

2019 SUPPORTING STATEMENT

(0572-0153)

7 CFR Part 1752 Special Servicing of Telecommunications Programs Loans for Financially Distressed Borrowers

A. Justification

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

The Rural Utilities Service (RUS or the Agency) Telecommunications Program (Program) provides loan funding to build and expand broadband and telecommunications services into unserved and underserved rural communities, along with very limited funding to support the costs to acquire equipment to provide distance learning and telemedicine service.

RUS published a Final rule; request for comments codifying a new servicing regulation on February 25, 2020 in the **Federal Register** which outlines policies for servicing actions associated with distressed borrowers from the Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, Broadband Initiatives Program, and Rural e-Connectivity Pilot Program. It is anticipated that the regulation will streamline servicing actions, improve the government's recovery on such loans, and improve customer service.

This is an extension of a previously approved collection package. The collection of information from the public is necessary for the RUS to identify and assist borrowers in need of servicing actions under its own servicing regulation without having to coordinate with DOJ. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), a 60- day notice for public comment on this information collection was embedded within the final rule.

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

The information collection addresses RD's expanded authority, with the codification of the rulemaking, to address servicing actions. RD considers it imperative to use the expanded authority for servicing actions associated with the RUS Telecommunications Programs in order to: (1) maximize risk management of loan portfolio; (2) reduce duplication of effort between federal agencies, which may expedite servicing of distressed borrowers; (3) ensure efficient recovery of debt which may mitigate negative impact on program subsidy rates; and (4) simplify

the servicing process for the Agency and therefore minimize the financial burden and costs on borrowers.

The Agency provides forms and/or guidelines to assist in collection and submission of the information required to service loans. In some cases, use of Agency forms is optional and the borrower may submit the information required on other forms. The Agency will utilize existing Rural Development forms to the greatest extent possible to continue to meet the needs of the program. The forms or related items completed by the borrower are submitted to and evaluated by the Agency. Failure to collect proper information from borrowers could result in improper determinations of servicing assistance, hinder the government's recovery of such loans as well as encumber customer service.

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

REPORTING REQUIREMENTS FOR THIS COLLECTION – Written/NO FORMS

Servicing Action Request Narrative (Written)

The Servicing Action Request Narrative explains the purpose of the request, including a discussion on the current problems that the borrower is facing regarding the ability to repay the loan and an overview of the history of the loan. This document also includes the amount of the loan, the amounts of principal and interest outstanding, a description of the security property, the type of security instrument, and the borrower's name and address.

Borrower Financial Statements

Financial statements are required to evaluate the current financial position of the borrower. These statements are comprised of the most recent audited balance sheet, income statement, and cash flow statements or two years of historical balance sheets, income statements, and cash flow statements. Borrowers are already required to submit annual financial statements under their existing Loan Documents.

Pro-Forma 5 Year Financial Forecast

A forecast is used to assess the borrower's long-term prospects to repay the loan. The forecast should include subscriber estimates related to all service offerings; annual financial projections with balance sheets, income statements, and cash flow statements; supporting assumptions for a five-year forecast period, and a depreciation schedule for existing facilities and those funded with federal assistance, matching, and other funds. This will be included with all servicing requests.

Adjustments to Pro-Forma Forecast

In some cases, the Agency may have questions about the Financial Forecast and request that the borrower prepare the forecast under a variety of different scenarios.

Existing and Projected Subscriber Numbers

The agency requests this information to assess the borrower's customer base.

Current Organizational Charts

The agency requests charts on all parent organizations and/or holding companies (including parents of parents, etc.), and all subsidiaries and affiliates.

Information Relating Ownership Interest of Borrower and Related or Affiliated Entities

This document details the internal personnel structure of the borrower and related or affiliated entities to inform the agency on potential payments, distributions, and resources being allocated to different related entities and to identify the key staff across the organizational structure.

List of Collateral

The agency may request this information to determine whether the ongoing maintenance of the collateral is sufficient to the agency.

Appraisal (Written)

An appraisal, completed by a qualified, independent third-party source, may be required as a result of some contemplated servicing actions, such as transfer and assumptions and liquidation actions. The appraisal is completed in conformity with statutes and regulations by a licensed appraiser.

Itemized List of Liquidation Expenses

In the event of liquidation, a list of liquidation expenses with a justification of each of expense is required.

Legal Opinion on RUS Interests in the Collateral

A legal opinion of RUS' interests in the collateral may be required to ensure that the borrower intends to maintain the lien position and cooperates with repayment to the agency in the event of liquidation.

Supporting Evidence of UCC Filings and Mortgages

Copies of all current UCC filings and mortgage liens are required to verify that RUS maintains a first lien position on all assets of the borrower or as financed by RUS.

Schedule of Non-RUS Debt

A schedule of external debt is required in a MAP to evaluate the distribution of payments and obligations to other organizations.

Trial Balance of Borrower

A closing trial balance of ledger accounts listing all debits and credits to the borrower's accounts is required to ensure that financial statements were prepared appropriately and present an accurate account consistent with the financial statements.

Schedule of Accounts Payable by Aging

An aging of accounts payable is required during a MAP to examine the outflow of cash to other organizations and the accounts that take priority for the borrower in repayment.

Schedule of Accounts Receivables by Aging

An aging schedule of accounts receivable is required to determine the inflow of cash and primary sources of payment to the borrower from its customers. It is also used to evaluate the turnaround of payments and the likelihood of repayment to the borrowers from its customers.

Fixed Asset Detail List

A list of current fixed assets is required to ensure that all pledged collateral is being used and maintained properly by the borrower.

Inventory Account Detail

An inventory account detail is required to evaluate the goods and materials that a borrower is holding for resale or repair. During a MAP, it is used to evaluate costs associated with setup and holding of inventory.

Current Year Capital and Operating Budget

A current year capital and operating budget detailing the planned and expected expenses and revenues of a borrower is required during a MAP to ensure that financial resources are being used efficiently and to ensure that expected payments are reasonable.

Copies of All Licenses, Leases, Contracts, and Agreements

Copies of all agreements, licenses, contracts, and leases are required during a MAP to evaluate the reported expenses of a borrower's financial statements and expected long term costs and revenues.

Reimbursement Schedule for Pledged Deposit Account

A complete listing of loan proceeds used by the borrower to pay expenses associated with the loan is required to ensure that the borrower used the funding for the appropriate purposes.

Additional Reporting and Monitoring Documentation

Following a MAP, the agency may impose additional reporting and monitoring requirements on the borrower. A borrower may need to submit reports with increased frequency or additional details.

Additional Controls and Limitations Documentation

Following a MAP, the agency may determine that additional controls, such as a segregation of accounts or further RUS review of ongoing expenditures, are required.

3rd Party Loan Documents

In the event a borrower obtains an additional unguaranteed loan, additional documents from the 3rd party lender such as the loan agreement or the lender's analysis may be required.

3rd Party Agreements

During the transfer of security and assumption of a loan, agreements made between the original borrower and the proposed transferee may be required.

Legal Opinion and Board Resolutions Regarding RUS Deferral Agreement

In the event of a principal and/or interest deferment, the agency will request a legal opinion and board resolutions regarding the due authorization, execution, and delivery of the Deferral Agreement.

Asset Valuation

An asset valuation detailing the process of determining the fair market or present value of the company or its collateral may be required if the borrower is requesting a servicing action that necessitated the release of the collateral from the agency or liquidation.

Corrected Management Plan

A detailed plan listing all of the changes to the borrower's management and operations may be required to ensure that borrower meets the requirements of the loan agreement or improve the internal processes of the organization.

REPORTING REQUIREMENTS – FORMS APPROVED UNDER OTHER OMB CONTROL NUMBERS

RUS Form 793, “Request for Release of Lien And/Or Approval of Sale” (Approved under 0572-0041)

The Request for Release of Lien and/or Approval of Sale is required in the event that a borrower is seeking an additional unguaranteed loan or requesting to sell collateral for a RUS loan to ensure that RUS' position will not be disadvantaged and document the proposed uses of the proceeds from the transaction.

3. Describe whether and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.

RUS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. 7 CFR 1752 requires borrowers to submit information and does not exclude electronic transmission, such as electronic mail.

4. Describe efforts to identify duplication.

The information required for various servicing actions will be specific to each borrower, therefore no duplication exists. The borrower must submit all solicited information specific to the servicing action request and subsequent analysis and workout.

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

The term “small entity” has the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction” in accordance with 5 USC 601(6). The Small Business Administration (SBA) establishes a Table of Small Business Size Standards which matches to industries described in the North American Industry Classification System (NAICS). According to the established SBA standards, it is estimated that 100 percent of RUS Telecommunication Program borrowers are classified as small entities according to the U. S. Small Business Administration Table of Small Business Size Standards under the categories of Wired Telecommunications Carriers (517311), Wireless Telecommunications Carriers (except Satellite)(517312), Telecommunications Resellers (517911) and All Other Telecommunications (517919). RUS is conscious of the needs of small entities and does not prohibit transmission of the information electronically. The information collected is unique to each borrower and is the minimum necessary to administer the servicing regulation and is collected in a format designed to minimize the paperwork burden on small businesses and other small entities.

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

The collection of information is obtained only when needed for purposes related to loan security. Much of the information collected under this regulation is the minimum necessary to ensure borrowers are taking appropriate servicing actions. Failure to collect adequate information from borrowers could result in delayed or inappropriate servicing actions, hinder the government’s ability to recover on such loans, and lower overall customer service.

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

- a. Requiring written responses in less than 30 days.

Throughout the term of a workout, if additional information is requested, the borrower will have up to 30 calendar days to submit the information so that the Agency may make timely servicing decisions. This may require increased frequency or additional details to the reporting and monitoring that would traditionally occur under the terms of the Loan and Security Documents that are in place. Therefore, when submitting a request for a servicing action under this regulation, the distressed borrower must consent to additional reporting and monitoring requirements, which may require written responses in less than 30 days.

- b. Requiring more than an original and two copies.

The Agency does not request more than an original and two copies of any document.

- c. Requiring respondents to retain records for more than 3 years.

Unless otherwise noted by statute, the Agency does not require applicants to retain records for more than 3 years beyond the designated action's effective date.

- d. Not utilizing statistical sampling.

This collection does not involve statistical information.

- e. Requiring use of statistical sampling which has not been reviewed and approved by OMB.

This collection does not involve statistical sampling.

- f. Requiring a pledge of confidentiality.

This collection does not require a pledge of confidentiality.

- g. Requiring submission of proprietary trade secrets.

This collection does not require submission of proprietary trade secrets.

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

The Agency published its new regulation, 7 CFR 1752, "*Special Servicing of Telecommunications Programs Loans for Financially Distressed Borrowers*" in the *Federal Register* on February 25, 2020 at 85 FR 10555. The new regulation outlines the general policies for servicing actions associated with financially distressed borrowers from the Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, Broadband Initiatives Program, and Rural e-Connectivity Pilot Program.

The Administrative Procedures Act exempts from prior notice rules any actions "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" (5 U.S.C. 553(b)(A)). The rule became effective on the date of publication in the *Federal Register* and the 60-Day notice for comments was embedded in the regulatory action. The Agency

received one relevant comment on the rule from the NTCA-The Rural Broadband Association (NTCA) and included suggestions for the Agency to consider regarding the collection of information. The Agency plans to publish a notice in the **Federal Register** to address the commenter’s suggestions. Looking forward,

the Agency will rely on input from the borrowers using RUS servicing activities and will maintain close contact with borrowers through general field representatives and headquarters staff.

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

RUS has not made any such decisions or payments.

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

Borrowers are encouraged to identify and label any confidential and proprietary information contained in their applications. The Agency will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. § 552), the Trade Secrets Act, as amended (18 U.S.C. § 1905), the Economic Espionage Act of 1996 (18 U.S.C. § 1831 et seq.), and CALEA (47 U.S.C. § 1001 et seq.). Applicants should be aware, however, that the Consolidated Appropriations Act requires substantial transparency. For example, RUS is required to make publicly available on the Internet a list of each entity that has applied for a loan or grant, a description of each application, the status of each application, the name of each entity receiving funds, and the purpose for which the entity is receiving the funds.

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

There are no questions of a sensitive nature.

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

For a detailed breakdown of the burden for the forms and activities, please see the attached spreadsheet. The collection is summarized as follows:

Regulation	Number of Respondents	Total Annual Responses	Total Burden Hours	Total Hourly Wage	Total Costs	Cost Per Customer
------------	-----------------------	------------------------	--------------------	-------------------	-------------	-------------------

7 CFR 1752	5	137	694.5	\$62.98	\$43,739.6 1	\$8,747.92 ¹
------------	---	-----	-------	---------	-----------------	-------------------------

RUS estimates a cost of \$43,739.61 for respondents to comply with the regulation. In calculating the respondent cost, RUS estimates that the primary individuals requesting servicing actions will be Manager’s earning \$48.52 per hour. RUS based this hourly wage estimate of \$48.52 on the Bureau of Labor Statistics (“BLS”) 2018 National Industry-Specific Occupational Employment and Wage Estimates (“OES”) at <https://www.bls.gov/oes/current/oes111021.htm>, Occupational Code 11-1021, General and Operations Managers. The standard rates are then multiplied by the fringe benefits published in the Employer Cost for Employee Compensation, Supplemental Tables, produced by the BLS. Page 11 lists the amount of total benefits as 29.8 percent of total hourly compensation for December 2018, which equates to \$14.46. Please reference <https://www.bls.gov/news.Release/pdf/ecec.pdf>. Thereby, the total cost of services is \$62.98 per hour.

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

(a) Total capital and start-up cost component (annualized over its expected useful life); and

There are no capital or start-up costs required pursuant to this regulation. This is a servicing regulation, so all applicable parties would already be in existence.

(b) Total operation and maintenance and purchase of services component.

There are no operation and maintenance and purchase of services required.

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

The cost to the Federal Government is estimated to be \$59,514.56. See below.

RUS National Office staff are responsible for all servicing regulation actions. Using the locality pay area, the National Office wage rates are \$53.85, based on the hourly wage rate for loan analysts (GS 13, Step 5). The estimated rate of cost of total benefits for civilian Federal Government employees is 36.25 percent ² for percentage of benefits as a portion of total hourly wage which equates to \$19.52. This figure was provided by the OMB Memoranda referenced in the footnote below. Thereby, the total rates for National Office employees is \$73.37.

¹ Servicing actions can be categorized in two ways: (1) routine; and (2) advanced. Cost Per Customer is based on a simple average. Distressed borrowers requiring advanced servicing actions are likely to incur costs higher than the average, whereas distressed borrowers requiring routine servicing actions are likely to incur costs lower than the average.

² Cost of total benefits as a percentage of total hourly compensation for civilian Federal Government employees exceeds that of private sector employees. OMB Memoranda indicate that the total Federal civilian position full fringe benefit cost factor is 36.25% See OMB Memoranda M-08-13(March 11, 2008).

RUS estimates the cost to the Federal Government to administer the activities of this program to be \$59,514.56 per year.

Routine Servicing Actions— 18 hours X 5 borrowers X \$73.37	= \$ 6,963.30
Advanced Servicing Actions- 238.75 hours X 3 borrowers X \$73.37	= \$ <u>52,551.26</u>
Total estimated cost to the Federal Government:	= \$ 59,514.56

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

This is an extension of a previously approved collection package. There are no program changes or adjustments.

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

There are no plans for publication of information collected.

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

The agency is not seeking such approval.

18. Collection of Information Employing Statistical Methods.

This collection does not involve a survey. Thus, this collection does not employ statistical methods.

19. Explain each exception to the certification statement identified in item 19 on OMB 83-1.

There are no exceptions requested to the certification statement involved with this collection request.