

**§§ 1786.1–1786.24**

**7 CFR Ch. XVII (1–1–20 Edition)**

**Subpart D [Reserved]**

**Subpart E—Discounted Prepayments on RUS Notes in the Event of a Merger of Certain RUS Electric Borrowers**

- 1786.95 Purpose.
- 1786.96 Definitions.
- 1786.97 Prepayment.
- 1786.98 Discounted present value.
- 1786.99 Eligibility criteria.
- 1786.100 Application procedure.
- 1786.101 Approval of application.
- 1786.102 Prepayment agreement.
- 1786.103 Security.
- 1786.104 Loan fund audit.
- 1786.105 Closing.
- 1786.106 Other prepayments.

APPENDIX A TO SUBPART E OF PART 1786—  
LISTING OF ELIGIBLE BORROWERS

APPENDIX B TO SUBPART E OF PART 1786—  
FEDERAL RESERVE STATISTICAL RELEASE

**Subpart F—Discounted Prepayments on RUS Electric Loans**

- 1786.150 Purpose.
- 1786.151 Definitions and rules of construction.
- 1786.152 Prepayments of RUS loans.
- 1786.153 Discounted present value.
- 1786.154 Qualified Notes.
- 1786.155 Eligible borrower.
- 1786.156 Application procedure.
- 1786.157 Approval of applications.
- 1786.158 Terms and conditions of prepayment agreement.
- 1786.159 Initial closing.
- 1786.160 Subsequent closings.
- 1786.161 Return of Qualified Notes and release of lien.
- 1786.162 Outstanding loan documents.
- 1786.163 Existing wholesale power contracts.
- 1786.164 Loan fund audit.
- 1786.165 Reporting.
- 1786.166 Approvals.
- 1786.167 Restrictions to additional RUS financing.
- 1786.168 Borrowers who prepaid under this part prior to October 21, 1992.
- 1786.169 Liability.
- 1786.170 Prepayment of loans approved after December 20, 1993. [Reserved]
- 1786.171–1786.199 [Reserved]

**Subpart G—Refinancing and Prepayment of RUS Guaranteed FFB Loans Pursuant to Section 306(C) of the RE Act**

- 1786.200 Purpose.
- 1786.201 Definitions and rules of construction.
- 1786.202 Prepayment and refinancing of RUS guaranteed FFB loans.
- 1786.203 Special considerations.
- 1786.204 Limitations.
- 1786.205 Application procedure.

- 1786.206 Refinancing note.
- 1786.207 Prepayment premium.
- 1786.208 Increased principal.
- 1786.209 Outstanding loan documents.
- 1786.210 Approvals.

AUTHORITY: 7 U.S.C. 901–950b; Title I, subtitle B, Pub. L. 99–509; Pub. L. 101–624, 104 Stat. 4051; Pub. L. 103–354, 108 Stat. 3178, (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

SOURCE: 55 FR 1145, Jan. 11, 1990, unless otherwise noted.

**Subpart A—General [Reserved]**

**§§ 1786.1–1786.24 [Reserved]**

**Subpart B—Prepayment of RUS Guaranteed Federal Financing Bank Loans Pursuant to Section 306(A) of the RE Act**

AUTHORITY: 7 U.S.C. 901–950b; Title I, Subtitle B, Pub. L. 99–509; Title I, Pub. L. 100–202; Pub. L. 100–203; Title VI, Pub. L. 100–460; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 55 FR 1145, Jan. 11, 1990, unless otherwise noted. Redesignated at 55 FR 49250, Nov. 27, 1990.

**§ 1786.25 Purpose.**

This subpart contains the general regulations of the Rural Utilities Service (RUS) for implementing the provisions of (a) section 306(A) of the Rural Electrification Act of 1936, as amended (RE Act); (b) section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100–202) (the continuing resolution); and (c) section 637 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100–460) (the 1989 Appropriations Act) which permit, in certain circumstances, loans made by the Federal Financing Bank (FFB) and guaranteed by the Administrator of RUS to be prepaid by RUS electric and telephone borrowers by paying the outstanding principal balance due on the FFB loan, using a private loan with the existing RUS guarantees or using internally generated funds.

**§ 1786.26 Policy.**

It is the policy of RUS to facilitate the prepayment of FFB loans in accordance with the provisions of section

306(A) of the RE Act and section 633 of the continuing resolution as modified by section 637 of the 1989 Appropriations Act. Furthermore, consistent with the RE Act, the continuing resolution and the 1989 Appropriations Act, it is the policy of RUS to implement the objectives of the prepayment program in a manner which does not result in an increase in loan guarantee risk or an inappropriate increase in the administrative burden on RUS.

**§ 1786.27 Definitions and rules of construction.**

(a) *Definitions.* For the purposes of this subpart, the following terms shall have the following meanings:

*Administrator* means the Administrator of RUS.

*Application Category* shall have the meaning set forth in § 1786.29(c).

*Application period* means a period during which RUS is accepting applications to make prepayments pursuant to this subpart, and initially means:

(1) In the case of telephone borrowers, the period commencing on February 12, 1990 and ending on March 12, 1990;

(2) In the case of financially distressed borrowers, the period commencing October 1, 1990 and ending on July 30, 1993; or

(3) In the case of other borrowers, the period to be announced by RUS.

*Borrower* means any organization which has an outstanding FFB loan guaranteed by RUS under the RE Act.

*Business Day* means any day other than a Saturday, a Sunday, a legal public holiday under 5 U.S.C. section 6103 for the purposes of statutes relating to pay and leave of employees, or any other day declared to be legal holiday for the purposes of statutes relating to pay and leave of employees by Federal statute or Federal Executive Order.

*Continuing Resolution* means section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202).

*Date Received* means the date inscribed on the Notice of Intent to Prepay the Federal Financing Bank, by an authorized official of RUS, as the date the application was received.

*Documentation* means all or part of the agreements relating to a prepayment under this part, irrespective of whether RUS is a party to each agreement, including all exhibits to such agreements.

*Electric Program Applications* shall have the meaning specified in § 1786.29(c)(1).

*Existing Loan Guarantee* means a guarantee of payment issued by RUS to FFB pursuant to the RE Act for an FFB loan made on or before July 2, 1986.

*Fees* means any fees, costs or charges, incurred in connection with obtaining the private loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees (including fees and disbursements charged by counsel representing the borrower), printing costs, recording fees, trustee fees, underwriting fees, capital stock purchases or other equity investment requirements of the lender, and other related transaction expenses.

*Financially Distressed Borrower* means an RUS-financed electric system determined by the Administrator to be either (1) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (2) participating in a work out or debt restructuring plan with RUS, either as the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring.

*Financially Viable Lender* means:

(1) A lender (i) which has a capital and surplus of at least \$50 million; (ii) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of \$50 million; (iii) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of \$50 million from a lending institution with a capital and surplus of at least \$50 million; or (iv) has other credit support, in form and substance satisfactory to the Administrator, in the amount of \$50 million; or

(2) In the event of a prepayment totalling less than \$100 million, a lender (i) which has a capital and surplus of at

least \$10 million; (ii) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of \$10 million; (iii) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of \$10 million from a lending institution with a capital and surplus of at least \$10 million; or (iv) has other credit support, in form and substance satisfactory to the Administrator, in the amount of \$10 million;

*FFB* means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

*FFB Loan* means one or more advances, or a part of one or more advances, made on or before July 2, 1986, by FFB on a promissory note or notes executed by a borrower and guaranteed by RUS pursuant to section 306 of the RE Act (7 U.S.C. 936).

*Guarantee* means the original endorsement, in the form specified by RUS which is executed by the Administrator and shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

*Increase in Loan Guarantee Risk* means the change in any of the components of loan guarantee risk associated with the private loan which in the judgment of RUS increases the magnitude or duration of the loan guarantee risk currently assumed by RUS in connection with the existing loan guarantee;

*Internally Generated Funds* means money belonging to the borrower other than: (1) Proceeds of loans made or guaranteed under the RE Act or (2) funds on deposit in the cash construction trustee account;

*Lender* means the organization making and servicing the private loan which is to be guaranteed under the provisions of this subpart and used to prepay the FFB loan. The term *lender* does not include the FFB, or any other Government agency.

*Loan Guarantee Agreement* means the written contract by and among the lender, the borrower, the Adminis-

trator, and such other parties that RUS may require, setting forth the terms and conditions of a guarantee issued pursuant to the provisions of this subpart.

*Loan Guarantee Risk* means the risk as determined by RUS associated with guaranteeing a loan for a particular borrower. Components of loan guarantee risk include the following:

(1) The outstanding principal balance of a loan;

(2) The dollar weighted average interest rate (stated as an annual percentage rate) on a loan;

(3) The final maturity date of a loan;

(4) The annual principal amortization of the loan; and

(5) Any other factor that as determined by RUS increases the magnitude or duration of the guarantee.

*Mortgage* means the mortgage and security agreements by and among the borrower and RUS, as from time to time supplemented, amended and restated.

*1989 Appropriations Act* means the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460).

*Notice of Intent to Prepay the Federal Financing Bank* means the notice in the form specified in §1786.33 hereof.

*Prepayment Authority* shall have the meaning specified in §1786.29(a).

*Private Loan* means a loan or loans to be guaranteed under the provisions of this part and used to prepay an FFB loan.

*Pro-rated Percentage* shall have the meaning specified in §1786.30(b)(1).

*RE Act* means the Rural Electrification Act of 1936 (7 U.S.C. 901-950b), as amended.

*REA* means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

*RUS* means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to

administering certain electric and telephone programs. See 7 CFR 1700.1.

*Service* or *Servicing* means the following activities:

(1) The billing and collecting of the private loan payments from the borrower;

(2) Notifying the Administrator promptly of any default in the payment of principal and interest on the private loan and submitting a report, as soon as possible thereafter, setting forth the servicer's views as to the reasons for the default, how long the servicer expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;

(3) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, loan guarantee agreement, the mortgage, or related security instruments, or conditions of which the servicer or the lender is aware which might lead to nonpayment, violation or other default; and

(4) Such other activities as may be specified in the loan guarantee agreement.

*Settlement Date* means the date the borrower disburses funds to the FFB in order to complete a prepayment pursuant to this subpart, and shall be a date agreed to by RUS, and a date on which both the FFB and the Federal Reserve Bank of New York are open for business.

*Standard Electric Program Application* shall have the meaning specified in §1786.29(c)(1).

*Telephone Borrower* means a borrower that provides telephone service as defined in 7 CFR 1735.2(a).

*Telephone Program Applications* shall have the meaning specified in §1786.29(c)(2).

(b) *Rules of Construction.* Unless the context shall otherwise indicate, the terms defined in §1786.27(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this subpart as a whole.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35426, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990, as amended at 59 FR 66440, Dec. 27, 1994]

#### § 1786.28 Qualifications.

(a) *Borrowers.* To qualify to prepay an FFB loan pursuant to this subpart, the borrower must:

(1) Demonstrate that the FFB loan was outstanding on July 2, 1986;

(2) Prepay the FFB loan by:

(i) Using a private loan with the existing loan guarantee;

(ii) Using internally generated funds;

or

(iii) Using a combination of a private loan with the existing loan guarantee and internally generated funds; and

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship.

(b) *Lenders.* To participate pursuant to this subpart, in a borrower's prepayment of an FFB loan by means of a private loan, the lender must:

(1) Be a private legally organized lender, or a lender established pursuant to the Farm Credit Act of 1971, as amended;

(2)(i) Be subject to credit examination and supervision by either an agency of the United States or a state and be in good standing with its licensing authority and have met the requirements, if any, of licensing, lending and loan servicing in the state where the collateral for the Loan is located;

(ii) Be a financially viable lender; or

(iii) Be a trust administered by an entity meeting the requirements of paragraph (b)(2) (i) or (ii) of this section; and

(3) Have the capability to adequately service the private loan either by using its own resources or by contracting for such resources with a financially viable lender. Under no circumstances may the borrower or an affiliate of the borrower service the private loan. A qualified lender may participate out each private loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator.

(c) *Private Loans.* A borrower who qualifies pursuant to §1786.28(a) may at its option elect to use a private loan to make a prepayment, or a portion of a prepayment, pursuant to this subpart.

§ 1786.28

7 CFR Ch. XVII (1-1-20 Edition)

Private loans, the proceeds of which are used exclusively to prepay FFB loans, shall be eligible for a guarantee under this subpart. The Administrator shall endorse a guarantee on each note evidencing a qualifying private loan. The private loan shall be structured in a manner which in the judgment of RUS shall not result in an increase in loan guarantee risk and shall comply with the following:

(1) The private loan shall provide for the periodic payment of interest by the borrower not less frequently than annually, at either a variable or fixed rate in a manner which shall not result in an increase in loan guarantee risk. (i.e. The dollar weighted average interest rate on the private loan shall be less than or equal to the dollar weighted average interest rate on the FFB loan being prepaid, so that:

$$C_r = C_o + \frac{\sum_{i=1}^n (C_o - A_i) T_i}{(J - n)}$$

Where,

- C<sub>r</sub> = The revised interest rate cap;
  - C<sub>o</sub> = The original interest rate cap at the time of prepayment;
  - A<sub>i</sub> = The average interest rate actually charged in the i<sup>th</sup> period;
  - T<sub>i</sub> = Length of the i<sup>th</sup> period expressed in years;
  - n = The number of years that have elapsed since the initial prepayment;
  - J = The initial term of the private loan, at the time of prepayment;
- Subject to the constraint that A<sub>1</sub> must be less or equal to C<sub>o</sub>).

(2) Principal payments on the private loan shall be made either quarterly, semiannually, or annually and shall commence on or before the last day of the calendar year during which the prepayment pursuant to this subpart was made.

(3) With the approval of the Administrator, the lender may refund the private loan with the proceeds of another loan from the same lender, with the existing guarantee and under terms, conditions, and a structure substantially similar to the private loan, on such dates as the lender, the borrower and RUS may agree, provided however, that such a refunding loan shall comply with the provisions of §1786.28(c) hereof. Additionally, with the approval of the Administrator, the private loan may be prepaid either in whole or in part at any time by the borrower using its general funds.

(4) The private loan and the guaranteed note evidencing the private loan

shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986.

(5) The guaranteed note evidencing the private loan shall not be transferable or assignable except

(i) With the written approval of the Administrator;

(ii) In the event that the guaranteed note evidencing the private loan is held by a trust, to a similar trust, in connection with a refunding loan made by the lender pursuant to §1786.28(c)(3); or

(iii) As an undivided pro rata interest in a pool of obligations.

(6) The loan documentation shall provide RUS with the right to accelerate the note evidencing the private loan upon the occurrence of any "Event of Default" under the mortgage with the effect that all of the unpaid principal and interest on any such note shall become immediately due and payable to RUS, and RUS shall continue to pay under its guarantee the principal of and interest on such note without taking into account such acceleration. The loan documentation shall also provide RUS with a right, upon the occurrence of such an "Event of Default," to accelerate payment on its guarantee and accelerate payment on the note evidencing the private loan on the earlier of any date the interest rate on the private loan is reset, without premium or penalty; any date the borrower may

prepay in accordance with the terms of the private loan, or the tenth anniversary of the date the private loan first bears interest at a fixed interest rate.

(7) The principal of the private loan shall not include amounts attributable to fees associated with the private loan. At the time it submits its application, a borrower may request that the Administrator approve the inclusion of amounts attributable to fees as part of the interest rate on the private loan, if the net effective interest rate including such fees meets the test contained in §1786.28(c)(1). For the purposes of these regulations, such financed fees shall be considered "interest".

(8) Private loans and guaranteed notes evidencing private loans shall otherwise be in form and substance satisfactory to the Administrator.

(d) *Prepayments Without a Guarantee.* Qualifying borrowers may elect to utilize internally generated funds without a guarantee to prepay an FFB loan, or partially prepay an FFB loan, pursuant to this subpart, if

(1) The borrower notifies RUS, of its intent to prepay using internally generated funds in accordance with the application procedures set forth in this subpart; and

(2) The borrower submits a certification to RUS that the prepayment does not, materially adversely affect the financial stability of the borrower and its ability to meet all its obligations, including debt service on all loans made, guaranteed or lien accommodated under the RE Act which will remain outstanding after the date of the prepayment.

(e) *The Use of both a Private Loan and Internally Generated Funds.* Qualifying borrowers may elect to utilize a combination of private loans and internally generated funds without a guarantee, to prepay an FFB loan pursuant to this subpart, if

(1) The private loans comply with the provisions of paragraph (c) of this section, and

(2) The borrower complies with paragraph (d) of this section.

(f) *FFB loans.* A borrower's FFB loans that qualify to be prepaid pursuant to this subpart are:

(1) *Qualifying Borrowers.* In the case of qualifying borrowers other than financially distressed borrowers, FFB advances with long-term maturity dates may be prepaid pursuant to this subpart; and

(2) *Financially distressed borrowers.* FFB loans that are eligible to be prepaid by utilizing the financially distressed borrowers' reserve are advances with long-term maturity dates, and which in the opinion of the Administrator, if prepaid, would result in an economic savings to the financially distressed borrower.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35426, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990]

**§ 1786.29 Prepayment authority, program allocations, categories of prepayment applications and financially distressed borrowers' reserve.**

(a) *Prepayment Authority.* So long as the aggregate amount of prepayments made after December 22, 1987, including prepayments made pursuant to §1786.28(d) and §1786.28(e), under section 306(A) of the RE Act, does not exceed \$2.5 billion, the approval of the Secretary of the Treasury is not required in order to make a prepayment pursuant to this subpart (such amount of prepayments is hereinafter called prepayment authority).

(b) *Program Allocations.* In accordance with the provisions of section 637 of the 1989 Appropriations Act, \$350 million of prepayment authority is allocated to RUS-financed electric systems and \$150 million of prepayment authority is allocated to RUS-financed telephone utilities. The amounts of prepayment authority allocated to electric program borrowers and telephone program borrowers shall not be transferred between programs. Borrowers may not sell, assign, or otherwise transfer prepayment authority to another borrower.

(c) *Categories of Prepayment Applications.* Applications received by RUS from borrowers desiring to prepay pursuant to this subpart will be separated into the following two application categories:

(1) *Electric Program Applications.* Electric program applications are applications to make a prepayment pursuant to this subpart from RUS-financed

## § 1786.30

## 7 CFR Ch. XVII (1-1-20 Edition)

electric utilities, that qualify in accordance with §1786.28(a) hereof and which are received by RUS during the application period. Electric program applications will be further subdivided and classified as being either (i) a financially distressed borrower's application, or (ii) a standard electric program application. Applications received from borrowers determined by the Administrator not to be a financially distressed borrower will be classified and processed as a standard electric program application;

(2) *Telephone Program Applications.* Telephone program applications are applications to make a prepayment pursuant to this subpart from RUS-financed telephone utilities that qualify in accordance with §1786.28(a) hereof and which are received by RUS during the application period;

(d) *Financially distressed borrowers' reserve.* The \$350 million of prepayment authority allocated for RUS-financed electric utilities, is initially set aside into a financially distressed borrowers' reserve. This reserve of prepayment authority will be available for prepayments pursuant to this subpart by financially distressed borrowers who apply to make such a prepayment during the application period. In the event that a portion of financially distressed borrowers' reserve remains unsubscribed at the end of the initial application period, the unallocated portion of the financially distressed borrowers' reserve will be allocated to other electric borrowers having submitted applications during an application period to be announced by RUS. Such prepayment applications shall be classified as standard electric program applications.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35427, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990]

### § 1786.30 Processing procedure.

(a) *Priority of Processing.* The determination of the order or method in which applications or portions of applications will be processed by RUS pursuant to this subpart rests solely within the discretion of the Administrator. RUS expects that a number of prepayment applications will be processed simultaneously. In the event that it be-

comes necessary to establish priorities of processing, prepayment applications will be processed without regard to the date received, generally in the following order of priority:

(1) Applications from telephone borrowers;

(2) Applications from financially distressed borrowers;

(3) Applications from all other borrowers. When assigning priority to such applications, RUS will consider a number of factors, including without limitation, (i) the number of prepayment applications being processed by the area office; (ii) the novelty or complexity of the proposed transaction; (iii) the method of prepayment; and (iv) the availability of resources. In the event that RUS receives during the initial application period, prepayment applications from such borrowers in an amount less than remaining prepayment authority for each respective program, RUS will establish a new application period and publish a notice to that effect in the FEDERAL REGISTER.

(b) *Pro-rated Applications.* Standard electric program applications, and telephone program applications will be prorated within their respective application categories to permit partial prepayments in the event that the aggregate amount of prepayment applications received during the application period exceeds the amount of prepayment authority allocated to that application category. In such circumstances, the amount of each borrower's permitted prepayment shall be determined within each respective application category, as follows:

(1) The principal amount of FFB advances under each individual application, which, if prepaid pursuant to this subpart, would result in an economic savings to the borrower, shall be divided by the aggregate principal amount of FFB advances, under all of the applications, which, if prepaid pursuant to this subpart, would result in an economic savings to the borrowers, in order to determine a percentage (hereinafter called a pro-rated percentage) for each borrower;

(2) Each borrower's share of the prepayment authority for its application category shall be equal to the product of (i) the prepayment authority times

(ii) the respective pro-rated percentage, and may be used to prepay a portion of any of the borrower's FFB loans listed pursuant to §1786.31(a)(2);

(3) If any approved prepayment transaction fails to be settled within 180 days of the date the borrower is notified by RUS of its prepayment allocation, RUS may rescind its approval. The unused prepayment authority represented by such a failed transaction is subject to being included in any subsequent notice of a new application period under this subpart; and

(4) In the event that applications from financially distressed borrowers exceed the amount prepayment authority remaining in the financially distressed borrowers' reserve, the Administrator at his discretion shall select one or more of such applications and allocate the reserve. In making such a selection and allocation, the Administrator may consider various factors, including without limitation, (i) the dollar amount of savings to be realized by the proposed prepayment; (ii) the interest rates on the FFB loans proposed to be prepaid; (iii) the magnitude of the default or potential default; and (iv) whether the borrower has previously completed a prepayment under section 306(A).

(c) *Notification of Borrowers' Allocations.* Promptly after allocating the prepayment authority to borrowers and completing any proration calculations that may be necessary, RUS will return to each borrower submitting a prepayment application pursuant to this subpart, a copy of their Notice of Intent to Prepay the Federal Financing Bank specifying the amount of the borrower's prepayment allocation.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 49250, Nov. 27, 1990]

**§ 1786.31 Application procedure.**

Applications to make a prepayment pursuant to this subpart shall be submitted to RUS on such forms as RUS may prescribe in the following manner:

(a) *Application.* Each borrower desiring to make a prepayment pursuant to this subpart shall submit an application to RUS. No application from a borrower will be accepted by RUS prior to the commencement of the application period. An application shall not be

deemed submitted to RUS until it is received by RUS, and the "Date Received" has been inscribed on the Notice of Intent to Prepay the Federal Financing Bank by an authorized official of RUS. Incomplete applications may be returned to the borrower at the discretion of RUS and thereafter must be resubmitted in order to be processed. To be considered complete, the application should include the following:

(1) "Notice of Intent to Prepay the Federal Financing Bank" in the form specified in §1786.33 hereof;

(2) A listing of each FFB loan advance to be prepaid by loan designation, RUS note number, RUS account number, advance date, maturity date, original amount, outstanding balance, and interest rate;

(3) Evidence that the borrower meets the qualification provisions of §1786.28(a) of these regulations;

(4) The certification set forth in part A of the Notice of Intent to Prepay the Federal Financing Bank executed by the chief executive officer of the borrower;

(5) In the event that a borrower submits a prepayment application which proposes to utilize a portion of the financially distressed borrowers' reserve, a certification signed by the chief executive officer of the system to the effect that the borrower is either (i) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (ii) participating in a work out or debt restructuring plan with RUS, either as the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring and stating why the borrower is in default or near default.

(b) *Election of Method of Prepayment.* Prior to requesting RUS to schedule a settlement date, the borrower shall (1) elect whether it will use a private loan, internally generated funds, or a combination of a private loan and internally generated funds to make the prepayment, by completing part C of its Notice of Intent to Prepay the Federal Financing Bank; (2) specify in part C of the Notice of Intent to prepay the Federal Financing Bank a date after which



**§ 1786.32**

a prepayment closing may be scheduled; (3) if appropriate, execute the certification set forth in part C of the Notice of Intent to Prepay the Federal Financing Bank; and (4) return a completed copy of the Notice of Intent to Prepay the Federal Financing Bank to the RUS area office.

(c) *Final Documentation.* All documentation in connection with a proposed prepayment made pursuant to this subpart shall have been submitted to RUS in final form, no later than 5 business days prior to the settlement date agreed to by the borrower and RUS. To be considered complete, the final documentation shall include the following material:

(1) A completed copy of the Notice of Intent to Prepay the Federal Financing Bank;

(2) In the event that a borrower proposes to utilize a private loan in connection with a prepayment or a portion of a prepayment,

(i) Evidence, in form and substance satisfactory to RUS, that the borrower has an irrevocable commitment from the lender to close the private loan on the settlement date at an interest rate that meets the requirements of §1786.28(c)(1);

(ii) Evidence that the lender meets the qualification provisions of §1786.28(b);

(iii) Evidence that the private loan meets the qualification provisions of §1786.28(c); and

(iv) The final documentation for the private loan;

(3) Estimate of fees, and expenses, including any taxes, in connection with the prepayment transaction;

(4) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting RUS approval of the prepayment.

(5) In the case of financially distressed borrowers, evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or state regulatory body having jurisdiction over the borrower's rates has acknowledged its awareness of this requirement;

(6) In the event that borrower is unable to deliver final documentation or

**7 CFR Ch. XVII (1-1-20 Edition)**

the evidence specified in accordance with, §1786.31(c), RUS may reschedule the settlement date at its discretion.

(Approved by the Office of Management and Budget under control number 0572-0088)

**§ 1786.32 Settlement procedure.**

(a) *General.* Settlements in connection with prepaying FFB loans pursuant to this subpart shall be conducted in accordance with the provisions of this section.

(b) *Settlement date.* The prepayment will be settled and if a private loan is utilized, the guarantee will be delivered, on a settlement date agreed upon by the borrower and RUS. Prior to scheduling a settlement date for a borrower's prepayment pursuant to this subpart, RUS shall have received the material specified in §1786.31(b).

(c) *Place of settlement.* All settlements will take place in Washington, DC, at a location of the borrower's choosing; provided however, if more than one settlement is proposed for the same settlement date, RUS reserves the right to coordinate the date and location of the settlements with borrowers involved.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to RUS through the Department of the Treasury account at the Federal Reserve Bank of New York or shall provide for payment to RUS in another manner acceptable to RUS and FFB, in an amount sufficient to pay the outstanding principal of the FFB loan being prepaid plus accrued interest from the last payment date to and including the settlement date.

(e) *Documentation.* The borrower shall deliver, or cause to be delivered to RUS and FFB, not less than 3 business days prior to the settlement date, written notice of the settlement date and a complete listing of each FFB loan advance to be prepaid or partially prepaid, in the format required by §1786.31(a)(2). In the event that a private loan is used in connection with the prepayment, the following executed documents, opinions and material shall be delivered at the settlement:

## Rural Utilities Service, USDA

## § 1786.35

(1) The guaranteed note evidencing the private loan.

(2) The guarantee.

(3) The loan guarantee agreement.

(4) Copy of the private loan agreement between the lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligations secured by the mortgage including the obligation of the borrower to reimburse RUS for any amounts that RUS may pay under the guarantee.

(7) An approving opinion of the borrower's legal counsel to the effect that the guaranteed note evidencing the private loan is a valid and legally binding obligation of the borrower which is secured under the mortgage, and the priority of the mortgage, as amended pursuant to paragraph (e)(6) of this section, remains undisturbed.

(8) An approving opinion of the lender's legal counsel to the effect that the loan guarantee agreement is a valid and legally binding obligation of the lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other documentation required by the lender.

(11) Copies of any other documentation required by RUS to ensure that the obligations of the borrower to reimburse RUS for any amounts that RUS pays under the guarantee or may advance in connection with the private loan are adequately secured under the mortgage.

(Approved by the Office of Management and Budget under control number 0572-0088)

### § 1786.33 Forms.

Guarantees and loan guarantee agreements executed by RUS pursuant to this subpart will be on forms prescribed by RUS. Such forms will include, without limitation, additional details on servicing, procedures for notifying RUS of a default, the manner for requesting payment on a guarantee. The Notice of Intent to Prepay the

Federal Financing Bank shall be substantially in the form specified by RUS. RUS may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to §1786.31 of this subpart.

### § 1786.34 Access to records of lenders, servicers, and trustees.

The lender, the servicer, or the trustee will permit representatives of RUS (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of their records pertaining to RUS guaranteed loans. Such inspection and copying may be made during regular office hours of the respective party or any other time the party and RUS find convenient.

### § 1786.35 Loss, theft, destruction, mutilation, or defacement of RUS guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the RUS Administrator is authorized on behalf of RUS to issue a replacement guarantee(s) for one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender, or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to RUS for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, requesting the replacement forms;

(ii) Legal name and address of lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the guarantee, including the name of the borrower, date of the guarantee, face amount of the evidence of debt purchased, date of evidence of debt and

## § 1786.36

present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the guarantee; and

(vi) The lender or holder, shall present evidence demonstrating current ownership of the guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to RUS (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to RUS shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a state or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than \$1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Utilities Service. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save RUS harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

### § 1786.36 Other prepayments.

Nothing contained in this subpart shall prohibit a borrower from making prepayments of FFB loans in accordance with the terms thereof.

## 7 CFR Ch. XVII (1-1-20 Edition)

### § 1786.37 Application of regulation to previous prepayments.

Nothing contained in this subpart shall affect the validity of prepayments made or guarantees issued pursuant to previous regulations. Those borrowers, however, that completed a prepayment pursuant to section 306(A) of the RE Act and closed loans prior to February 27, 1988, may, in their discretion request RUS approval and if required by prior regulations the concurrence of the Secretary of the Treasury, of any amendments necessary to make the terms and conditions of such loans consistent with, or to consolidate such loans with, loans guaranteed under these regulations.

### § 1786.38 Judicial review.

This subpart is intended to set forth RUS policies and procedures for the orderly administration of the provisions of section 306(A) of the RE Act, section 633 of the continuing resolution, and section 637 of the 1989 Appropriations Act and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

### §§ 1786.39-1786.49 [Reserved]

## Subpart C—Special Discounted Prepayments on RUS Direct/Insured Loans

AUTHORITY: 7 U.S.C. 901-950b; Title I, Subtitle B, Pub. L. 99-509; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 51 FR 46999, Dec. 29, 1986, unless otherwise noted. Redesignated at 55 FR 49250, Nov. 27, 1990.

### § 1786.50 Purpose.

This subpart sets forth the policies and procedures of RUS whereby electric and telephone borrowers may prepay outstanding RUS Notes at the Discounted Present Value of the RUS Notes with private financing.

### § 1786.51 Definitions.

As used in this subpart:  
*Act* means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).