more than 60 days old at the time the application is received by RUS, and the outstanding debt owed to or guaranteed by RUS will be based on latest RUS records available. The financial and statistical reports (Form 7 for distribution borrowers and Form 12a for power supply borrowers) are

subject to RUS review and revision, and they must comply with RUS's system of accounts and accounting principles set forth in 7 CFR part 1767. Since sinking fund depreciation is not approved under part 1767, net worth for borrowers using sinking fund depreciation will be calculated as if the borrower had been using straight line depreciation.

(2) Net worth shall be calculated by taking total margins and equities (Line 33 of Part C of RUS Form 7 for distribution borrowers, or Line 34 of Section B of RUS Form 12a for power supply borrowers) and subtracting assets properly recordable in account 182.2, Unrecovered Plant and Regulatory Study Costs, and account 182.3, Other Regulatory Assets, as defined in 7 CFR part 1767.

(c) *Application requirements and process.* (1) If a borrower's net worth to RUS debt ratio exceeds 110 percent, as determined by RUS, and the borrower is in compliance with all requirements of its mortgage, loan agreement with RUS, and any other agreement with RUS that have not been exempted in writing by RUS, if requested RUS will expeditiously approve a lien accommodation or subordination for 100 percent private financing of capital investments, provided that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate. RUS's approval will be conditioned upon execution and delivery by the borrower of a security instrument satisfactory to RUS, if required, and such additional information, documents, and opinions of counsel as RUS may require.

(2) The application must include the following:

(i) A resolution of the borrower's board of directors requesting the lien accommodation and including the amount and maturity of the proposed loan, a general description of the facilities or other purposes to be financed, the name and address of the lender, and an attached term sheet summarizing the terms and conditions of the proposed loan;

(ii) A certification by an authorized official of the borrower that the borrower is in compliance with all requirements of its mortgage, loan agreement with RUS, and any other agreement with RUS that have not been exempted in writing by RUS;

(iii) The borrower's financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by RUS;

(iv) Draft copy of any new mortgage or mortgage amendment (supplement) required by RUS or the lender, unless RUS has notified the borrower that it wishes to prepare these documents itself;

(v) A copy of the loan agreement, loan note, bond or other financing instrument, unless RUS has notified the borrower that these documents need not be submitted. These documents will not be subject to RUS approval, but may be reviewed to determine whether they contain any provisions that would result in the security, including assurance of repayment, for loans made or guaranteed by RUS no longer being reasonably adequate;

(vi) The following certifications and reports required by law:

(A) The certification by the project architect for any buildings to be constructed, as required by 7 CFR 1717.850(i);

(B) A certification by an authorized official of the borrower that flood hazard insurance will be obtained for the full value of any buildings, or other facilities susceptible to damage if flooded, that will be located in a flood hazard area;

(C) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 7 CFR part 3017;

(D) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and the reasons therefor; and a certification, if not previously provided, that the borrower has been informed of the Government's collection options; and

(E) The written acknowledgement from a registered engineer or architect regarding compliance with seismic pro-

visions of applicable model codes for any buildings to be constructed, as required by 7 CFR 1792.104. All other elements of an application listed in § 1717.855, § 1717.856, and § 1717.858(c) not listed in this paragraph (c) are exempted.

(3) Applications from distribution borrowers are submitted to the general field representative (GFR), while applications from power supply borrowers are submitted to the RUS Power Supply Division, or its successor, in Washington, DC. When an application is satisfactory to the GFR, it will be sent promptly to the Washington office. If Washington office staff determine that an application is incomplete, the borrower will be promptly notified in writing about the deficiencies. When the application is complete, and if the security, including assurance of repayment, of loans made or guaranteed by RUS will remain reasonably adequate after granting the lien accommodation or subordination, the borrower and the lender will be promptly notified in writing that the lien accommodation or subordination has been approved, subject to the conditions cited in paragraph (c)(1) of this section.

(d) *Rural development and other non-electric utility investments.* Although RUS recommends the use of separate subsidiaries as set forth in § 1717.858, if requested by a borrower that meets the 110 percent equity test and all other applicable requirements of this section, RUS will provide a lien subordination on the specific assets financed in the case of loans made directly to the borrower for rural development and other non-electric utility purposes, provided that the outstanding balance of all such loans lien subordinated under this paragraph (d), after taking into consideration the effect of the new loan, does not exceed 15 percent of the borrower's net worth and the security, including assurance of repayment, of loans made or guaranteed by RUS will remain reasonably adequate after granting the lien subordination. Investments lien subordinated under this paragraph shall be included among those investments subject to the 15 percent of total utility plant limitation set forth in 7 CFR 1717.654(b)(1), and granting of the lien subordination will not constitute

approval of the investment under 7 CFR part 1717, subpart N.

(e) *Requirements and controls not exempted.* All requirements and limitations imposed with respect to lien accommodations and subordinations by this subpart R that are not specifically exempted by this section are not exempted and shall continue to apply according to their terms.

[59 FR 3986, Jan. 28, 1994, as amended at 60 FR 3735, Jan. 19, 1995; 60 FR 67410, Dec. 29, 1995]

§§ 1717.861–1717.899 [Reserved]

Subpart S—Lien Accommodations for Supplemental Financing Required by 7 CFR 1710.110

SOURCE: 58 FR 53851, Oct. 19, 1993, unless otherwise noted.

§ 1717.900 Qualification requirements.

Applications for a lien accommodation for supplemental financing required by 7 CFR 1710.110 must meet the same requirements as an RUS insured loan. The justification and documentation materials submitted as part of the borrower's application for an insured loan also serve as the justification and documentation of the request for a lien accommodation for the required supplemental loan. Unless early approval under § 1717.901 is requested by a borrower, these applications will be processed during the same time as RUS's review of the borrower's application for the concurrent insured loan.

§ 1717.901 Early approval.

(a) *Conditions.* If requested by a borrower in writing, RUS will review the application for a lien accommodation for required supplemental financing early in the process, before funding is available for the concurrent RUS insured loan, and approve the lien accommodation if the following conditions are met:

(1) The required supplemental loan meets the requirements for an insured loan, as set forth in 7 CFR part 1710, subparts A through G, and other RUS regulations pertaining to required supplemental loans;

(2) The borrower has demonstrated the ability to obtain the funds that would be needed to complete other portions of the project, if the portion to be constructed with private loan funds could not be used productively without completion of such other portions, in the event concurrent RUS insured loan funds are not forthcoming. Such evidence may include financial records demonstrating the availability of general funds, and/or a written commitment from the private lender to provide a loan for the remaining amount of financing required, with such commitment being conditioned upon the availability of a lien accommodation from RUS; and

(3) An authorized official of the borrower has requested early approval of the lien accommodation and explained the reasons therefor, and has certified that the funds are needed and will be drawn down before funds from the concurrent insured loan are expected to be available, assuming that the insured loan is approved.

(b) *Timeframe for RUS action.* (1) RUS will either approve or disapprove the lien accommodation within 90 days of receiving the borrower's request for early approval and the complete application for the concurrent RUS loan and required supplemental financing, in form and substance satisfactory to RUS, or notify the borrower in writing of the estimated date when a decision is expected. If an environmental assessment or an Environmental Impact Statement is required, additional time beyond the 90 days may be required to prepare these documents. RUS's approval of the lien accommodation will be conditioned upon execution and delivery by the borrower of a satisfactory security instrument, if required, and such additional information, documents, and opinions of counsel as RUS may require.

(2) If a mortgage or mortgage amendment is required, RUS will consult with the other mortgagees as to who will prepare the documents. Within 30 days of obtaining the documents satisfactory to RUS, including required execution counterparts, RUS will execute the documents and send them to the borrower, along with instructions pertaining to recording of the mortgage,

§ 1717.902

7 CFR Ch. XVII (1-1-12 Edition)

an opinion of borrower's counsel, and other matters. RUS will promptly notify the borrower upon receiving satisfactory evidence that the borrower has complied with said instructions.

(c) *Approval of concurrent insured loan.* Early approval of a lien accommodation for a required supplemental loan does not ensure that the concurrent RUS insured loan will be approved. The request for the concurrent insured loan will be reviewed when funds are available to make the loan. The borrower may be requested to update certain supporting information in the loan application if substantial time has elapsed since the lien accommodation or subordination was approved.

§ 1717.902 Other RUS requirements.

Supplemental loans required by 7 CFR 1710.110 are subject to the same post-loan requirements as insured RUS loans regarding accepted materials, construction standards, contracting and procurement procedures, standard forms of contracts, RUS approval of the advance of loan funds, and other matters.

§ 1717.903 Liability.

It is the intent of this subpart that any failure on the part of RUS to comply with any provisions of this subpart, including without limitation, those provisions setting forth specified timeframes for action by RUS on applications for lien accommodations or lien subordinations, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of a borrower, private lender or any other party.

§ 1717.904 Exemptions pursuant to section 306E of the RE Act.

(a) *General policy.* If a borrower's net worth to RUS debt ratio exceeds 110 percent, as determined by RUS, and the borrower is in compliance with all requirements of its mortgage, loan agreement with RUS, and any other agreement with RUS that have not been exempted in writing by RUS, RUS will expeditiously approve a lien accommodation for a concurrent supple-

mental loan if requested in writing by the borrower, provided that the security, including assurance of repayment, of loans made or guaranteed by RUS will remain reasonably adequate. RUS's approval will be conditioned upon execution and delivery by the borrower of a security instrument satisfactory to RUS, if required, and such additional information, documents, and opinions of counsel as RUS may require.

(b) *Determination of net worth to RUS debt ratio.* A borrower's ratio of net worth to RUS debt will be determined as set forth in § 1717.860(b).

(c) *Procedures.* If a borrower meets the requirements of this section, upon receipt of a complete application RUS will promptly notify the borrower and lender in writing that the lien accommodation has been approved subject to the conditions set forth in paragraph (a) of this section.

[59 FR 3987, Jan. 28, 1994, as amended at 67 FR 70153, Nov. 21, 2002]

§§ 1717.905-1717.949 [Reserved]

Subpart T [Reserved]

§§ 1717.950-1717.999 [Reserved]

Subpart U [Reserved]

§§ 1717.1000-1717.1049 [Reserved]

Subpart V [Reserved]

§§ 1717.1050-1717.1099 [Reserved]

Subpart W [Reserved]

§§ 1717.1100-1717.1149 [Reserved]

Subpart X [Reserved]

§§ 1717.1150-1717.1199 [Reserved]

Subpart Y—Settlement of Debt

SOURCE: 62 FR 50491, Sept. 26, 1997, unless otherwise noted.

§ 1717.1200 Purpose and scope.

(a) Section 331(b) of the Consolidated Farm and Rural Development Act (Con Act), as amended on April 4, 1996 by Public Law 104-127, 110 Stat. 888 (7