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Title 7 –Agriculture

Subtitle B –Regulations of the Department of Agriculture

Chapter XVII –Rural Utilities Service, Department of Agriculture

Part 1752 Servicing of Telecommunications Programs

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PART 1752—SERVICING OF TELECOMMUNICATIONS PROGRAMS

Authority: 7 U.S.C. 1981(b)(4), 7 U.S.C. 901 et seq. and 7 U.S.C. 950aaa et seq.

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§ 1752.1 Purpose.

This part prescribes the policies and procedures for loan and grant servicing for financial assistance made under the Rural Utilities Service (RUS) Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, Broadband Initiatives Program, and the Rural e-Connectivity Pilot Program (in this part collectively referred to as the “RUS Telecommunications Programs”).

§ 1752.2 Objectives.

The purpose of loan and grant servicing functions is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements and protect RUS' financial interests. The provisions of this part will ensure recipients comply with any revised terms in repayment on loans and ensures serving actions are handled consistently by the Agency.

§ 1752.3 Definitions.

The terms and conditions provided in this section are applicable to this part only. All financial terms not defined in this section shall have the commonly-accepted meaning under Generally Accepted Accounting Principles.

Acceleration. A written notice informing the Borrower that the total unpaid principal and interest is due and payable immediately.

Administrator. Administrator of the Rural Utilities Service.

Agency. The Rural Utilities Service, an agency of the United States Department of Agriculture's Rural Development mission area.

Assumption of debt. Agreement by one party to legally bind itself to repay the debt of the RUS borrower.

Borrower. Recipient of loan funding under a RUS Telecommunications Program.

Broadband system. The telecommunications or broadband network financed with RUS loan and/or grant funding or maintained by the Borrower and contained as part of the collateral to the loan.

Cancellation. Final discharge of debt with a release of liability.

Charge-off. Write-off of a debt and termination of servicing activity without release of liability. A charge-off is a decision by the Agency to remove debt from Agency receivables, however, future payments may be received.

Collateral. Means the assets, equipment and/or revenues pledged as security for the loan as defined in the loan documents.

Disposition of facility. Relinquishing control of a facility to another entity.

Loan Documents. All associated loan agreements, loan and security agreements, loan/grant agreements, mortgages, and promissory notes, as applicable.

Liquidation. Satisfaction of a debt through the sale of a Borrower's assets and cancellation of liabilities.

Parity lien. A lien having an equal lien position to another lender's lien on a Borrower's asset.

Rural Utilities Service (RUS). An agency of the United States Department of Agriculture's Rural Development mission area.

Settlement. Compromise, adjustment, cancellation, or charge-off of a debt owed to the Agency. The term "settlement" is used to refer to any of these actions, whether individually or collectively.

Unliquidated obligations. Obligated loan funds that have not been advanced.

Voluntary conveyance. A method by which title to security is voluntarily transferred to the Federal Government.

§ 1752.4 Availability of forms, bulletins, and procedures.

Forms, bulletins, and procedures referenced in this part are available online at <https://www.rd.usda.gov/publications/regulations-guidelines>.

§ 1752.5 Monetary default by Borrower.

A defaulting Borrower's primary responsibility is to expeditiously bring the delinquent account current. If a monetary default exceeds 60 days, RUS will attempt to discuss the situation with the Borrower and make the Borrower aware of options that may be available. In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency is the paramount objective. RUS will also work with entities that are not in monetary default but whose financial position is such that, without RUS action, a monetary default is imminent within the next 24 months, as evidenced by a financial forecast provided by the Borrower. RUS receives quarterly financial reports and annual audits from borrowers and actively monitors the borrower's Times Interest Earned Ratio (TIER), Current Ratio, Debt Service Coverage Ratio, and Net Worth.

§ 1752.6 Request for special servicing action.

(a) Special servicing actions include, but are not limited to, one or more of the following:

- (1) Consent to additional, unsecured debt;
- (2) Parity lien;
- (3) Reamortization or rescheduling of debt payments;
- (4) Deferment of principal and/or interest;
- (5) Interest rate adjustment;
- (6) Transfer of collateral and assumption of debt;
- (7) Sale or exchange of loan collateral;
- (8) Sale of the note; and
- (9) Debt settlement.

(b) In order for the Agency to consider one or more of the curative actions cited in [paragraph \(a\)](#) of this section, the Borrower must submit a written request to RUS.

(1) The written request must contain the following items:

- (i) A detailed explanation of the request and why it is needed.
- (ii) Most recent audited financial statements for the Borrower.
- (iii) Borrower's Pro Forma 5-year financial forecast, which includes an Income Statement, Balance Sheet, and Statement of Cash Flows, 2 years of historical data, current year data and a 5-year forecast, with detailed supporting assumptions. Additionally, in order to request assistance

under this paragraph (b)(1)(iii), the Borrower must make a showing that the account is delinquent and cannot be brought current within one year, or that the Borrower will become delinquent within 24 months, as demonstrated in the Pro Forma.

- (iv) Existing and projected subscriber numbers and service tiers, along with pricing for each tier. Additionally, for companies receiving support from the Federal Communications Commission, a detailed forecast of the support revenue, certified by a cost consultant, must be included.
 - (v) Current organizational chart for the Borrower, related entities, and affiliated companies, as well as information relating to ownership interest in the Borrower and its related entities.
 - (vi) A complete list of all collateral and steps the Borrower is taking to preserve the collateral.
- (2) The Agency may request the additional documents in paragraphs (b)(2)(i) through (iv) of this section after reviewing the Borrower's servicing request:
- (i) An appraisal in order to determine the adequacy of loan security or repayment ability;
 - (ii) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;
 - (iii) A legal opinion regarding RUS' interests in the impacted collateral and supporting evidence, in the form of Uniform Commercial Code Statements and filed Mortgages, that RUS maintains a first lien position on all assets of the Borrower, or such collateral as mandated by the Loan Documents; and
 - (iv) Such other documents that may be relevant in individual cases, as determined by RUS.
- (3) When submitting a request for a servicing action, the distressed Borrower must consent to the following during the request and for the duration of the servicing action:
- (i) **On-site visit.** A Management Analysis Profile (MAP) visit of the Borrower's entire operation;
 - (ii) **RUS priority payment.** Borrowers must agree that no other creditors will be paid without RUS consent, if RUS is not receiving full principal and interest payments;
 - (iii) **Additional reporting and monitoring.** Throughout the term of the servicing action(s), RUS will require increased frequency and/or additional details to the reporting and monitoring required under the terms of the Loan Documents; and
 - (iv) **Additional controls and limitations.** RUS may require additional controls and limitations such as segregation of accounts, RUS review of expenditures, etc.
- (c) False information provided by a Borrower, or by entities acting on behalf of the Borrower, will give rise to the immediate termination of any servicing action(s).

§ 1752.7 Civil rights and requirements.

- (a) **Equal opportunity and nondiscrimination.** The Agency will ensure that equal opportunity and nondiscriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital

status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

- (b) **Civil rights compliance.** Recipients of Federal assistance under this part must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. Prior to determining eligibility of any servicing action under this part, the Agency will determine that the Borrower is in compliance with all civil rights requirements of the latest Civil Rights Compliance Review conducted by the Agency.
- (c) **Discrimination complaints.** Persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250. A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or the Agency.

§§ 1752.8-1752.10 [Reserved]

§ 1752.11 Consent to additional, unsecured debt.

- (a) An additional, unsecured loan from another lender to the Borrower may be approved subject to the conditions set forth in this section. In order to request assistance under this section, the Borrower must make a showing that the additional debt will cure any existing or projected delinquency. Additionally, the following requirements must be met, as determined by RUS:
 - (1) The additional debt will not disadvantage RUS's standing or lien on any of the collateral already pledged to RUS;
 - (2) The additional debt will not adversely impact the continued financial viability of the Borrower or the Borrower's ability to carry out the purposes of the RUS loan;
 - (3) The debt is needed to resolve short-term, negative cashflow problems; and
 - (4) The Borrower is in good standing with the Agency or will become so with the additional debt.
- (b) In the case where all assets of the Borrower are not secured by the Government's debt, the Borrower may request additional debt that is secured by collateral that is not subject to the Government's security interest.

§ 1752.12 Parity lien.

A Borrower's request for parity may be approved subject to the conditions set forth in this section. In order to request assistance under this section, the Borrower must make a showing that the amount of new debt is at least equal to the amount of the collateral being added and will cure any existing or projected delinquency. The following factors will be considered in assessing whether the request is in the Government's best interest:

- (a) The value of the added assets compared with the amount of new debt to be secured;
- (b) The value of the assets already pledged under the Loan Documents, and any effects of the proposed transaction on the value of those assets;
- (c) The ratio of the total outstanding debt secured under the Loan Documents to the value of all assets pledged as security under the Loan Documents;

- (d) The Borrower's ability to repay its debt owed to the Government;
- (e) The overall financial viability of the Borrower; and
- (f) That the Borrower is in good standing with the Agency or will become so with the parity lien; and
- (g) Such other conditions as may be imposed by the Agency on a case-by-case basis, as determined by RUS.

§ 1752.13 Reamortization of or rescheduling of the debt payments.

A reamortization or rescheduling of debt payments may be approved subject to the conditions set forth in this section. In order to request a reamortization or rescheduling of debt payments, the Borrower must make a showing that the Borrower does not have access to other sources of capital or alternatives for resolving the delinquency, and that the reamortization or rescheduling of debt payment will cure any existing or projected delinquency.

Reamortizations or rescheduling of debt will be limited to 10 years beyond the original maturity date. Additionally, the following requirements must be met, as determined by RUS:

- (a) The Borrower has cooperated with RUS in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and Agency regulations;
- (b) Any management deficiencies identified by RUS have been corrected or the Borrower has submitted a plan acceptable to RUS to correct any deficiencies;
- (c) The Borrower has presented a budget which clearly indicates that it is able to meet the proposed payment schedule and the reamortization or rescheduling of debt payments will ensure the continued financial viability of the Borrower;
- (d) The Agency will consider the useful life of the facilities along with the level of debt service payments that the Borrower can contribute when determining the appropriate term to place on any reamortized loan; and
- (e) Such other conditions as may be imposed by the Agency on a case-by-case basis, as determined by RUS.

§ 1752.14 Deferment of principal and/or interest payments.

A deferment of principal and/or interest payments which will continue the original purpose of the loan may be approved subject to the conditions set forth in this section.

- (a) **Principal-only deferrals.** In order to request a principal deferral, the Borrower must make a showing that at the end of the deferment period the Borrower's financial position has improved and the Borrower is able to make full principal and interest payments, curing any delinquency or projected delinquency. Deferments of principal will be limited to no more than 36 months. Additionally, the following requirements must be met, as determined by RUS:
 - (1) Any management deficiencies identified by RUS have been corrected or the Borrower has submitted a plan acceptable to RUS to correct any deficiencies;
 - (2) The Borrower has presented a budget which clearly indicates that it is able to meet the new proposed payment schedule and after the end of the deferral period is able to resume making full principal and interest payments while maintaining a positive cashflow position;

- (3) Unless authorized by prior RUS written consent, the Borrower will only use funds otherwise due and payable under the RUS Note for the benefit of the broadband system. Such expenditures include, but are not limited to, costs to complete any necessary construction of the Project, costs to connect additional subscribers, marketing and sales costs, and other such costs that are necessary to maximize the value of the broadband system; and
 - (4) The Borrower will comply with such other conditions as may be imposed by the Agency on a case-by-cases basis, as determined by RUS.
- (b) **Principal and interest deferrals.** A principal and interest deferral shall only be approved when the Borrower has demonstrated that it is the only option for the Agency to avoid foreclosure and is in the best interest of the Government to avoid a substantial loss to the Government. Additionally, principal and interest deferrals may be approved if the Borrower and RUS have agreed to a public sale of the broadband system and such a deferral is needed to provide time to complete the sale of the broadband system. Principal and interest deferrals will be limited to no more than 24 months, unless extended by the Agency for good cause and full cooperation of the Borrower. Additionally, the following requirements must be met, as determined by RUS:
- (1) The Borrower has cooperated with RUS in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its Loan Documents and Agency regulations;
 - (2) Any management deficiencies identified by RUS have been corrected or the Borrower has submitted a plan acceptable to RUS to correct any deficiencies; and
 - (3) Unless authorized by prior RUS written consent, the Borrower will only use funds otherwise due and payable under the RUS Note for the benefit of the broadband system. Such expenditures include, but are not limited to, costs to execute a sale of the broadband system, costs to complete any necessary construction of the Project, costs to connect additional subscribers, marketing and sales costs, and other such costs that are necessary to maximize the value of the broadband system for an eventual sale;
 - (4) In cases when the Borrower and RUS have agreed to a public sale of the broadband system, the Borrower agrees that within 30 days of the execution of the deferral agreement, the Borrower will develop a process and timeline for the sale of the broadband system, in form and substance satisfactory to RUS, and will continually execute on those plans in order to effectuate a public sale of the broadband system; and
 - (5) The Borrower will comply with such other conditions as may be imposed by the Agency on a case-by-cases basis, as determined by RUS.

§ 1752.15 Interest rate adjustments.

Interest rate reductions may be approved subject to the conditions set forth in this section. In order to request an interest rate reduction, the Borrower must make a showing that the Borrower does not have access to other sources of capital or alternatives to resolve the delinquency, and the interest rate adjustment will cure any existing or projected delinquency. Additionally, the following requirements must be met, as determined by RUS:

- (a) The Borrower has cooperated with RUS in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and Agency regulations;

- (b) Any management deficiencies identified by RUS have been corrected or the Borrower has submitted a plan acceptable to RUS to correct any deficiencies;
- (c) The Borrower has presented a budget which clearly indicates that it is able to meet the proposed payment schedule and the interest rate reduction will improve the financial viability of the Borrower;
- (d) The Borrower has agreed to not maintain cash or cash reserves beyond what is reasonable at the time of interest rate adjustment to meet debt service, operating, and reserve requirements; and
- (e) The Borrower will comply with such other conditions as may be imposed by the Agency on a case-by-cases basis, as determined by RUS.

§ 1752.16 Transfer of collateral and assumption of debt.

A transfer of collateral and assumption of debt may be approved subject to the conditions set forth in this section. In order to request assistance under this section, the Borrower must make a showing that the transfer of collateral and assumption of debt will improve the likelihood that the government will be repaid and maximize the Agency's recovery on such loans. Such actions will be subject to the following requirements:

- (a) The transfer will not be disadvantageous to the Government, as determined by RUS;
- (b) The Agency has concurred to plans for disposition of funds in any reserve account, including project construction bank accounts;
- (c) The transferee will assume all of the Borrower's responsibilities regarding the loan(s) and will accept the original loan conditions, as well as any others that may be imposed by the Agency;
- (d) There must be no lien, judgement, or similar claims of other parties against the loan collateral being transferred, and once transferred, such collateral may not be subject to the lien, judgement, or similar claims of other parties of the transferee;
- (e) Title to all assets must be conveyed to the transferee; and
- (f) The Borrower will comply with such other conditions as may be imposed by the Agency on a case-by-case basis, as determined by RUS.

§ 1752.17 Sale or exchange of loan collateral.

A cash sale of all or a portion of a Borrower's assets or an exchange of security property for Borrowers in a distressed situation may be approved subject to the conditions set forth in this section. In order to request assistance under this section, the Borrower must make a showing that the sale or exchange of collateral is in the best interest of the Government to avoid a substantial loss to the Government. Additionally, the following requirements must be met, as determined by RUS:

- (a) If a sale of all of the assets, that the consideration is for the full amount of the debt or the present fair market value as determined by an independent appraiser that has been approved by RUS, and which addresses any conditions of the appraisal as may be imposed by RUS; and
- (b) If the sale is for a portion of the assets, that the remaining property is adequate security for the loan and that the transaction will not adversely affect the Agency's security position; and provided that any proceeds remaining after paying reasonable and necessary selling expenses, as approved by the Agency in advance, are to be used for the following purposes:

- (1) Repayment of the RUS debt, and other non-RUS debt if secured by a parity lien with the Agency; and/or
- (2) Improvement of the broadband network or other facilities of the Borrower, including customer premise equipment and other equipment needed to upgrade the broadband network, if necessary to improve the Borrower's ability to repay the loan; and
- (c) Any grant assets in the sale of collateral that were financed with Agency grants must follow the disposition rules as stated in the Loan Documents or Grant/Loan Documents.

§ 1752.18 Sale of the note.

In the event of one or more incidents of default by the Borrower that cannot or will not be cured within a reasonable period of time, the Agency may sell the note. A decision to sell the note may be made when the Agency determines that the monetary default cannot be cured through the other actions as outlined in this part, or it has been determined that it is in the best interest of the Agency. The decision to sell the note should be made as soon as possible when one or more of the following exist:

- (a) A loan is 90 days behind on any scheduled payment and the Agency and Borrower have not been able to cure the delinquency through actions such as those contained in this part;
- (b) It is determined that delaying sale of the note will jeopardize full recovery on the loan; or
- (c) The Borrower is uncooperative in resolving the delinquency or the Agency has reason to believe the Borrower is not acting in good faith, and it would improve the position of the Agency to sell the note immediately.

§ 1752.19 Debt settlement.

Debts will not be settled directly by the Agency if:

- (a) Referral to the Office of Inspector General and/or to Office of General Counsel is contemplated or pending because of suspected criminal violation;
- (b) Civil action to protect the interest of the Government is contemplated or pending;
- (c) An investigation for suspected fiscal irregularity is contemplated or pending;
- (d) The Borrower is uncooperative in resolving the delinquency or the Agency has reason to believe the Borrower is not acting in good faith; or
- (e) The debt has been referred to the Department of Justice, such as in bankruptcy proceedings.

§§ 1752.20-1752.24 [Reserved]

§ 1752.25 Special terms.

If the Administrator determines the servicing actions in this part would not protect the Government's interest due to unique circumstances of the debtor, the Agency reserves the right to negotiate special terms to maximize the Government's recovery on the debt.

§ 1752.26 No rights to special servicing actions.

Nothing in this part should be assumed guaranteed as a right to the Borrower for any of the special servicing actions noted in this part.

§ 1752.27 Confidentiality of borrower information.

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 Communications Assistance for Law Enforcement Act (CALEA) (47 U.S.C. 1001 *et seq.*).

§ 1752.28 Interest accrual.

- (a) The Agency may determine to stop accruing interest if the account has remained delinquent for a period of 18 months or more, and the Agency has determined, in its sole discretion, that it will not recover the full outstanding principal balance on the loan.
- (b) Notwithstanding paragraph (a) of this section, the Administrator may waive the accrual of interest on any outstanding delinquent debt, if in the sole determination of the Administrator, such waiver facilitates and maximizes the Government's recovery of the debt, such as under a voluntary foreclosure by the Borrower.

§ 1752.29 Communications laws.

Borrowers must comply with all applicable Federal and state communications laws and regulations, including, for example, the Communications Act of 1934, as amended (47 U.S.C. 151 *et seq.*), the Telecommunications Act of 1996, as amended (Pub. L. 104–104, 110 Stat. 56 (1996)), and CALEA. For further information see <http://www.fcc.gov>.

§ 1752.30 Information collection and reporting requirements.

Copies of all forms and instructions referenced in this part may be obtained from RUS. Data furnished by Borrowers will be used to determine eligibility for certain servicing actions. Furnishing the data is voluntary; however, the failure to provide data could result in a servicing action being denied or the Agency taking adverse action against the Borrower to collect funds. The collection of information is vital to RUS to ensure compliance with the provisions of this part. The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0153.

§ 1752.31 Authorized signatories.

Only the RUS Administrator can bind the Government to the expenditure of funds. Notwithstanding anything contained in this part, however, any settlement resulting in the reduction of \$500,000 or more in payment to the Government, inclusive of attorney's fees, shall be approved by the Under Secretary for Rural Development, or higher.