

2022

SUPPORTING STATEMENT

OMB Control No. 0572-0100

**7 CFR Part 1717, Subparts R and S,
Lien Accommodations and Subordinations**

REPORTING REQUIREMENTS - NO FORMS:

Non-forms approved under this OMB collection package:

Written - Advance and Normal Approval of 100 Percent Private Financing

Parts of 7 CFR 1717.855 & .856 provide criteria whereby distribution borrowers are able to receive advance approval for a lien accommodation or subordination for 100 percent private financing of distribution and sub-transmission facilities. Advance approval means that RUS approves the request automatically once the Agency is satisfied that the borrower meets requirements for advance approval. In all cases, if other lenders secured under the Agency mortgage have the right of approval of lien accommodations and subordinations, their approval would also be required.

The qualification criteria include financial tests in terms of equity, Times Interest Earned Ratio (TIER), Debt Service Coverage (DSC), and the ratio of net utility plant to total outstanding long-term debt.

In addition, the borrower's board of directors must agree to implement any required increases in rates. There must be no pending litigation against the borrower and no threatened action by third parties that would have a material adverse effect. The borrower must be current on all financial obligations and not in default under the Agency mortgage or loan contract and the borrower must be in compliance with Agency requirements on accounting, irregularities, and financial reporting and recordkeeping.

Advance approval is not authorized for lien accommodations or subordinations for financing bulk transmission and generation facilities mainly because such construction may require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Preparation of these documents normally

require additional time beyond that allowed for advance approval. Power supply borrowers are not eligible for advance approval because few, if any of them, are able to meet the financial tests, and also because the financial conditions and requirements of these borrowers generally are more complex and diverse than is the case of distribution borrowers.

Approximately 48 percent of distribution borrowers qualify for advanced approval. The information and documents required in the application are significantly less than in the case of “normal review”. Since the Agency’s review is limited to verifying that the borrower meets requirements for advance approval, the time required for Agency review and action is also substantially reduced. The regulation states that the Agency acts on these applications within 45 days of receiving a complete application satisfactory to the Agency.

7 CFR 1717 is responsive to public comment that the Agency retain the flexibility to grant lien accommodations and subordinates in the case of borrowers that are not able to meet the objective criteria for advance approval. These borrowers must demonstrate, in a long-range financial forecast, that their system is economically viable and that the proposed loan is financially feasible. The timeframe for Agency action in these cases is 90 days after receiving a complete application satisfactory to the Agency. In both the case of advance approval and normal review, if a new mortgage or mortgage amendment is required, the proposed timeframe for the Agency to execute these documents is 30 days, once satisfactory documents are received.

Written - Refinancing of Existing Secured Debt

A portion of 7 CFR 1717.857 establishes criteria whereby both distribution and power supply borrowers may qualify for advance approval for a lien accommodation or subordination for loans to refinance existing debt secured under the Agency mortgage. Under the advance approval process, the Agency automatically approves the request once satisfied that the borrower met the requirements for advance approval. This would eliminate uncertainty and substantially reduce the time requirement for qualified applicants to obtain a lien accommodation or subordination for refinancing. A subordination is available only if the lien of the mortgage has been subordinated with respect to the assets securing the debt being refinanced.

The qualification criteria for advanced approval in the case of refinancing are designed to identify those refinancing that are a priority in the Government’s interest. The criteria are designed to limit the Agency’s credit exposure to the point it was before the refinancing; to prevent the repayment of loan principal from being pushed off into the future, which could increase the borrower’s future debt burden and increase uncertainty about its ability to repay; to ensure that the borrower’s annual cost of the debt, on a present value basis, is reduced as a result of the refinancing to strengthen the borrower’s repayment ability; and, to limit uncertainty about the Agency’s credit exposure and risk.

The timeframe for the Agency to act on an application for advance approvals is 15 days upon receipt of a complete and satisfactory application. The timeframe for Agency action on applications subject to normal review is 30 days.

A supplemental loan made concurrently with an RUS insured loan is refinanced and the refinancing is not deemed a prepayment if the principal amount of the refinancing loan is not less than the principal amount of the loan 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. Under these circumstances, no proportional prepayment of the concurrent Agency insured loan is required. The refinancing loan, once made, is itself considered a concurrent loan with regard to provisions of the mortgage and Agency regulations, including provisions governing any future prepayments.

Written - Lien Subordination for Rural Development Investments

Under 7 CFR 1717.858, the RUS borrower is encouraged to consider investing in financially sound projects likely to have a substantial effect on economic development and employment in rural areas. It is recommended that such investments be made through an independent 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. The separation of financial interests and risks is consistent with requirements of most state public service commissions.

RUS subordinates or releases 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. This provides support to provide financing of rural development investments by allowing the lender to obtain a first lien on the stock held by the borrower in the subsidiary. To limit the financial risks to a borrower's utility system and to discourage possible undisclosed cross subsidization of rural development activities by electric rate payers, the Agency does not lien accommodate or subordinate for loans made directly to a borrower for rural development purposes.

Written - Access of Handicapped to Buildings Certification

Under §1717.850(h)(2)(i), RUS borrowers are required to provide the Agency with a certification by the project architect that the buildings will be constructed that the facilities will be readily accessible to and usable by person with handicaps in accordance with the appropriate laws cited in the regulation.

Written - Safety and Performance Standards Certification

Under §1717.850(f), RUS borrowers must certify that they 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.