

**§ 1738.154 Loan security.**

(a) The broadband loan must be secured by the assets purchased with the loan funds, as well as all other assets of the applicant and any other signer of the loan documents except as provided in § 1738.155.

(b) The Agency must be given an exclusive first lien, in form and substance satisfactory to the Agency, on all of the applicant's property and revenues and such additional security as the Agency may require. The Agency may share its first lien position with another lender on a *pari passu*, prorated basis if security arrangements are acceptable to the Agency.

(c) Unless otherwise designated by the Agency, all property purchased with loan funds must be owned by the applicant.

(d) In the case of loans that include financing of facilities that do not constitute self-contained operating systems, the applicant shall furnish assurance, satisfactory to the Agency, that continuous and efficient service at the broadband lending speed will be rendered.

(e) The Agency will require financial, investment, operational, reporting, and managerial controls in the loan documents.

**§ 1738.155 Special terms and conditions.**

(a) The Agency may, when it is in the best interest of the Agency and its mission, the affected community, and the applicant, aid in achieving financial feasibility in an underserved area by taking the following steps:

(1) Extend the loan term up to 35 years, and

(2) Modify its security requirements.

(b) The Agency may reduce the security requirements discussed in § 1738.154(a) to ensure that the security is commensurate with the risk involved.

**§ 1738.156 Other Federal requirements.**

(a) To receive a broadband loan, the applicant must certify or agree in writing to comply with a variety of Federal regulations including, but not limited to:

(1) The nondiscrimination and equal employment opportunity requirements

of Title VI of the Civil Rights Act of 1964, as amended (7 CFR part 15);

(2) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794 *et seq.*; 7 CFR part 15b);

(3) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*; 45 CFR part 90);

(4) Executive Order 11375, amending Executive Order (E.O.) 11246, Relating to Equal Employment Opportunity (3 CFR, 1966-1970). See 7 CFR parts 15 and 15b and 45 CFR part 90, RUS Bulletin 1790-1 ("Nondiscrimination Among Beneficiaries of RUS Programs"), and RUS Bulletin 20-15:320-15 ("Equal Employment Opportunity in Construction Financed with RUS Loans");

(5) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*);

(6) The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6);

(7) The requirements of the National Environmental Policy Act of 1969 (NEPA), as amended;

(8) The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related Federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR part 1794;

(9) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and with implementing Federal regulations in 49 CFR part 24 and 7 CFR part 21;

(10) The regulations implementing E.O. 12549, Debarment and Suspension, 7 CFR 3017.510, Participants' Responsibilities;

(11) The requirements regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements in 31 U.S.C. 1352;

(12) Certification regarding Flood Hazard Area Precautions;

(13) Certification regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions; and

(14) Certification that the borrower is not delinquent on any Federal debt and has been informed of the collection options the Federal Government may use to collect delinquent debt.

(b) Applicants must agree in writing to comply with all Federal, State and

**§ 1744.205 Determinations and application of limitations described in § 1744.202.**

(a) RUS will not include qualified investments, including qualified investments in affiliated companies, in calculating the amount of dividend or capital distributions a borrower may make under its RUS mortgage.

(b) A borrower's investment in its net plant shall not be considered a rural development investment for purposes of calculating the maximum investment ratio or the minimum total assets ratio.

(c) The borrower's net worth and total assets shall be determined using the balances of the respective accounts of the borrower as of December 31 of the last complete calendar year preceding the date on which the borrower's maximum investment ratio and minimum total assets ratio are calculated.

(d) All determinations required to be made under 7 U.S.C. 926 or this subpart will be made in accordance with the Uniform System of Accounts (USoA) (47 CFR part 32). References to specific USoA accounts shall include revised or replacement accounts.

**§ 1744.206 Effect of subsequent failure to maintain ratios.**

If an expenditure constitutes a qualified investment under the terms of this subpart, it does not cease to be a qualified investment merely because subsequently the borrower fails to maintain the maximum investment ratio or the minimum total assets ratio.

**§ 1744.207 Investment not to jeopardize loan security.**

A borrower shall not make a qualified investment or a rural development investment which jeopardizes:

(a) The security of loans made or guaranteed by RUS; or

(b) The borrower's ability to repay such loans under the terms and conditions as agreed.

**§ 1744.208 Rural development investments before November 28, 1990.**

All investments made by a borrower shall be subject to the provisions of this subpart, regardless of when the investment was made or whether it has

been approved by RUS. Any restrictions required by RUS as a condition to approving a rural development investment before November 28, 1990, shall continue to be in effect to the extent that such investment exceeds the maximum investment ratio or causes the borrower to fall below the minimum total assets ratio.

**§ 1744.209 Records.**

(a) The records of borrowers, including records relating to qualified investments, shall be subject to the auditing procedures prescribed in part 1773 of this chapter. RUS reserves the right to review the records of the borrower relating to qualified investments to determine if the borrower is in compliance with this subpart.

(b) Borrowers shall report to RUS on the end-of-year operating report, RUS Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

(Approved by the Office of Management and Budget under control number 0572-0098)

**§ 1744.210 Effect of this subpart on RUS loan contract and mortgage.**

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with RUS, its notes issued to RUS, and the RUS mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a creditor of the borrower, other than RUS, whose loan to the borrower is secured by the RUS mortgage.

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costs between rural and nonrural areas. This allocation will be used to determine whether the use of loan funds in nonrural areas is necessary and incidental to furnishing and improving telephone service in rural areas. Cost estimates shall be provided by the borrower in the LD. See subpart D of this part. RUS will use the following method to review the cost breakdowns and to determine their appropriateness:

(1) The costs of facilities associated directly with particular subscribers shall be allocated to those subscribers.

(2) The costs of facilities that serve both rural and nonrural subscribers shall be allocated based on the relative number of rural and nonrural subscribers receiving service from those facilities.

(3) When a borrower's exchange that includes a nonrural community will have an extended area of service (EAS) with other exchanges of the borrower, the breakdown of subscribers and funds in the allocation for rural and nonrural areas included in the proposed loan shall show the number of rural and nonrural subscribers and the costs to serve each group, as determined per paragraphs (a)(1) and (a)(2) of this section, in the subject exchange and in all exchanges connected by EAS.

(b) If RUS determines that costs cannot be adequately allocated using the procedures in paragraphs (a)(1) through (a)(3) of this section, RUS shall, on a case by case basis, allocate costs between the rural and nonrural subscribers using whatever methodology it deems reasonable. All allocations in paragraphs (a) and (b) of this section shall be documented.

§§ 1737.62-1737.69 [Reserved]

#### Subpart H—Feasibility Determination Procedures

##### § 1737.70 Description of feasibility study.

(a) In connection with each loan RUS shall prepare a feasibility study that includes sections on consolidated loan estimates, operating statistics, projected telecommunications, plant, projected retirement computations, and projected revenue and expense estimates (including detailed estimates of

depreciation and amortization expense, scheduled debt service payments, toll and access charge revenues, and local service revenues). Normally, projections will be for a 5-year period and used to determine the ability of the borrower to repay its loans in accordance with the terms thereof. RUS will not require borrowers to raise local service rates. Local service revenue projections will be based on the borrower's existing local service rates or regulatory body approved rates not yet in effect but to be implemented within the Forecast period. In the latter case, if a borrower is not required to obtain regulatory body approval for the implementation of such rates, RUS will require a resolution of the board of directors indicating when those rates will be in effect.

(b) RUS makes loans only to rural telephone systems that are financially feasible. RUS shall consider the factors discussed in paragraphs (c) through (j) of this section in determining feasibility.

(c) The revenue and expense estimates for the feasibility study generally will be based on the borrower's operating experience provided that:

(1) Adjustments are made for any nonrecurring revenues and expenses that are not representative of the borrower's past operations and would thus make the borrower's experience data inappropriate for the forecast; and

(2) Adjustments are made for any special or new characteristics or other considerations deemed necessary by the Administrator.

(d) [Reserved]

(e) Depreciation expense will be determined using depreciation rates appropriate to the normal operation of the borrower, based on:

(1) The borrower's regulatory body approved depreciation rates; and

(2) Where such rates as described in paragraph (e)(1) of this section do not exist for items which the borrower is seeking financing, the most recent median depreciation rates published by RUS for all borrowers. RUS will publish such depreciation rates annually in RUS's "Statistical Report, Rural Telephone Borrowers."

(f) Projected scheduled debt service payments will generally be based on all

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of the borrower's outstanding and proposed loans from RUS and all other lenders as of the end of the feasibility Forecast period (i.e. for a 5-year Forecast period, the amount of debt outstanding in year 5).

(g) The financial and statistical data are derived from RUS Form 479, "Financial and Statistical Data for Telephone Borrowers," or for initial loans, the data may be obtained from the borrower's financial statements and other reports, and from other information supplied with the completed loan applications (see 7 CFR 1737.21 and 1737.22).

(h) When, in RUS's opinion, the borrower's operating experience is not adequate or the borrower's current operations are not representative, the estimates in the feasibility study normally will be developed from state and regional standards based on the experience of RUS borrowers. These standards are included in the Borrower's Statistical Profile (BSP), which is revised annually by RUS. If the borrower's operating experience is not the basis for one or more per-subscriber estimates used in the feasibility study, the estimates generally may not vary from the standard by more than 20 percent to reflect the particular characteristics of the loan applicant. Any variation from the standard shall be documented.

(i) In cases where these per-subscriber standards do not represent a reasonable forecast of a particular borrower's operations (for example, when a variation greater than 20 percent is necessary), estimates based upon a special analysis of the borrower's projected operations shall be used. The special analysis will accompany the feasibility study.

(j) When it is reasonably expected that a subscriber, classified as a special project, may discontinue service, a second feasibility study will be prepared, for comparison purposes, omitting revenues and expenses from this subscriber.

(k) RUS may obtain and review commercially available credit reports on applicants for a loan or loan guarantee to verify income, assets, and credit history, and to determine whether there are any outstanding delinquent Federal or other debts. Such reports will also

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be reviewed for parties that are or propose to be joint owners of a project with a borrower.

(1) If it is determined that loan feasibility cannot be proven as described in this section, the loan application will be returned to the borrower with an explanation. A borrower whose application has been returned will have 90 working days, from the date the application was returned, to revise and re-submit its application. If a revised application is not received by RUS within the 90-day period described above, the application will be canceled and a new application will need to be submitted if the borrower wishes further consideration.

[54 FR 13356, Apr. 3, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 56 FR 26599, June 10, 1991; 58 FR 66256, Dec. 20, 1993; 62 FR 46872, Sept. 5, 1997]

### § 1737.71 Interest rate to be considered for the purpose of assessing feasibility for loans.

(a) For purposes of determining the creditworthiness of a borrower for concurrent RUS cost-of-money and RTB loans, the Administrator shall assume that the loans, if made, would bear interest at the Treasury rate on the date of determination as described in paragraph (b) of this section. If the Treasury rate exceeds 7 percent, the interest rate used to determine eligibility for the RUS cost-of-money loan will be 7 percent.

(b) The 30-year Treasury rate will be used in all feasibility studies for loans with a final maturity of at least 30 years. A straight-line interpolation between other Treasury rates will be used to determine the rate used in feasibility studies for loans with final maturities of less than 30 years.

(c) The Treasury rate will be obtained each Tuesday, or as soon as possible thereafter, from the Federal Reserve. The rate for the current week, from the column labeled "This week" in the Federal Reserve statistical release, will be used from that Wednesday through the following Tuesday.

(d) As used in this section, the "date of determination" means the date of the feasibility study used in support of the loan recommendation.

[58 FR 66257, Dec. 20, 1993]