§ 1717.854

(a) Policy. Requests for a lien accommodation or subordination from distribution borrowers for 100 percent private financing of distribution, subtransmission and headquarters facilities, and for community infrastructure listed in §1717.852(a)(3), qualify for advance approval by RUS if they meet the conditions of this section and all other applicable provisions of this subpart. Advance approval means RUS is satisfied that the conditions of this section and all other applicable provisions of this subpart have been met.

(b) Eligible purposes. Lien accommodations or subordinations for the financing of distribution, subtransmission, and headquarters facilities and community infrastructure listed in §1717.852(a)(3) are eligible for advance approval, except those that involve the purchase of existing facilities and associated service territory.

(c) Qualification criteria. To qualify for advance approval, the following requirements, as well as all other applicable requirements of this subpart, must be met:

(1) The borrower has achieved a TIER of at least 1.25 and a DSC of at least 1.25 for each of 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

(2) The ratio of the borrower’s equity, less deferred expenses, to total assets, less deferred expenses, is not less than 27 percent, after adding the principal amount of the proposed loan to the total assets of the borrower;

(3) The borrower’s net utility plant as a ratio to its total outstanding long-term debt is not less than 1.0, after adding the principal amount of the proposed loan to the existing outstanding long-term debt of the borrower;

(4) There are no actions or proceedings against the borrower, pending or overtly threatened in writing before any court, governmental agency, or arbitrator that would materially adversely affect the borrower’s operations and/or financial condition;

(5) The borrower is current on all debt payments and all other financial obligations, and is not in default under the RUS mortgage, the RUS loan contract, the borrower’s wholesale power contract, any debt restructuring agreement, or any other agreement with RUS;

(6) The borrower has:

(i) Submitted the annual auditor’s report, report on compliance, report on internal controls, and management letter in accordance with 7 CFR part 1773;

(ii) Received an unqualified opinion in the most recent auditor’s report;
(iii) Resolved all material findings and recommendations made in the most recent Loan Fund and Accounting Review;

(iv) Resolved all material findings and recommendations made in the most recent financial statement audit, including those material findings and recommendations made in the report on internal control, report on compliance, and management letter;

(v) Resolved all outstanding material accounting issues with RUS; and

(vi) Resolved any significant irregularities to RUS’s satisfaction; and

(7) If the borrower has a power supply contract with a power supply borrower, the power supply borrower is current on all debt payments and all other financial obligations, and is not in default under the RUS mortgage, the loan contract, any debt restructuring agreement, or any other agreement with RUS.

(d) Right of normal review reserved. RUS reserves the right to review any request for lien accommodation or subordination under its normal review process rather than under advance approval procedures if RUS, in its sole discretion, determines there is reasonable doubt as to whether the requirements of paragraphs (b) and (c) of this section have been or will be met, or whether the borrower will be able to meet all of its present and future financial obligations.


§1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

Applications for a lien accommodation or subordination that meet the requirements of §1717.854 must include the following information and documents:

(a) A certification by an authorized official of the borrower that the borrower and, as applicable, the loan are in compliance with all conditions set forth in §1717.854(c) and all applicable provisions of §§1717.852 and 1717.853;

(b) A resolution of the borrower’s board of directors requesting the lien accommodation or subordination and including the amount and maturity of the proposed loan, a general description of the facilities or other purposes to be financed, the name and address of the lender, and an attached term sheet summarizing the terms and conditions of the proposed loan;

(c) The borrower’s financial and statistical report, the data in which shall not be more than 60 days old when the complete application is received by RUS;

(d) Draft copy of any new mortgage or mortgage amendment (supplement) required by RUS or the lender, unless RUS has notified the borrower that it wishes to prepare these documents itself;

(e) A copy of the loan agreement, loan note, bond or other financing instrument, unless RUS has notified the borrower that these documents need not be submitted;

(f) Borrower’s environmental report and/or other environmental documentation, if required by 7 CFR part 1794;

(g) RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, and RUS Form 740g, Application for Headquarters Buildings;

(h) A CWP or CWP amendment covering the proposed project, in accordance with 7 CFR part 1710, subpart F, and subject to RUS approval, and a resolution of the borrower’s board of directors adopting the CWP;

(i) The certification by the project architect for any buildings to be constructed, as required by §1717.850(1);

(j) A certification by an authorized official of the borrower that flood hazard insurance will be obtained for the full value of any buildings, or other facilities susceptible to damage if flooded, that will be located in a flood hazard area;

(k) Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 7 CFR part 3017;

(l) A report by the borrower stating whether or not it is delinquent on any Federal debt, and if delinquent, the amount and age of the delinquency and