

AMENDMENTS

1994—Pub. L. 103-354 substituted “Secretary” for “Rural Electrification Administration” in subsec. (b) and “Secretary” for “Administrator” wherever appearing in subsections (d) and (e).

Statutory Notes and Related SubsidiariesPREPAYMENT OF RURAL ELECTRIFICATION LOANS
DURING FISCAL YEAR 1988

Pub. L. 100-203, title I, §1401, Dec. 22, 1987, 101 Stat. 1330-20, provided that:

“(a) **ELIGIBILITY TO PREPAY.**—Notwithstanding subsections (c), (d), and (e) of section 306A of the Rural Electrification Act of 1936 (7 U.S.C. 936a(c), (d), and (e)), during fiscal year 1988, a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with subsections (a) and (b) of section 306A of such Act, except that any prepayment that would cause the total amount of such prepayments during fiscal year 1988 to exceed \$2,000,000,000 shall be subject solely to the approval of the Secretary of the Treasury.

“(b) **PRIORITY FOR APPROVAL.**—In determining which borrowers shall be permitted to prepay loans under subsection (a):

“(1) The Administrator of the Rural Electrification Administration shall give priority to those 8 borrowers that were determined by the Administrator, prior to the date of the enactment of this Act [Dec. 22, 1987], to be eligible to prepay, or that prepaid, an advance under section 306A of such Act [7 U.S.C. 936a] (as in effect prior to the date of the enactment of this Act), except that to retain such priority a borrower shall—

“(A) notify the Administrator in writing, within 30 days after the issuance of regulations to carry out this section, of the intent of the borrower to prepay; and

“(B) complete such prepayment by disbursing funds to the Federal Financing Bank to prepay loan advances within 120 days after the issuance of such regulations.

“(2) In considering requests for prepayment under subsection (a) by borrowers not described in paragraph (1), the Administrator shall permit prepayment based on the order in which borrowers are prepared to disburse funds to the Federal Financing Bank to complete such prepayments. If more than 1 borrower is so prepared at the same time, and if the combined amount of such prepayments would cause the total amount of prepayments during fiscal year 1988, under this section, to exceed \$2,000,000,000, the Administrator shall—

“(A) base the determination on the date on which prepayment applications have been submitted; or

“(B) permit partial prepayment by two or more borrowers.

“(c) **REGULATIONS.**—Not later than 30 days after the date of enactment of this Act [Dec. 22, 1987], the Administrator of the Rural Electrification Administration shall issue such regulations as are necessary to carry at this section.

“(d) **STUDY.**—Not later than January 1, 1989, the Comptroller General of the United States shall—

“(1) study—

“(A) all benefits provided by Federal Financing Bank lending and the procedures and conditions for the prepayment of current Federal Financing Bank loans;

“(B) the benefits and costs to Federal Financing Bank borrowers of making prepayments; and

“(C) alternative conditions and procedures for prepayment of all Federal Financing Bank loans to balance Federal benefits with Federal costs; and

“(2) submit to Congress a report describing the results of such study, together with any appropriate recommendations.”

PREPAYMENT OF GUARANTEED LOANS; RESTRICTIONS

Pub. L. 100-202, §101(k) [title VI, §633], Dec. 22, 1987, 101 Stat. 1329-322, 1329-356, provided that: “Hereafter, notwithstanding section 306A(c), (d), and (e) of the Rural Electrification Act of 1936, as amended [7 U.S.C. 936a(c), (d), (e)], a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with section 306A(a) and (b) of such Act: *Provided*, That any prepayment in excess of \$2,500,000,000 shall be subject to the approval of the Secretary of the Treasury.”

Pub. L. 100-71, title I, July 11, 1987, 101 Stat. 429, provided in part that: “Hereafter, notwithstanding section 306A(d) of the Rural Electrification Act of 1936 (7 U.S.C. 936a(d)), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with section 306A of such Act.”

REGULATIONS

Pub. L. 99-509, title I, §1011(c), Oct. 21, 1986, 100 Stat. 1876, provided that: “The Secretary of Agriculture shall issue regulations to implement this section [enacting sections 936a and 936b of this title and repealing provisions set out as a note under section 936 of this title] within 60 days after the date of enactment of this Act [Oct. 21, 1986]. Such regulations—

“(1) shall facilitate prepayment of loans under section 306A of the Rural Electrification Act of 1936 [this section], as added by subsection (a); and

“(2) may not require any rural utility that is a borrower of loans subject to section 306A to make unreasonable reductions in rates to its customers as a condition of such prepayment.”

§ 936b. Sale or prepayment of direct or insured loans**(a) Discounted prepayment by borrowers of electric loans****(1) In general**

Except as provided in paragraph (2), a direct or insured loan made under this chapter shall not be sold or prepaid at a value that is less than the outstanding principal balance on the loan.

(2) Exception

On request of the borrower, an electric loan made under this chapter, or a portion of such a loan, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be sold to or prepaid by the borrower at the lesser of—

(A) the outstanding principal balance on the loan; or

(B) the present value of the loan discounted from the face value at maturity at the rate established by the Secretary.

(3) Discount rate

The discount rate applicable to the prepayment under this subsection of a loan or loan advance shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan.

(4) Tax exempt financing

If a borrower prepays a loan under this subsection using tax exempt financing, the discount shall be adjusted to ensure that the bor-

rower receives a benefit that is equal to the benefit the borrower would receive if the borrower used fully taxable financing. The borrower shall certify in writing whether the financing will be tax exempt and shall comply with such other terms and conditions as the Secretary may establish that are reasonable and necessary to carry out this subsection.

(5) Eligibility

(A) In general

A borrower that has prepaid an insured or direct loan shall remain eligible for assistance under this chapter in the same manner as other borrowers, except that—

(i) a borrower that has prepaid a loan, either before or after October 21, 1992, at a discount rate as provided by paragraph (3), shall not be eligible, except at the discretion of the Secretary, to apply for or receive direct or insured loans under this chapter during the 120-month period beginning on the date of the prepayment; and

(ii) a borrower that prepaid a loan before October 21, 1992, at a discount rate greater than that provided by paragraph (3), shall not be eligible—

(I) except at the discretion of the Secretary, to apply for or receive direct or insured loans described in clause (i) during the 180-month period beginning on the date of the prepayment; or

(II) to apply for or receive direct or insured loans described in clause (i) until the borrower has repaid to the Federal Government the sum of—

(aa) the amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury at the time of the prepayment; and

(bb) interest on the amount described in item (aa), for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury.

(B) Effect on existing agreements

If a borrower and the Secretary have entered into an agreement with respect to a prepayment occurring before October 21, 1992, this paragraph shall supersede any provision in the agreement relating to the restoration of eligibility for loans under this chapter.

(C) Distribution borrowers

A distribution borrower not in default on the repayment of loans made or insured under this chapter shall be eligible for discounted prepayment as provided in this subsection. For the purpose of determining eligibility for discounted prepayment under this subsection or eligibility for assistance under this chapter, a default by a borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower.

(6) Definitions

As used in this subsection:

(A) Direct loan

The term “direct loan” means a loan made under section 904 of this title.

(B) Insured loan

The term “insured loan” means a loan made under section 935 of this title.

(b) Mergers of electric borrowers

Notwithstanding subsection (a), a direct or insured loan may be prepaid by an electric borrower at the lesser of the outstanding principal balance due thereon or the present value thereof discounted from the face value at maturity at the rate set by the Secretary if the borrower is an electrical organization which resulted from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to this section. Prepayments by a borrower hereunder shall be made not later than one year after the effective date of the merger, consolidation, or other transaction. The discount rate to be set by the Secretary for direct or insured loans prepayments hereunder shall be based on the current cost of funds to the Department of the Treasury for obligations of comparable maturity to those being prepaid. If a borrower prepaes using tax exempt financing, the discount shall be adjusted to make the discount equivalent to fully taxable financing. The borrower shall certify in writing whether the financing will be tax exempt and shall comply with such other terms and conditions as the Secretary may establish which are reasonable and necessary to implement this provision. As used in this section, the term “direct loan” means a loan made under section 904 of this title.

(May 20, 1936, ch. 432, title III, §306B, as added Pub. L. 99-509, title I, §1011(a), Oct. 21, 1986, 100 Stat. 1876; amended Pub. L. 101-624, title XXIII, §2387, Nov. 28, 1990, 104 Stat. 4051; Pub. L. 102-428, §2, Oct. 21, 1992, 106 Stat. 2183; Pub. L. 103-354, title II, §235(a)(13), Oct. 13, 1994, 108 Stat. 3221.)

Editorial Notes

CODIFICATION

October 21, 1992, referred to in subsec. (a)(5)(A), (B), was in the original “the date of enactment of this subsection”, which was translated as meaning the date of enactment of Pub. L. 102-428, which amended subsec. (a) generally, to reflect the probable intent of Congress.

AMENDMENTS

1994—Pub. L. 103-354 substituted “Secretary” for “Administrator” wherever appearing.

1992—Subsec. (a). Pub. L. 102-428, §2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A direct or insured loan made under this chapter shall not be sold or prepaid at a value less than the face value of any outstanding principal balance on such loan, except when sold to or prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan’s present value discounted from the face value at maturity at the rate set by the Administrator. The exception contained in the preceding sentence shall be effective for the period ending September 30, 1987.”

Subsec. (b). Pub. L. 102-428, §2(b), inserted heading.

1990—Pub. L. 101-624 designated existing provisions as subsec. (a) and added subsec. (b).

§ 936c. Refinancing and prepayment of FFB loans

(a) In general

A borrower of a loan made by the Federal Financing Bank and guaranteed under section 936 of this title may, at the option of the borrower, refinance or prepay the loan or an advance on the loan, or any portion of the loan or advance.

(b) Penalty

(1) Determination of penalty

A penalty shall be assessed against a borrower that refinances or prepays a loan or loan advance, or any portion of a loan or advance, under this section. Except as provided in paragraph (2), the penalty shall be equal to the lesser of—

(A) the difference between the outstanding principal balance of the loan being refinanced and the present value of the loan discounted at a rate equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid;

(B) 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced, multiplied by the ratio that—

(i) the number of quarterly payment dates between the date of the refinancing or prepayment and the maturity date for the loan advance; bears to

(ii) the number of quarterly payment dates between the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced was advanced and the maturity date of the loan advance; and

(C)(i) the present value of 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced or prepaid; plus

(ii) for the interval between the date of the refinancing or prepayment and the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced or prepaid was advanced, the present value of the difference between—

(I) each payment scheduled for the interval on the loan amount being refinanced or prepaid; and

(II) the payment amounts that would be required during the interval on the amounts being refinanced or prepaid if the interest rate on the loan were equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid.

(2) Limitation

(A) In general

Except as provided in subparagraph (B), the penalty provided by paragraph (1)(A)

shall be required for refinancing or prepayment under this section.

(B) Exception

In the case of a loan advanced under an agreement that permits the refinancing or prepayment of the loan advance based on the payment of 1 year of interest on the outstanding principal balance of the loan advance, a borrower may, in lieu of the penalty required by paragraph (1)(A), pay a penalty as provided by—

(i) paragraph (1)(B), if the loan advance has reached the 12-year maturity required under the loan agreement for the refinancing or prepayment; or

(ii) paragraph (1)(C), if the loan advance has not reached the 12-year maturity required under the loan agreement for the refinancing or prepayment.

(3) Financing of penalty

(A) In general

In the case of a refinancing under this section, a borrower may, at the option of the borrower, meet the penalty requirements of paragraph (1) by—

(i) making a payment in the amount of the required penalty at the time of the refinancing; or

(ii) increasing the outstanding principal balance of the loan advance guaranteed by the Secretary that is being refinanced under this section by the amount of the penalty.

(B) Increased principal

If a borrower meets the penalty requirements of paragraph (1) by increasing the outstanding principal balance of the loan advance that is being refinanced, the borrower shall make a payment at the time of the refinancing equal to 2.5 percent of the amount of the penalty that is added to the outstanding principal balance of the loan.

(c) Loan terms and conditions after refinancing

(1) In general

On the payment of a penalty as provided by subsection (b), the loan or loan advance, or any portion of the loan or advance, shall be refinanced at the interest rate described in paragraph (2) for a term selected by the borrower pursuant to paragraph (3), except that this paragraph shall not apply if the loan advance, or any portion of the advance, is prepaid by the borrower.

(2) Interest rate

The interest rate on a loan refinanced under this section shall be determined to be equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to a term selected by the borrower pursuant to paragraph (3), except that such rate shall not be greater than 7 percent per year, subject to subsection (d).

(3) Loan term

Subject to paragraph (4), the borrower of a loan that is refinanced under this section—

(A) shall select the term for which an interest rate shall be determined pursuant to paragraph (2); and