

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 U.S.C. 1981), grants authority to the Secretary of Agriculture to compromise, adjust, reduce, or charge-off debts or claims arising from loans made or guaranteed under the Rural Electrification Act of 1936, as amended (RE Act). Section 331(b) of the Con Act also authorizes the Secretary of Agriculture to adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Rural Utilities Service (RUS). The Secretary, in 7 CFR 2.47, has delegated authority under section 331(b) of the Con Act to the Administrator of the RUS, with respect to loans made or guaranteed by RUS.

(b) This subpart sets forth the policy and standards of the Administrator of RUS with respect to the settlement of debts and claims arising from loans made or guaranteed to rural electric borrowers under the RE Act. Nothing in this subpart limits the Administrator's authority under section 12 of the RE Act.

§1717.1201 Definitions.

Terms used in this subpart that are not defined in this section have the meanings set forth in 7 CFR part 1710. In addition, for the purposes of this subpart:

Application for debt settlement means a written application containing all of the information required by §1717.1204(b)(2), in form and substance satisfactory to RUS.

Attorney General means the Attorney General of the United States of America.

Claim means any claim of the government arising from loans made or guaranteed under the RE Act to a rural electric borrower.

Con Act means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

Debt means outstanding debt of a rural electric borrower (including, but not necessarily limited to, principal, accrued interest, penalties, and the government's costs of debt collection) arising from loans made or guaranteed under the RE Act.

Enforced collection procedures means any procedures available to the Administrator for the collection of debt that are authorized by law, in equity, or under the borrower's loan documents or other agreements with RUS.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note entered into between the borrower and RUS.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901-950b).

Restructure means to settle a debt or claim.

Settle means to reamortize, adjust, compromise, reduce, or charge-off a debt or claim.

§1717.1202 General policy.

(a) It is the policy of the Administrator that, wherever possible, all debt owed to the government, including but not limited to principal and interest, shall be collected in full in accordance with the terms of the borrower's loan documents.

(b) Nothing in this subpart by itself modifies, reduces, waives, or eliminates any obligation of a borrower under its loan documents. Any such modifications regarding the debt owed by a borrower may be granted under the authority of the Administrator only by means of the explicit written approval of the Administrator in each case.

(c) The Administrator's authority to settle debts and claims will apply to cases where a borrower is unable to pay its debts and claims in accordance with their terms, as further defined in §1717.1204(b)(1), and where settlement will maximize, on a present value basis, the recovery of debts and claims owed to the government.

(d) In structuring settlements and determining the capability of the borrower to repay debt and the amount of debt recovery that is possible, the Administrator will consider, among other factors, the RE Act, the National Energy Policy Act of 1992 (Pub. L. 102-486, 106 Stat. 2776), the policies and regulations of the Federal Energy Regulatory Commission, state legislative and regulatory actions, and other market and nonmarket forces as to their effects on competition in the electric utility industry and on rural electric systems in particular. Other factors the Administrator will consider are set forth in more detail in §1717.1204.

§1717.1203 Relationship between RUS and Department of Justice.

(a) The Attorney General will be notified by the Administrator whenever the Administrator intends to use his or her authority under section 331(b) of the Con Act to settle a debt or claim.

(b) If an outstanding claim has been referred in writing to the Attorney General, the Administrator will not use his or her own authority to settle the claim without the approval of the Attorney General.

(c) If an application for additional debt relief is received from a borrower whose debt has been settled in the past under the authority of the Attorney General, the Administrator will promptly notify the Attorney General before proceeding to consider the application.

§1717.1204 Policies and conditions applicable to settlements.

(a) General. Settlement of debts and claims shall be subject to the policies, requirements, and conditions set forth in this section and in §1717.1202.

(b) Need for debt settlement. (1) The Administrator will not settle any debt or claim unless the Administrator has determined that the borrower is unable to meet its financial obligations under its loan documents according to the terms of those documents, or that the borrower will not be able to meet said obligations sometime within the period of 24 months following the month the borrower submits its application for debt settlement to RUS, and, in either case, such default is likely to continue indefinitely. The determination of a borrower's ability to meet its financial obligations will be based on analyses and documentation by RUS of the borrower's historical, current, and projected costs, revenues, cash flows, assets, opportunities to reduce costs and/or increase revenues, and other factors that may be relevant on a case by case basis.

(2) In its application to RUS for debt settlement, the borrower must provide, in form and substance satisfactory to RUS, an in-depth analysis supporting the borrower's contention that it is unable or will not be able to meet its financial obligations as described in paragraph (b)(1) of this section. The analysis must include:

- (i) An explanation and analysis of the causes of the borrower's inability to meet its financial obligations;
- (ii) A thorough review and analysis of the opportunities available or potentially available to the borrower to reduce administrative overhead and other costs, improve efficiency and effectiveness, and expand markets and revenues, including but not limited to opportunities for sharing services, merging, and/or consolidating, raising rates when appropriate, and renegotiating supplier and service contracts. In the case of a power supply borrower, the study shall include such opportunities among the members of the borrower, unless the Administrator waives this requirement;
- (iii) Documentation of the actions taken, in progress, or planned by the borrower (and its member systems, if applicable) to take advantage of the opportunities cited in paragraph (b)(2)(ii) of this section; and
- (iv) Other analyses and documentation prescribed by RUS on a case by case basis.

(3) RUS may require that an independent consultant provide an analysis of the efficiency and effectiveness of the borrower's organization and operations, and those of its member systems in the case of a power supply borrower. The following conditions will apply:

- (i) RUS will select the independent consultant taking into account, among other matters, the consultant's experience and expertise in matters relating to electric utility operations, finance, and restructuring;

(ii) The contract with the consultant shall be to provide services to RUS on such terms and conditions as RUS deems appropriate. The consultant's scope of work may include, but shall not be limited to, an analysis of the following:

(A) How to maximize the value of the government's collateral, such as through mergers, consolidations, or sales of all or part of the collateral;

(B) The viability of the borrower's system, taking into account such matters as system size, service territory and markets, asset base, physical condition of the plant, operating efficiency, competitive pressures, industry trends, and opportunities to expand markets and improve efficiency and effectiveness;

(C) The feasibility and the potential benefits and risks to the borrower and the government of corporate restructuring, including aggregation and disaggregation;

(D) In the case of a power supply borrower, the retail rate mark-up by member systems and the potential benefits to be achieved by member restructuring through mergers, consolidations, shared services, and other alliances;

(E) The quality of the borrower's management, management advisors, consultants, and staff;

(F) Opportunities for reducing overhead and other costs, for expanding markets and revenues, and for improving the borrower's existing and prospective contractual arrangements for the purchase and sale of power, procurement of supplies and services, and the operation of plant and facilities;

(G) Opportunities to achieve efficiency gains and increased revenues based on comparisons with benchmark electric utilities; and

(H) The accuracy and completeness of the borrower's analysis provided under paragraph (b)(2) of this section;

(iii) RUS and, as appropriate, other creditors, will determine the extent to which the borrower and third parties (including the members of a power supply borrower) will be required to participate in funding the costs of the independent consultant;

(iv) The borrower will be required to make available to the consultant all corporate documents, files, and records, and to provide the consultant with access to key employees. The borrower will also normally be required to provide the consultant with office space convenient to the borrower's operations and records; and

(v) All analyses, studies, opinions, memoranda, and other documents and information produced by the independent consultant shall be provided to RUS on a confidential basis for consideration in evaluating the borrower's application for debt settlement. Such documents and information may be made available to the borrower and other appropriate parties if authorized in writing by RUS.

(4) The borrower may be required to employ a temporary or permanent manager acceptable to the Administrator, to manage the borrower's operations to ensure that all actions are taken to avoid or minimize the need for debt settlement. The employment could be on a temporary basis to manage the system during the time the debt settlement is being considered, and possibly for some time after any debt settlement, or it could be on a permanent basis.

(5) The borrower must submit, at a time determined by RUS, a resolution of its board of directors requesting debt settlement and stating that the borrower is either currently unable to meet its financial obligations to the government or will not be able to meet said obligations sometime within the next 24 months, and that, in either case, the default is likely to continue indefinitely.

(c) Debt settlement measures. (1) If the Administrator determines that debt settlement is appropriate, the debt settlement measures the Administrator will consider under this subpart with respect to direct, insured, or guaranteed loans include, but are not limited to, the following:

(i) Reamortization of debt;

(ii) Extension of debt maturity, provided that the maturity of the borrower's outstanding debt after settlement shall not extend more than 10 years beyond the latest maturity date prior to settlement;

(iii) Reduction of the interest rate charged on the borrower's debt, provided that the interest rate on any portion of the restructured debt shall not be reduced to less than 5 percent, unless the Administrator determines that reducing the rate below 5 percent would maximize debt recovery by the government;

(iv) Forgiveness of interest accrued, penalties, and costs incurred by the government to collect the debt; and

(v) With the concurrence of the Under Secretary for Rural Development, forgiveness of loan principal.

(2) In the event that RUS has, under section 306 of the RE Act, guaranteed loans made by the Federal Financing Bank or other third parties, the Administrator may restructure the borrower's obligations by: acquiring and restructuring the guaranteed loan; restructuring the loan guarantee obligation; restructuring the borrower's reimbursement obligations; or by such means as the Administrator deems appropriate, subject to such consents and approvals, if any, that may be required by the third party lender.

(d) Borrower's obligations to other creditors. The Administrator will not grant relief on debt owed to the government unless similar relief, on a pro rata basis, is granted with respect to other secured obligations of the borrower, or the other secured creditors provide other benefits or value to the debt restructuring. Unsecured creditors will also be expected to contribute to the restructuring. If it is not possible to obtain the expected contributions from other creditors, the Administrator may proceed to settle a borrower's debt if that will maximize recovery by the government and will not result in material benefits accruing to other creditors at the expense of the government.

(e) Competitive bids for system assets. If requested by RUS, the borrower or the independent consultant provided for in paragraph (b)(3) of this section shall solicit competitive bids from potential buyers of the borrower's system or parts thereof. The bidding process must be conducted in consultation with RUS and use standards and procedures acceptable to RUS. The Administrator may use the competitive bids received as a basis for requiring the sale of all or part of the borrower's system as a condition of settlement of the borrower's debt. The Administrator may also consider the bids in evaluating alternative settlement measures.

(f) Valuation of system. (1) The Administrator will consider the value of the borrower's system, including, in the case of a power supply borrower, the wholesale power contracts between the borrower and its member systems. The valuation of the wholesale power contracts shall take into account, among other matters, the rights of the government and/or third parties, to assume the rights and obligations of the borrower under such contracts, to charge reasonable rates for service provided under the contracts, and to otherwise enforce the contracts in accordance with their terms. In no case will the Administrator settle a debt or claim for less than the value (after considering the government's collection costs) of the borrower's system and other collateral securing the debt or claim.

(2) RUS may use such methods, analyses, and assessments as the Administrator deems appropriate to determine the value of the borrower's system.

(g) Rates. The Administrator will consider the rates charged for electric service by the borrower and, in the case of a power supply borrower, by its members, taking into account, among other factors, the practices of the Federal Energy Regulatory Commission (FERC), as adapted to the cooperative structure of borrowers, and, where applicable, FERC treatment of any investments by co-owners in projects jointly owned by the borrower.

(h) Collection action. The Administrator will consider whether a settlement is favorable to the government in comparison with the amount that can be recovered by enforced collection procedures.

(i) Regulatory approvals. Before the Administrator will approve a settlement, the borrower must provide satisfactory evidence that it has obtained all approvals required of regulatory bodies that the Administrator determines are needed to implement rates or other provisions of the settlement, or that are needed in any other way for the borrower to fulfill its obligations under the settlement.

(j) Conditions regarding management and operations. As a condition of debt settlement, the borrower, and in the case of a power supply borrower, its members, will be required to implement those changes in structure, management, operations, and performance deemed necessary by the Administrator. Those changes may include, but are not limited to, the following:

(1) The borrower may be required to undertake a corporate restructuring and/or sell a portion of its plant, facilities, or other assets

(2) The borrower may be required to replace senior management and/or hire outside experts acceptable to the Administrator. Such changes may include a commitment by the borrower's board of directors to restructure and/or obtain new membership to improve board oversight and leadership;

(3) The borrower may be required to agree to:

(i) Controls by RUS on the general funds of the borrower, as well as on any investments, loans or guarantees by the borrower, notwithstanding any limitations on RUS' control rights in the borrower's loan documents or RUS regulations; and

(ii) Requirements deemed necessary by RUS to perfect and protect its lien on cash deposits, securities, equipment, vehicles, and other items of real or non-real property; and

(4) In the case of a power supply borrower, the borrower may be required to obtain credit support from its member systems, as well as pledges and action plans by the members to change their operations, management, and organizational structure (e.g., shared services, mergers, or consolidations) in order to reduce operating costs, improve efficiency, and/or expand markets and revenues.

(k) Conveyance of assets. As a condition of a settlement, a borrower may be required to convey some or all its assets to the government.

(l) Additional conditions. The borrower will be required to warrant and agree that no bonuses or similar extraordinary compensation has been or will be provided, for reasons related to the settlement of government debt, to any officer or employee of the borrower or to other persons or entities identified by RUS. The Administrator may impose such other terms and conditions of debt settlement as the Administrator determines to be in the government's interests.

(m) Certification of accuracy. Before the Administrator will approve a debt settlement, the manager or other appropriate official of the borrower must certify that all information provided to the government by the borrower or by any agent of the borrower, in connection with the debt settlement, is true, correct, and complete in all material respects.

§1717.1205 Waiver of existing conditions on borrowers.

Pursuant to section 331(b) of the Con Act, the Administrator, at his or her sole discretion, may waive or otherwise reduce conditions and requirements imposed on a borrower by its loan documents if the Administrator determines that such action will contribute to enhancement of the government's recovery of debt. Such waivers or reductions in conditions and requirements under this section shall not

include the exercise of any of the debt settlement measures set forth in §1717.1204(c), which are subject to all of the requirements of said §1717.1204.

§1717.1206 Loans subsequent to settlement.

In considering any future loan requests from a borrower whose debt has been settled in whole or in part (including the surviving entity of merged or consolidated borrowers, where at least one of said borrowers had its debts settled), it will be presumed that credit support for the full amount of the requested loan will be required. Such support may be in a number of forms, provided that they are acceptable to the Administrator on a case by case basis. They may include, but need not be limited to, equity infusions and guarantees of debt repayment, either from the applicant's members (in the case of a power supply borrower), or from a third party.

§1717.1207 RUS obligations under loan guarantees.

Nothing in this subpart affects the obligations of RUS under loan guarantee commitments it has made to the Federal Financing Bank or other lenders.

§1717.1208 Government's rights under loan documents.

Nothing in this subpart limits, modifies, or otherwise affects the rights of the government under loan documents executed with borrowers, or under law or equity.