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PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

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AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

SOURCE: 55 FR 39396, Sept. 27, 1990, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Lien Accommodations and Subordination Policy

SOURCE: 51 FR 32430, Sept. 12, 1986, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990.

§1744.20 General.

(a) Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), these services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders. The borrower's financial strength and the assurance of repayment of outstanding Government debt

may be improved as a result of providing such telecommunications services.

(b) To facilitate the financing of new services and other services not ordinarily financed by RUS, RUS is willing to consider accommodating the Government's lien on telecommunications borrowers' systems or accommodating or subordinating the Government's lien on after-acquired property of telecommunications borrowers. To expedite this process, requests for lien accommodations meeting the requirements of §1744.30 will receive automatic approval from RUS.

(c) This subpart establishes RUS policy with respect to all requests for lien accommodations and subordinations for loans from private lenders. For borrowers that do not qualify for automatic lien accommodations in accordance with §1744.30, RUS will consider lien accommodations for RE Act purposes under §1744.40 and non-Act purposes under §1744.50.

[66 FR 41758, Aug. 9, 2001]

§1744.21 Definitions.

The following definitions apply to this subpart:

Administrator means the Administrator of RUS.

Advance means transferring funds from RUS or a lender guaranteed by RUS to the borrower's construction fund.

After-acquired property means property which is to be acquired by the borrower and which would be subject to the lien of the Government mortgage when acquired.

Amortization expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Amortization expense	6560.2
(2) Amortization expense—tangible	6563
(3) Amortization expense—intangible	6564
(4) Amortization expense—other	6565

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Asset means a future economic benefit obtained or controlled by the borrower as a result of past transactions or events.

Automatic lien accommodation means the approval, by RUS, of a request to share the Government's lien on a pari passu or pro-rata basis with a private lender in accordance with the provisions of §1744.30.

Borrower means any organization that has an outstanding telecommunications loan made or guaranteed by RUS, or that is seeking such financing. See 7 CFR part 1735.

Construction Fund means the RUS Construction Fund Account into which all advances of loan funds are deposited pursuant to the provisions of the loan documents.

Debt Service Coverage (DSC) ratio means the ratio of the sum of the borrower's net income, depreciation and amortization expense, and interest expense, all divided by the sum of all payments of principal and interest required to be paid by the borrower during the year on all its debt from any source with a maturity greater than 1 year and capital lease obligations.

Default means any event or occurrence which, unless corrected, will, with the passage of time and the giving of proper notices, give rise to remedies under one or more of the loan documents.

Depreciation expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Depreciation expense	6560.1
(2) Depreciation expense—telecommunications plant in service	6561
(3) Depreciation expense—property held for future telecommunications use	6562

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Disbursement means a transfer of money by the borrower out of the construction fund in accordance with the provisions of the fund.

Equity percentage means the total equity or net worth of the borrower expressed as a percentage of the borrower's total assets.

FFB means the Federal Financing Bank.

Financial Requirement Statement (FRS) means RUS Form 481 (OMB—No. 0572—0023). (This RUS Form is available from

RUS, Program Development and Regulatory Analysis, Washington, DC 20250–1522).

Government mortgage means any instrument to which the Government, acting through the Administrator, is a party and which creates a lien or security interest in the borrower's property in connection with a loan made or guaranteed by RUS whether the Government is the sole mortgagee or is a co-mortgagee with a private lender.

Hardship loan means a loan made by RUS under section 305(d)(1) of the RE Act.

Interim construction means the purchase of equipment or the conduct of construction under an RUS-approved plan of interim financing. See 7 CFR part 1737.

Interest expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Interest and related items	7500
(2) Interest on funded debt	7510
(3) Interest expense—capital leases	7520
(4) Amortization of debt issuance expense	7530
(5) Less Allowance for funds used during construction	7340/ 7300.4
(6) Other interest deductions	7540

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Interim financing means funding for a project which RUS has acknowledged may be included in a loan, should said loan be approved, but for which RUS loan funds have not yet been made available.

Lien accommodation means sharing the Government's lien on a pari passu or pro-rata basis with a private lender.

Loan means any loan made or guaranteed by RUS.

Loan documents means the loan contract, note and mortgage between the borrower and RUS and any associated document pertinent to a loan.

Loan funds means the proceeds of a loan made or guaranteed by RUS.

Material and supplies means any of the items properly recordable in the following account of the borrower:

Account names	Number
(1) Material and Supplies	1220.1

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Net income/Net margins means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Local Network Services Revenues	5000 through 5069
(2) Network Access Services Revenues	5080 through 5084
(3) Long Distance Network Services Revenues.	5100 through 5169
(4) Miscellaneous Revenues	5200 through 5270
(5) Nonregulated Revenues	5280
(6) Less Uncollectible Revenues	5200 through 5302
(7) Less Plant Specific Operations Expense.	6110 through 6441
(8) Less Plant Nonspecific Operations Expense.	6510 through 6565
(9) Less Customer Operations Expense	6610 through 6623
(10) Less Corporate Operations Expense.	6710 through 6790
(11) Other Operating Income and Expense.	7100 through 7160
(12) Less Operating Taxes	7200 through 7250/ 7200.5
(13) Nonoperating Income and Expense	7300 through 7370
(14) Less Nonoperating Taxes	7400 through 7450/ 7400.5
(15) Less Interest and Related Items	7500 through 7540
(16) Extraordinary Items	7600 through 7640/ 7600.4
(17) Jurisdictional Differences and Nonregulated Income Items.	7910 through 7990

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Net plant means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Property, Plant and Equipment	2001 through 2007
(2) Less Depreciation and Amortization	3100 through 3600

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Notes means evidence of indebtedness secured by or to be secured by the Government mortgage.

Pari Passu means equably; ratably; without preference or precedence.

Plant means any of the items properly recordable in the following accounts of the borrower:

Account names	Number
(1) Property, Plant and Equipment	2001 through 2007

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Private lender means any lender other than the RUS or the lender of a loan guaranteed by RUS.

Private lender notes means the notes evidencing a private loan.

Private loan means any loan made by a private lender.

RE Act (Act) means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et. seq.*).

RUS means the Rural Utilities Service, and includes its predecessor, the Rural Electrification Administration.

RUS cost-of-money loan means a loan made under section 305(d)(2) of the RE Act.

Subordination means allowing a private lender to have a lien on specific property which will have priority over the Government's lien on such property.

Tangible plant means any of the items properly recordable in the following accounts of the borrower:

Account names	Number
(1) Telecommunications Plant in Service—General Support Assets.	2110 through 2124
(2) Telecommunications Plant in Service—Central Office Assets.	2210 through 2232
(3) Telecommunications Plant in Service—Information Origination/Termination Assets.	2310 through 2362
(4) Telecommunications Plant in Service—Cable and Wire Facilities Assets.	2410 through 2441
(5) Amortizable Tangible Assets	2680 through 2682
(6) Nonoperating Plant	2006

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Telecommunication services means any service for the transmission, emission, or reception of signals, sounds, information, images, or intelligence of any nature by optical waveguide, wire, radio, or other electromagnetic systems and shall include all facilities used in providing such service as well as the development, manufacture, sale, and distribution of such facilities.

Times interest earned ratio (TIER) means the ratio of the borrower's net income or net margins plus interest expense, divided by said interest expense.

Total assets means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Current Assets	1100s through 1300s
(2) Noncurrent Assets	1400s through 1500s
(3) Total telecommunications plant	2001 through 2007
(4) Less accumulated depreciation	3100 through 3300s
(5) Less accumulated amortization	3400 through 3600s

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Total equity or net worth means the excess of a borrower's total assets over its total liabilities.

Total liabilities means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Current Liabilities	4010 through 4130.2
(2) Long-Term Debt	4210 through 4270.3
(3) Other Liabilities and Deferred Credits.	4310 through 4370

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Total long-term debt means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Long-Term Debt	4210 through 4270.3

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Weighted-average life of the loans or notes means the average life of the loans or notes based on the proportion of original loan principal paid during each year of the loans or notes. It shall be determined by calculating the sum of all loan or note principal payments expressed as a fraction of the original loan or note principal amount, times the number of years and fractions of years elapsed at the time of each payment since issuance of the loan or note. For example, given a $5 million loan, with a maturity of 5 years and equal principal payments of $1 million due on the anniversary date of the loan, the weighted-average life would be: (.2)(1 year) + (.2)(2 years) + (.2)(3 years) + (.2)(4 years) + (.2)(5 years) = .2 years + .4 years + .6 years + .8 years +

1.0 years = 3.0 years. If instead the loan had a balloon payment of $5 million at the end of 5 years, the weighted-average life would be: ($5 million/$5 million)(5 years) = 5 years.

Weighted-average remaining life of the loans or notes means the remaining average life of the loans or notes based on the proportion of remaining loan or note principal expressed in years remaining to maturity of the loans or notes. It shall be determined by calculating the sum of the remaining principal payments of each loan or note expressed as a fraction of the total remaining loan or note amounts times the number of years and fraction of years remaining until maturity of the loan or note.

Weighted-average remaining useful life of the assets means the estimated original average life of the assets to be acquired with the proceeds of the private lender notes expressed in years based on depreciation rates less the number of years those assets have been in service (or have been depreciated). It shall be determined by calculating the sum of each asset's remaining value expressed as a fraction of the total remaining value of the assets, times the estimated number of years and fraction of years remaining until the assets are fully depreciated.

Wholly-owned subsidiary means a corporation owned 100 percent by the borrower.

[66 FR 41758, Aug. 9, 2001, as amended at 84 FR 59922, Nov. 7, 2019]

§§ 1744.22–1744.29 [Reserved]

§ 1744.30 Automatic lien accommodations.

(a) *Purposes and requirements for approval.* Automatic lien accommodations are available only for refinancing and refunding of notes secured by the borrower's existing Government mortgage; financing assets, to be owned by the borrower, to provide telecommunications services; or financing assets, to be owned by a wholly-owned subsidiary of the borrower, to provide telecommunications services in accordance with the procedures set forth in this section.

(b) *Private lender responsibility.* The private lender is responsible for ensuring that its notes, for which an automatic lien accommodation has been approved as set forth in this section, are secured under the mortgage. The private lender is responsible for ensuring that the supplemental mortgage is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional documents are required or that RUS must take additional actions to secure the notes under the mortgage, the private lender shall follow the procedures set forth in § 1744.40 or § 1744.50, as appropriate.

(c) *Refinancing and refunding.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of refinancing or refunding any notes secured under the Government mortgage, provided that all of the following conditions are met:

(1) No default has occurred and is continuing under the Government mortgage;

(2) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form set forth in Appendix A of this subpart, providing that:

(i) No default has occurred and is continuing under the Government mortgage;

(ii) The principal amount of such refinancing or refunding notes will not be greater than 112 percent of the then outstanding principal balance of the notes being refinanced or refunded;

(iii) The weighted-average life of the private loan evidenced by the private lender notes will not exceed the weighted-average remaining life of the notes being refinanced or refunded;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than the original remaining years to maturity;

(v) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(vi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures contained in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(d) *Financing assets to be owned directly by a borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of financing the purchase or construction of plant and material and supplies to provide telecommunication services and when such assets are to be owned and the telecommunications services are to be offered by the borrower, provided that all of the following conditions are met:

(1) The borrower has achieved a TIER of not less than 1.5 and a DSC of not less than 1.25 for each of the borrower's two fiscal years immediately preceding the issuance of the private lender notes;

(2) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is not less than 1.2, on a pro-forma basis, after taking into account the effect of the private lender notes and additional plant on the total long-term debt of the borrower;

(3) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 25 percent;

(4) No default has occurred and is continuing under the Government mortgage;

(5) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification by an independent certified public accountant that the borrower has met each of the requirements in paragraphs (d)(1) and (d)(3) of this section, such certification to be substantially in the form in appendix B of this subpart; and

(6) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form in appendix C of this subpart: provided, that:

(i) The borrower has met each of the requirements in paragraphs (d)(2) and (d)(4) of this section;

(ii) The proceeds of the private lender notes are to be used for the construction or purchase of the plant and materials and supplies to provide telecommunications services in accordance with this section and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(iii) The weighted-average life of the private loan evidenced by the private lender notes does not exceed the weighted-average remaining useful life of the assets being financed;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than the original remaining years to maturity;

(v) All of the assets financed by the private loans will be purchased or otherwise procured in bona fide arm's length transactions;

(vi) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents;

(vii) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(viii) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures set forth in paragraph (h) of this section for the preparation,

execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(e) *Financing assets to be owned by a wholly-owned subsidiary of the borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of financing the purchase or construction of tangible plant and material and supplies to provide telecommunication services and when such services are to be offered and the associated tangible assets are to be owned by a wholly-owned subsidiary of the borrower, provided that all of the following conditions are met:

(1) The borrower has achieved a TIER of not less than 2.5 and a DSC of not less than 1.5 for each of the borrower's two fiscal years immediately preceding the issuance of the private lender notes;

(2) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is not less than 1.6, on a pro-forma basis, after taking into account the effect of the private lender notes and additional plant on the total long-term debt of the borrower;

(3) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 45 percent;

(4) No default has occurred and is continuing under the Government mortgage;

(5) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification by an independent certified public accountant that the borrower has met each of the requirements in paragraphs (e)(1) and (e)(3) of this section, such certification to be substantially in the form in appendix D of this subpart; and

(6) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form in appendix E of this subpart; providing that:

(i) The borrower has met each of the requirements in paragraphs (e)(2) and (e)(4) of this section;

(ii) The proceeds of the private lender notes are to be used for the construction or purchase of the tangible plant and materials and supplies to provide telecommunications services in accordance with this section and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(iii) The weighted-average life of the private loan evidenced by the private lender notes does not exceed the weighted-average remaining useful life of the assets being financed;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than the original remaining years to maturity;

(v) All of the assets financed by the private loans will be purchased or otherwise procured in bona fide arm's length transactions;

(vi) The proceeds of the private lender notes will be lent to a wholly-owned subsidiary of the borrower pursuant to terms and conditions agreed upon by the borrower and subsidiary;

(vii) The borrower will, whenever requested by RUS, provide RUS with a copy of the financing or guarantee agreement between the borrower and the subsidiary or any similar or related material including security instruments, loan contracts, or notes issued by the subsidiary to the borrower;

(viii) The borrower will promptly report to the Administrator any default by the subsidiary or other actions that impair or may impair the subsidiary's ability to repay its loans;

(ix) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents;

(x) Except as provided in the Government mortgage, the borrower has not

agreed to any restrictions or limitations on future loans from RUS; and

(xi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures contained in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(f) *Borrower notification.* The borrower shall notify RUS of its intention to obtain an automatic lien accommodation under §1744.30 by providing the following:

(1) The board resolution cited in §1744.55(b)(1) and the opinion of counsel cited in §1744.55(b)(2);

(2) The applicable certification or certifications required by paragraph (c)(2); paragraphs (d)(5) and (d)(6); or paragraphs (e)(5) and (e)(6), respectively, of this section, in substantially the form contained in the applicable appendices to this subpart.

(g) *RUS acknowledgment.* Within 5 business days of receipt of the completed certifications and any other information required under this section, RUS will review the information and provide written acknowledgment to the borrower and the private lender of its qualification for an automatic lien accommodation. Upon receipt of the acknowledgment, the borrower may execute the private lender notes.

(h) *Supplemental mortgage.* If the private lender determines that a supplemental mortgage is required to secure the private lender notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, the private lender may prepare the supplemental mortgage using the form attached as appendix F to this subpart or the borrower may request RUS to prepare such supplemental mortgage in accordance with the following procedures:

(1) The private lender preparing the supplemental mortgage shall execute and forward the completed document to RUS. Upon ascertaining the correctness of the form and the information concerning RUS, RUS will execute and forward the supplemental mortgage to the borrower.

(2) When requested by the borrower, RUS will expeditiously prepare the supplemental mortgage, using the form in appendix F to this subpart, upon submission by the private lender of:

(i) The name of the private lender;

(ii) The Property Schedule for inclusion as supplemental mortgage Schedule B, containing legally sufficient description of all real property owned by the borrower; and

(iii) The amount of the private lender note.

(3) The government is not responsible for ensuring that the supplemental mortgage has been executed by all parties and is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional security instruments or other documents are required or that RUS must take additional actions to secure the private lender notes under the mortgage, the private lender shall follow the procedures established in §§1744.40 or 1744.50, as appropriate. Except for the actions of the government expressly established in §1744.40, the government undertakes no obligation to effectuate an automatic lien accommodation. When processing of the supplemental mortgage has been completed to the satisfaction of the private lender, the borrower shall provide RUS with the following:

(i) A fully executed counterpart of the supplemental mortgage, including all signatures, seals, and acknowledgements; and

(ii) Copies of all opinions rendered by borrower's counsel to the private lender.

(i) *Other approvals.* (1) The borrower is responsible for meeting all requirements necessary to issue private lender notes and to accommodate the lien of the Government mortgage to secure the private lender notes including, but not limited to, those of the private lender, of any other mortgagees secured under the existing RUS mortgage, and of any governmental entities with jurisdiction over the issuance of notes or the execution and delivery of the supplemental mortgage.

(2) To the extent that the borrower's existing mortgage requires RUS approval before the borrower can make an investment in an affiliated company, approval is hereby given for all investments made in affiliated companies with the proceeds of private lender notes qualifying for an automatic lien accommodation under paragraph (e) of this section. Any reference to an approval by RUS under the mortgage shall apply only to the rights of RUS and not to any other party.

[66 FR 41760, Aug. 9, 2001]

§ 1744.40 Act purposes.

(a) Borrowers are encouraged to submit requests for accommodation of the Government's lien on the borrower's system in order to facilitate obtaining financing from private lenders for purposes provided in the RE Act.

(b) The Administrator will consider requests for the subordination of the Government's lien on after-acquired property which will enable borrowers to obtain financing from private lenders for purposes provided in the Act: Provided, however, that property integral to the operation of projects financed with loans made or guaranteed by RUS shall be financed with funds obtained through lien accommodations instead of lien subordinations, unless the Administrator determines that it is in the Government's interest to do otherwise.

[51 FR 32430, Sept. 12, 1986. Redesignated at 55 FR 39396, Sept. 27, 1990, and further redesignated at 66 FR 41760, Aug. 9, 2001]

§§ 1744.41–1744.49 [Reserved]

§ 1744.50 Non-Act purposes.

(a) The Administrator will consider requests for the accommodation of the Government's lien on the borrower's system or the subordination of the Government's lien on after-acquired property which will enable the borrowers to obtain financing from private lenders for the purpose of providing new telecommunication services which may not be eligible for financing under the Act if the Administrator is satisfied that:

(1) The borrower will have the ability to repay its existing and proposed indebtedness;

(2) The security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination; and

(3) Approval of the request is in the interests of the Government with respect to the financial soundness of the borrower and other matters, such as assuring that the borrower's system is constructed cost-effectively using sound engineering practices.

(b) In determining that the security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination the Administrator will consider, among other matters, when applicable, the following:

(1) Market forecasts for the project;

(2) Projected revenues, expenses and net income of the borrower's existing system and the project;

(3) Maximum debt service on indebtedness of both the borrower's system and the project;

(4) Projected rate of return on the borrower's investment in the project;

(5) Fair market value of property acquired by the borrower as part of the project;

(6) Impact of the project on the ratio of the borrower's secured debt to assets;

(7) Projected growth in borrower's system and project equity; and

(8) Amount of funds available for plant additions, replacements and other similar costs of the system and the project.

(c) In determining whether the accommodation or subordination is in the interests of the Government, the Administrator may consider, among other matters, whether the project will improve the borrower's financial strength and the assurance of repayment of Government debt.

[51 FR 32430, Sept. 12, 1986. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 59 FR 43716, Aug. 25, 1994. Redesignated at 66 FR 41760, Aug. 9, 2001, as amended at 66 FR 41763, Aug. 9, 2001]

§§ 1744.51–1744.54 [Reserved]

§ 1744.55 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC 20250–1590.

(b) An application for a lien accommodation or subordination shall include the following supporting information:

(1) A board Resolution from the applicant requesting the lien accommodation or subordination and stating the general purpose for which the funds from the private lender will be used, the proposed amount of the loan, and the proposed terms and conditions of the loan;

(2) An opinion from counsel representing the applicant that the applicant has the authority under its articles of incorporation, bylaws, and under applicable state law to undertake the project;

(3) Engineering and pertinent studies related to the projects or purposes to be financed, when applicable;

(4) Feasibility studies with pro forma financial statements showing the ability to repay the loan and provide an appropriate margin or net income;

(5) Any other information or documentation deemed pertinent by the borrower or the Administrator in support of the application.

(c) When the Administrator makes a determination that an application for an accommodation or subordination will not be approved the Administrator shall set forth the reasons therefor in writing and furnish such determination and reasons to the borrower within 30 days of the determination.

[51 FR 32430, Sept. 12, 1986. Redesignated at 55 FR 39396, Sept. 27, 1990, and further redesignated at 66 FR 41760, Aug. 9, 2001, as amended at 66 FR 41763, Aug. 9, 2001]

§§ 1744.56–1744.59 [Reserved]

APPENDIX A TO SUBPART B OF PART 1744—STATEMENT, CERTIFICATION, AND AGREEMENT OF BORROWER'S PRESIDENT OF BOARD OF DIRECTORS REGARDING REFINANCING AND REFUNDING NOTES PURSUANT TO 7 CFR 1744.30(C)

I _____(Name of President)_____, am President of _____(Name of Borrower)_____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____(Name of Private Lender)_____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(c).

(a) The private lender:

___ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or

___ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I hereby certify that all other requirements of 7 CFR 1744.30(c) are met; said requirements being as follows:

(1) No default has occurred and is continuing under the government mortgage;

(2) The principal amount of such refinancing or refunding notes, which is _____ dollars, will not be greater than 112 percent of the then outstanding principal balance of the notes being refinanced or refunded; such outstanding principal balance being _____ dollars;

(3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, will not exceed the weighted-average remaining life of the notes being refinanced or refunded, which is _____ years;

(4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and

(5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.

(c) The borrower agrees that the private lender notes will provide for substantially level debt service or level principal amortization.

(d) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, subpart B.

_____ _____

Signed Date

_____

Name

Name and Address of Borrower:

[66 FR 41763, Aug. 9, 2001]

APPENDIX B TO SUBPART B OF PART 1744—CERTIFICATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT REGARDING NOTES TO BE ISSUED PURSUANT TO 7 CFR 1744.30(C)

I/We, (Name of Independent Certified Public Accountant), hereby certify the following with respect to the note or notes (the "private lender notes") to be issued by (Name of Borrower) ("the borrower") on or about (Date private lender notes are to be Signed), evidencing a total loan principal of _____ dollars:

(a) The borrower has achieved a TIER of not less than 1.5 and a DSC of not less than 1.25 for each of the borrower's 2 fiscal years immediately preceding the issuance of the private lender notes. The TIER and DSC ratios achieved are as follows:

Year	TIER	DSC

(b) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 25 percent:

Year	Total Equity

_____ _____

Signed Date

Name and address of CPA Firm:

All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

[66 FR 41763, Aug. 9, 2001]

APPENDIX C TO SUBPART B OF PART 1744—STATEMENT, CERTIFICATION, AND AGREEMENT OF BORROWER'S PRESIDENT OF BOARD OF DIRECTORS REGARDING NOTES TO BE ISSUED PURSUANT TO 7 CFR 1744.30(d)

I _____(Name of President)_____, am President of _____(Name of Borrower) (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to_____(Name of Private Lender)_____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(d).

(a) The private lender:
___ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or
___ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I have reviewed the certificate of the independent certified public accountant also being delivered to the government in connection with the private lender notes to be issued pursuant to 7 CFR 1744.30(d) and concur with the conclusions expressed therein.

(c) I hereby certify that all other requirements of 7 CFR 1744.30(d) are met as follows:
(1) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is ____, which is not less than 1.2, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;
(2) No default has occurred and is continuing under the government mortgage;
(3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, does not exceed the weighted-average remaining useful lives of the assets being financed, which is _____ years;
(4) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and
(5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.

(d) The borrower agrees that:
(1) The proceeds of the private lender notes are to be used for the construction or purchase of the plant and materials and supplies to provide telecommunications services in accordance with 7 CFR 1744.30 and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;
(2) The private lender notes will provide for substantially level debt service or level principal amortization;
(3) All of the assets financed by the private lender notes will be purchased or otherwise procured in bona fide arm's length transactions; and
(4) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents.

(e) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

_____ _____
Signed Date

_____
Name
Name and Address of Borrower:

[66 FR 41763, Aug. 9, 2001]

APPENDIX D TO SUBPART B OF PART 1744—CERTIFICATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT REGARDING NOTES TO BE ISSUED PURSUANT TO 7 CFR 1744.30

I/We, (Name of Independent Certified Public Accountant), hereby certify the following with respect to the note or notes (the "private lender notes") to be issued by (Name of Borrower) ("the borrower") on or about (Date private lender notes are to be Signed), evidencing a total loan principal of _____ dollars:

(a) The borrower has achieved a TIER of not less than 2.5 and a DSC of not less than 1.5 for each of the borrower's 2 fiscal years immediately preceding the issuance of the private lender notes. The TIER and DSC ratios achieved are as follows:

Year	TIER	DSC

(b) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 45 percent.

Year	Total Equity

_____ _____

Signed Date

Name and address of CPA Firm:

All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

[66 FR 41763, Aug. 9, 2001]

APPENDIX E TO SUBPART B OF PART 1744—STATEMENT, CERTIFICATION, AND AGREEMENT OF BORROWER'S PRESIDENT OF BOARD OF DIRECTORS REGARDING NOTES TO BE ISSUED PURSUANT TO 7 CFR 1744.30(e)

I _____(Name of President)_____, am President of _____(Name of Borrower)_____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____(Name of Private Lender)_____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(e).

(a) The private lender:

___ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or

___ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I have reviewed the certificate of the independent certified public accountant also being delivered to the government in connection with private lender notes to be issued pursuant to said § 1744.30(e) and concur with the conclusions expressed therein.

(c) I hereby certify that all other requirements of 7 CFR 1744.30(e) are met; said requirements being as follows:

(1) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is ____, which is not less than 1.6, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;

(2) No default has occurred and is continuing under the government mortgage;

(3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, does not exceed the weighted-average remaining useful lives of the assets being financed, which is _____ years;

(4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service "RUS"; and

(5) This certificate is being delivered to RUS at least 10 business days before the private lender note or notes are to be executed.

(d) The borrower agrees that:

(1) The proceeds of the private lender notes are to be used for the construction or purchase of the tangible plant and materials and supplies to provide telecommunications services in accordance with 7 CFR 1744.30 and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(2) The private lender notes will provide for substantially level debt service or level principal amortization;

(3) All of the assets financed by the private lender notes will be purchased or otherwise procured in bona fide arm's length transactions;
(4) The proceeds of the private lender notes will be lent to, __(Name of Subsidiary)___, a wholly-owned subsidiary of the borrower pursuant to terms and conditions agreed upon by the borrower and subsidiary;
(5) The borrower will, whenever requested by RUS, provide RUS with a copy of the financing or guarantee agreement between the borrower and the subsidiary or any similar or related material including security instruments, loan contracts, or notes issued by the subsidiary to the borrower;
(6) The borrower will promptly report to RUS any default by the subsidiary or other actions that impair or may impair the subsidiary's ability to repay its private loans; and
(7) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents.

(e) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

_____ _____
Signed Date

_____
Name Name and Address of Borrower:

[66 FR 41763, Aug. 9, 2001]

APPENDIX F TO SUBPART B OF PART 1744—FORM OF SUPPLEMENTAL MORTGAGE

Supplemental Mortgage and Security Agreement, dated as of _____ , (hereinafter sometimes called this "Supplemental Mortgage") is made by and among _____ (hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of _____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government"[1]), _____ (Supplemental Lender[2]) (hereinafter called _____), a _____ existing under the laws of _____, and is intend to confer rights and benefits on both the Government and_____ and _____ in accordance with this Supplemental Mortgage and the Original Mortgage (hereinafter defined) (the Government and the Supplemental Lenders being hereinafter sometimes collectively referred to as the "Mortgagees").

Recitals

Whereas, the Mortgagor, the Government and _____ are parties to that certain Restated Mortgage (the "Original Mortgage" as identified in Schedule "A" of this Supplemental Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Utilities Service (hereinafter called "RUS"), and _____; and

Whereas, the Original Mortgage as the same may have been previously supplemented, amended or restated is hereinafter referred to as the "Existing Mortgage"; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same, and to enter into this Supplemental Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity, and to add _____ as a Mortgagee and secured party hereunder and under the Existing Mortgage (the Supplemental Mortgage and the Existing Mortgage, hereinafter sometimes collectively referred to the "Mortgage"); and

Whereas, all of the Mortgagor's Outstanding Notes listed in Schedule "A" hereto is secured pari passu by the Existing Mortgage for the benefit of all of the Mortgagees under the Existing Mortgage; and

Whereas, by their execution and delivery of this Supplemental Mortgage the parties hereto do hereby secure the Additional Notes listed in Schedule "A" ((hereinafter called the Supplemental Lender Notes[3])) pari passu with the Outstanding Notes under the Existing Mortgage {and do hereby add _____ as a Mortgagee and a secured party under the Existing Mortgage}; and

---

1 If the Rural Telephone Bank is a party to the original Mortgage, then "Rural Telephone Bank (herein after called the "Bank")" should be added here and the words "and the Bank" should be added after each reference to the Government.

2 If the Existing Mortgage already defines a Supplemental Lender, then the supplemental lender in the present transaction is to be called the "Second Supplemental Lender" and the supplemental mortgage should refer to both the supplemental lender and the second supplemental lender.

3 If the Second Supplemental Lender is being added to the mortgage, the reference here should be to the "Second Supplemental Lender's Notes."

Whereas, all acts necessary to make this Supplemental Mortgage a valid and binding legal instrument for the security of such notes and related obligations under the terms of the Mortgage, have been in all respects duly authorized:

Now, Therefore, This Supplemental Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge and grant to the Mortgagees, for the purposes hereinafter expressed, a continuing security interest in all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other kind or nature, in accordance with the Existing Mortgage owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule; and

B. all of those fee and leasehold interests in real property set forth in _____ the Existing Mortgage or in any restatement, amendment or supplement thereto,_____; and

C. all of the kinds, types or items of property, now owned or hereafter acquired, described as Mortgaged Property in the Existing Mortgage or in any restatement, amendment to supplement thereto as Mortgaged Property.

It is Further Agreed and Covenanted That the Original Mortgage, as previously restated, amended or supplemented, and this Supplement shall constitute one agreement and the parties hereto shall be bound by all of the terms thereof and, without limiting the foregoing:

1. All terms not defined herein shall have the meaning given in the Existing Mortgage.
2. The Supplemental Lender Notes are "notes" and "Additional Notes" under the terms of the Existing Mortgage and the Supplemental Mortgage is a supplemental mortgage under the terms of the Existing Mortgage.
3. The holders of the Supplemental Lenders Notes shall be considered as a class, so that in those instances where the Existing Mortgage providers that the holders of majority of the notes issued to other Mortgagees, voting as a class, may approve certain actions or make certain demands, so shall the holders of the Supplemental Lender Notes be considered to be a class with rights and authority equal to those of the holders of notes issued to such other Mortgagees.
4. The Maximum Debt Limit for the Existing Mortgage shall be as set forth in Schedule "A" hereto.
5. The [Second] Supplemental Lender shall immediately cease transfer of funds covered by the Supplemental Lender Notes if it receives notice that RUS has determined that the borrower's financial condition has deteriorated to a level that impairs the security or feasibility of the government's loans to the borrower.

In Witness Whereof, _____ as Mortgagor[4]

4 Spaces are to be provided for the execution by all other parties, together with the printed name and office of the executing individual and the name of the organization represented. Each execution must be acknowledged.

Supplemental Mortgage Schedule A

Maximum Debt Limit and Other Information

1. The Maximum Debt Limit is $_____ .

2. The Original Mortgage as referred to in the first WHEREAS clause above is more particularly described as follows:_____ .

3. The Outstanding Notes referred to in the fourth WHEREAS clause above are more particularly described as follows:

4. The Additional Notes described in the fifth WHEREAS clause above are more particularly described as follows:

Supplemental Mortgage Schedule B

Property Schedule

The fee and leasehold interests in real property referred to in clause A of the granting clause are more particularly described as follows:

[66 FR 41763, Aug. 9, 2001]

Subpart C—Advance and Disbursement of Funds

SOURCE: 54 FR 12186, Mar. 24, 1989, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990.

§ 1744.60 General.

(a) The standard loan documents (as defined in 7 CFR part 1758) contain provisions regarding advances and disbursements of loan funds by telephone borrowers. This part implements certain of the provisions by setting forth requirements and procedures to be followed by borrowers in obtaining advances and making disbursements of loan and nonloan funds.

(b) This part supersedes any sections of RUS Bulletins with which it is in conflict.

§ 1744.61 [Reserved]

§ 1744.62 Introduction.

RUS is under no obligation to make or approve advances of loan funds unless the borrower is in compliance with all terms and conditions of the loan documents. The borrower shall use funds in its construction fund only to make disbursements approved by RUS.

§ 1744.63 The telephone loan budget.

When the loan is made, RUS provides the borrower a Telephone Loan Budget, RUS Form 493. This budget divides the loan into budget accounts such as ''Engineering.'' When a contract or other document is approved by RUS, funds are encumbered from the appropriate budget account. See 7 CFR part 1753.

§ 1744.64 Budget adjustment.

(a) If more funds are required than are available in a budget account, the borrower may request RUS's approval of a budget adjustment to use funds from another account. The request shall include an explanation of the change, the budget account to be used, and a description of how the adjustment will affect loan purposes. RUS will not approve a budget adjustment that affects other loan purposes unless the borrower satisfies RUS that the additional funds are available from another source, requests a deficiency loan, or scales back the project.

(b) RUS may make a budget adjustment without a formal request by the borrower when a budget account is insufficient to encumber funds for a contract that otherwise would be approved by RUS. See 7 CFR part 1753.

§ 1744.65 The construction fund.

(a) The construction fund is used by the borrower primarily to hold advances until disbursed.

(b) All advances shall be deposited in the construction fund.

(c) RUS may require that other funds be deposited in the construction fund. These may include equity or general fund contributions to construction, service termination payments, proceeds from the sale of property, amounts recovered from insurance for losses during the construction period, and interest received on loan funds in savings or interest bearing checking accounts, and similar receipts. Deposit slips for any deposit to the construction fund shall show the source and amount of funds deposited and be executed by an authorized representative of the bank.

(d) Funds shall be disbursed only up to the amount approved for advance on the FRS as described in §1744.66. No funds may be withdrawn from the fund except for loan purposes approved by RUS.

(e) The disbursement of nonloan funds requires the same RUS approvals as loan funds.

(f) Disbursements must be evidenced by canceled checks. The invoices and supporting documentation needed for construction contracts are specified in the contracts and in 7 CFR part 1753. Disbursements to reimburse the borrower's general funds shall be documented by a reimbursement schedule, *to be retained in the borrower's files*, that lists the construction fund check number, date, and an explanation of amounts reimbursed by budget account.

§ 1744.66 The financial requirement statement (FRS).

(a) To request advances, the borrower must submit to RUS an FRS, a description of the advances desired, and other information related to the transactions when required by RUS.

(b) The FRS is used by RUS and the borrower to record and control transactions in the construction fund. Approved contracts and other items are shown on the FRS under ''Approved Purposes.'' Except as noted below, the amount approved for advance is 100 percent of the amount encumbered for that item. Funds are approved for advance as follows:

(1) *Construction*—(i) *Construction contracts and force account proposals.* Ninety percent of the encumbered amount (95 percent for outside plant), with the final 10 percent (5 percent) approved when RUS approves the closeout documents. When a contract contains supplement ''A'' (See 7 CFR part 1753), 90 percent (95 percent) of the contract is approved less materials supplied by the borrower. For the Supplement ''A'' materials, which are a separate entry on the FRS, 100 percent of the material cost is approved.

(ii) *Work orders.* The portion of the work order summary (See 7 CFR part 1753) determined by RUS to be for approved loan purposes.

(iii) *Work order fund.* Based on a borrower's request as described in 7 CFR part 1753.

(iv) *Real estate.* Upon request by the borrower after submission of evidence of a valid title.

(v) *Right of way procurement.* Based on the borrower's itemized costs.

(vi) *Joint use charges.* Based on copies of invoices from the other utility.

(2) *Engineering*—(i) *Preloan engineering.* Based on a final itemized invoice from the engineer.

(ii) *Postloan engineering contracts.* The amount shown on the engineering estimate, RUS Form 506, less the amount estimated for construction contract closeouts. The balance is approved when the engineering contract is closed.

(iii) *Force account engineering.* Ninety percent of the total amount of the RUS approved force account engineering proposal. The balance is approved when the force account engineering proposal is closed.

(3) *Office equipment, vehicles and work equipment.* Based on copies of invoices for the equipment.

(4) *General*—(i) *Organization and loan expenditures.* Based on an itemized list of requirements prepared by the borrower.

(ii) *Construction overhead.* Based on an itemized list of expenditures. If funds are required for employee salaries, the itemization shall include the employee's position, the period covered, total compensation for the period, and the portion of compensation attributable to the itemized construction.

(iii) *Legal fees.* Based on itemized invoices from the attorney.

(iv) *Bank stock.* Based on the requirements for purchase of class B Rural Telephone Bank stock established in the loan. Funds for class B stock will be advanced in an amount equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance.

(5) *Operating expenses*—(i) *Working capital—new system.* Based on the borrower's itemized estimate.

(ii) *Current operating deficiencies.* Based on a current and projected balance sheet submitted by the borrower.

(6) *Debt retirement and refinancing.* Upon release of the loan, based on the amount in the approved budget.

(7) *Acquisitions.* Based on final itemized costs, but cannot exceed the amount in the approved loan budget.

(c) Funds other than loan funds deposited in the construction fund, which shall include proceeds from the sale of property on which RUS has a lien, (lines 10 and 11 on the FRS) are reported as a credit under total disbursements. Disbursements of these funds are subject to the same RUS approvals as loan funds.

(d) The borrower shall request advances as needed to meet its obligations promptly. Generally, RUS does not approve an advance requested more than 60 days before the obligation is payable.

(e) Funds should be disbursed for the item for which they were advanced. If the borrower needs to pay an invoice for which funds have not been advanced, and disbursement of advanced funds for another item has been delayed, the latter funds may be disbursed to pay the invoice up to the amount approved for advance for that item on the FRS. The borrower shall make erasable entries on the next FRS showing the changes under ''Total Advances to Date'' and shall explain the changes in writing before RUS will process the next FRS.

(f) Advances will be rounded down to the nearest thousands of dollars except for final amounts.

(g) The certification on each of the three copies of the FRS sent to RUS shall be signed by a corporate officer of manager authorized by resolution of the board of directors to sign such statements. At the time of such authorization a certified copy of the resolution and one copy of RUS Form 675, Certificate of Authority, shall be submitted to RUS.

(h) The documentation required for the FRS transactions are the deposit slips, the canceled construction fund checks and the supporting invoices or reimbursement schedules. These shall be kept in the borrower's files for periodic audits by RUS.

[54 FR 12186, Mar. 24, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 56 FR 26600, June 10, 1991]

§ 1744.67 Temporary excess construction funds.

(a) When unanticipated events delay the borrower's disbursement of advanced funds, the funds may be used as follows:

(1) With RUS loan funds for loans approved prior to November 1, 1993, or hardship loan funds, the borrower may invest the funds in 5 percent Treasury Certificates of Indebtedness—RUS Series.

(2) With RUS cost-of-money or FFB loan funds, the following apply:

(i) The borrower may invest the funds in short term securities issued by the United States Treasury.

(ii) If permitted by state law, the borrower may deposit the funds in savings accounts, including certificates of deposit, of federally insured savings institutions.

(3) Funds advanced by a guaranteed lender other than the FFB may, if so permitted by such lender, be invested under the terms and conditions described above for FFB advances.

(4) Any security or investment made under this authorization shall identify the borrower by its corporate name followed by the words ''Trustee, Rural Utilities Service.''

(5) All temporary investments and all income derived from them shall be considered part of the construction fund and be subject to the same controls as cash in that account.

(6) Securities and other investments shall have maturity dates or liquidating provisions that ensure the availability of funds as required for the completion of projects and the payment of obligations.

(7) Any instrument evidencing a security or other investment herein authorized to be purchased or made, may not be sold, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

(8) The Administrator may, at his sole discretion, require a borrower to pledge any security or other evidence of investment authorized hereby by forwarding to him all pertinent instruments and related documentation as he may reasonably require.

(9) Borrowers shall be responsible for the safekeeping of securities and other investments.

(b) All interest and income received from investments of temporary excess funds, as described in this section, shall be deposited in the Construction Fund.

(c) The borrower shall account for investment proceeds on the next FRS submitted to RUS. RUS will make the necessary adjustments on budgetary records.

(d) The Administrator reserves the right to suspend any borrower's authorization to invest temporary excess funds contained herein if the borrower does not comply with the requirements.

(e) For RUS loans approved prior to October 1, 1991, the borrower may return advanced funds to RUS as a refund of an advance. Interest stops accruing on the refunded advance upon receipt by RUS. A refunded advance may be readvanced. A refund of an advance shall be sent to the Rural Utilities Service, United States Department of Agriculture, Collections and Custodial Section, Washington, DC, 20250. The borrower should clearly indicate that this is a refund of an advance, and not a loan payment or prepayment.

[54 FR 12186, Mar. 24, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 58 FR 66257, Dec. 20, 1993; 84 FR 59922, Nov. 7, 2019]

§ 1744.68 Order and method of advances of telephone loan funds.

(a) Borrowers may specify the sequence of advances of funds under any combination of approved telephone loans from RUS or FFB, except that for all loans approved on or after November 1, 1993, the borrower may use loan funds:

(1) Only for purposes for which that type of loan (*i.e.* Hardship, RUS cost-of-money, or FFB) may be made; and

(2) Only in exchanges that qualify for the type of loan from which the funds are drawn.

(b) The first or subsequent advances of loan funds may be conditioned on the satisfaction of certain requirements stated in the borrower's loan contract.

(c) Normally, only one payment is made by the Automatic Clearing House (ACH) for an advance of funds.

(d) Borrowers of RUS funds may request advances by wire service only for amounts greater than $500,000 or for advances to borrowers outside the Continental United States. FFB advances in any amount over $100,000 can be sent by wire service.

(e) The following information shall be included with the FRS:

(1) Name and address of borrower's bank.

(2) If borrower's bank is not a member of the Federal Reserve System, the name and address of its correspondent bank that is a member of the Federal Reserve System.

(3) American Bankers Association (ABA) nine digit identifier of the receiving banks (routing number and check digit).

(4) Borrower's bank account title and number.

(5) Any other necessary identifying information.

[54 FR 12186, Mar. 24, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 58 FR 66257, Dec. 20, 1993, as amended at 84 FR 59922, Nov. 7, 2019]

§ 1744.69 [Reserved]

Subpart D [Reserved]

Subpart E—Borrower Investments

SOURCE: 58 FR 52642, Oct. 12, 1993, unless otherwise noted.

§ 1744.200 General statement.

(a) RUS telephone borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not impair a borrower's ability to provide modern telecommunications services at reasonable rates or to repay its indebtedness to RUS and other lenders. When considering loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve.

(b) [Reserved]

[58 FR 52642, Oct. 12, 1993, as amended at 84 FR 59923, Nov. 7, 2019]

§ 1744.201 Definitions.

As used in this subpart:

Administrator means the Administrator of the Rural Utilities Service (RUS).

Advance means any funds provided of which repayment is expected.

Affiliated company means any organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

Borrower means any organization which has an outstanding loan made by RUS or guaranteed by RUS, or which is seeking such financing.

Extension of credit means to make loans or advances.

Guarantee means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of affiliated companies. Some examples of such guarantees would include:

(1) Guarantees of payment or collection on a note or other debt instrument;

(2) Issuing performance bonds or completion bonds; or

(3) Cosigning leases or other obligations of third parties.

Maximum investment ratio means that the aggregate of all qualified investments by the borrower including the proposed qualified investment shall not be more than one-third of the net worth of the borrower.

Minimum total assets ratio means the borrower's net worth is at least twenty percent of its total assets including the proposed qualified investment.

Net plant means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Telecommunications plant in service	2001
(2) Property held for future telecommunications use	2002
(3) Telecommunications plant under construction-short term	2003
(4) Telecommunications plant under construction-long term	2004
(5) Telecommunications plant adjustment	2005
(6) Nonoperating plant	2006
(7) Goodwill	2007
(8) Less accumulated depreciation	3100 through 3300s
(9) Less accumulated amortization	3400 through 3600s

NOTE: All references to account numbers are to the Uniform System of Accounts (47 CFR part 32).

Net worth means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Capital stock	4510
(2) Additional paid-in capital	4520
(3) Treasury stock	4530
(4) Other capital	4540
(5) Retained earnings	4550

NOTE: For nonprofit organizations, owners' equity is shown in subaccounts of 4540 and 4550. All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Qualified investment is defined in § 1744.202(b).

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

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.

Rural development investment is defined in § 1744.202(d).

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.

RUS mortgage means the instrument creating a lien on or security interest in the borrower's assets in connection with a loan made or guaranteed under the RE Act.

Total assets means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Current assets	1100s through 1300s
(2) Noncurrent assets	1400s through 1500s
(3) Total telecommunications plant	2001 through 2007
(4) Less accumulated depreciation	3100 through 3300s
(5) Less accumulated amortization	3400 through 3600s

NOTE: All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Uniform System of Accounts means the Federal Communications Commission Uniform System of Accounts for Telecommunications Companies (47 CFR part 32) as supplemented by 7 CFR Part 1770, Accounting Requirements for RUS Telephone Borrowers.

[58 FR 52642, Oct. 12, 1993, as amended at 59 FR 66440, Dec. 27, 1994; 84 FR 59923, Nov. 7, 2019]

§ 1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

(a) A borrower that equals or exceeds the minimum total assets ratio may make a qualified investment, defined in paragraph (b) of this section without prior written approval of the Administrator.

(b) A qualified investment is a rural development investment, defined in paragraph (d) of this section meeting the following criteria:

(1) Unless the borrower's commitment is a guarantee, extension of credit, or advance, the borrower receives any financial return accruing to such investment, or the borrower's proportionate share of such return;

(2) Unless the borrower's commitment is a guarantee, extension of credit, or advance, the borrower retains title to any asset acquired with such investment, or the borrower's proportionate share of such title; and

(3) The funds committed are the borrower's own funds. As used in this subpart, the term own funds shall not include proceeds of loans made, guaranteed or lien accommodated by RUS; funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien accommodated by RUS; and funds on deposit in the cash construction fund-trustee account, as defined in the borrower's loan contract with RUS.

(c) A rural development investment will not be considered to be a qualified investment to the extent that the amount of such investments exceeds the borrower's maximum investment ratio.

(d) A rural development investment is an investment, extension of credit, advance, or guarantee by a borrower for a period longer than one year and for one or more of the following purposes:

(1) Improve the economic well-being of rural residents and alleviate the

problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

(2) Improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

(3) Improve state and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for state and local officials, particularly in small rural communities;

(4) Strengthen the family farm system; or

(5) Maintain and protect the environment and natural resources of rural areas.

(e) As used in paragraph (d) of this section, the term rural development investment shall include investments by a borrower in its own name, in affiliated companies, and in entities not affiliated with the borrower.

§ 1744.203 Establishing amount of rural development investment.

For purposes of determining whether a rural development investment is within the limits of the borrower's maximum investment ratio or the minimum total assets ratio, the amount of the qualified investment shall be the total amount of funds committed to the rural development project as of the date of determination. The total amount of funds committed to the rural development project includes:

(a) The principal amount of loans and advances made by the borrower;

(b) Guarantees made by the borrower; and

(c) A reasonable estimate of the amount the borrower is committed to provide to the rural development project in future years.

§ 1744.204 Rural development investments that do not meet the ratio requirements.

(a) Each borrower is authorized to make investments other than qualified investments only in accordance with the provisions of the borrower's mortgage with RUS. Without RUS's approval, the portion of any investment of funds or commitment to invest funds for any rural development investment that will exceed the borrower's maximum investment ratio or cause the borrower to fall below the minimum total assets ratio, must comply with the provisions of the RUS mortgage.

(b) RUS will consider, on a case-by-case basis, requests for approval of rural development investments not constituting qualified investments. RUS may condition such approval, if granted, on such requirements and restrictions as RUS may determine to be in the best interests of the Government, including, without limitation, the borrower's agreement to limit dividends or distributions of capital by an amount specified by RUS. Requests for such approvals must be submitted in writing to the relevant RUS regional office and shall include:

(1) A description of the rural development project and the type of investment to be made, such as a loan, guarantee, stock purchase or equity investment;

(2) A reasonable estimate of the amount the borrower is committed to provide to the rural development project including investments that may be required in the future; and

(3) A pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to the rural development project.

(c) In determining whether to approve a rural development investment that may cause the borrower to exceed the maximum investment ratio or to fall below the minimum total assets ratio in the future, RUS will consider annual increases to the borrower's net worth and total assets as might be reasonably anticipated from the borrower's normal operations.

§ 1744.205 Determinations and application of limitations described in § 1744.202.

(a) RUS will not include qualified investments, including qualified investments in affiliated companies, in calculating the amount of dividend or capital distributions a borrower may make under its RUS mortgage.

(b) A borrower's investment in its net plant shall not be considered a rural development investment for purposes of calculating the maximum investment ratio or the minimum total assets ratio.

(c) The borrower's net worth and total assets shall be determined using the balances of the respective accounts of the borrower as of December 31 of the last complete calendar year preceding the date on which the borrower's maximum investment ratio and minimum total assets ratio are calculated.

(d) All determinations required to be made under 7 U.S.C. 926 or this subpart will be made in accordance with the Uniform System of Accounts (USoA)(47 CFR part 32). References to specific USoA accounts shall include revised or replacement accounts.

§ 1744.206 Effect of subsequent failure to maintain ratios.

If an expenditure constitutes a qualified investment under the terms of this subpart, it does not cease to be a qualified investment merely because subsequently the borrower fails to maintain the maximum investment ratio or the minimum total assets ratio.

§ 1744.207 Investment not to jeopardize loan security.

A borrower shall not make a qualified investment or a rural development investment which jeopardizes:

(a) The security of loans made or guaranteed by RUS; or

(b) The borrower's ability to repay such loans under the terms and conditions as agreed.

§ 1744.208 Rural development investments before November 28, 1990.

All investments made by a borrower shall be subject to the provisions of this subpart, regardless of when the investment was made or whether it has been approved by RUS. Any restrictions required by RUS as a condition to approving a rural development investment before November 28, 1990, shall continue to be in effect to the extent that such investment exceeds the maximum investment ratio or causes the borrower to fall below the minimum total assets ratio.

§ 1744.209 Records.

(a) The records of borrowers, including records relating to qualified investments, shall be subject to the auditing procedures prescribed in part 1773 of this chapter. RUS reserves the right to review the records of the borrower relating to qualified investments to determine if the borrower is in compliance with this subpart.

(b) Borrowers shall report to RUS on the end-of-year operating report, RUS Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

(Approved by the Office of Management and Budget under control number 0572–0098)

§ 1744.210 Effect of this subpart on RUS loan contract and mortgage.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with RUS, its notes issued to RUS, and the RUS mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a creditor of the borrower, other than RUS, whose loan to the borrower is secured by the RUS mortgage.

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