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part 1737, subpart D, have been complied with. Statements of preloan expenditures will be verified as to accuracy by loan fund audits.

(Approved by the Office of Management and Budget under control number 0572-0085)

§§ 1737.102—1737.109 [Reserved]

PART 1741—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED TELEPHONE LOANS [RESERVED]

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

Subpart A—[Reserved]

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AUTHORITY: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

EDITORIAL NOTE: Nomenclature changes to part 1744 appear at 55 FR 39397, Sept. 27, 1990.

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.

Recent changes in the telephone industry, including deregulation and technological developments, have caused RUS borrowers and other organizations providing telephone services to consider undertaking projects to provide new telecommunication services. Although certain telecommunication services may not be eligible for financing under the RE Act, these services may nevertheless advance 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 new telecommunication services. To facilitate the financing of new telecommunication services, RUS is willing to consider accommodating the Government's lien on telephone borrowers' systems or subordinating the Government's lien on after-acquired property of telephone borrowers. This part sets forth RUS policy with respect to such lien accommodations and subordinations. The policies of this part will also be utilized by the Governor of the Rural Telephone Bank in carrying out the Rural Telephone Bank's loan program.

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§ 1744.21 Definitions.

Accommodation means sharing the Government's lien on a *pari passu* or *pro rata* basis with a private lender.

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

Administrator means the Administrator of RUS. See 7 CFR part 1735.

Advance means transferring funds from RUS or FFB 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's mortgage when acquired.

Borrower means any organization that has an outstanding 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 required by section 2.4 of the Loan Contract into which all RUS loan funds are advanced.

Disbursement means the paying of money by the borrower out of the construction fund for approved loan purposes.

FFB means the Federal Financing Bank.

FRS means RUS Form 481 (OMB-No. 0572-0023) Financial Requirement Statement.

Hardship loan means a loan made by RUS under section 305(d)(1) of the RE Act bearing interest at a rate of 5 percent per year.

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.

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

Loan (RUS Loan) means any loan made or guaranteed by RUS. See 7 CFR part 1735.

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

Loan Funds (RUS Loan Funds) means funds provided by RUS through direct or guaranteed loans.

Private lender means any lender other than the Rural Utilities Service, the Rural Telephone Bank or the Federal Financing Bank.

RUS cost-of-money loan means a loan made under section 305(d)(2) of the RE Act bearing an interest rate as determined under 7 CFR 1735.31(c). RUS cost-of-money loans are made concurrently with RTB loans.

RTB means the Rural Telephone Bank.

Subordination means granting a lien which a private lender has on specific property priority over the Government's lien on such property.

Telecommunication services means any service for the transmission, emission, or reception of signals, sounds, 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.

[51 FR 32430, Sept. 12, 1986. Redesignated at 55 FR 39396, Sept. 27, 1990. Further redesignated and amended at 59 FR 43716, Aug. 25, 1994]

§§ 1744.22—1744.29 [Reserved]

§ 1744.30 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.

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§§ 1744.31—1744.39 [Reserved]

§ 1744.40 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. Generally, it would not be in the Government's interest if the accommodation or subordination is being requested to enable the borrower to avoid complying with such RUS policies or procedures, as competitive bid procedures or purchasing equipment acceptable to RUS, under 7 CFR part 1753.

(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, and amended at 59 FR 43716, Aug. 25, 1994]

§§ 1744.41—1744.49 [Reserved]

§ 1744.50 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator—Telephone Rural Utilities Service, Washington, DC 20250-1500.

(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) Such information regarding the environmental impacts of the project as may be required pursuant to 7 CFR part 1794; and

(6) 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.

§§ 1744.51—1744.59 [Reserved]

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

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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, FFB or RTB 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.

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(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 re-advanced. 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, and amended at 58 FR 66257, Dec. 20, 1993]

§ 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, RTB, 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, RTB, 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 and RTB 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, and amended at 58 FR 66257, Dec. 20, 1993]

§ 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) This subpart E applies to both RUS and RTB borrowers. For the purposes of RTB borrowers, as used in this subpart E, if a borrower has received a loan from the RTB, RUS means RTB, and Administrator means Governor unless the text indicates otherwise.

§ 1744.201 Definitions.

As used in this subpart:

Administrator means the Administrator of the Rural Utilities Service (RUS) and, as provided in §1744.200(b), the Governor of the Rural Telephone Bank (RTB).

Advance means any funds provided of which repayment is expected.

Affiliated company means any organization that directly, or indirectly through one or more intermediaries,

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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 RTB, 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:

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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.

RTB means the Rural Telephone Bank, an agency and instrumentality of the United States within the United States Department of Agriculture.

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

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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]

§ 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.

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§ 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.

PART 1748—POST-LOAN POLICIES AND PROCEDURES FOR INSURED TELEPHONE LOANS [RESERVED]

PART 1751—TELECOMMUNICATIONS SYSTEM PLANNING AND DESIGN CRITERIA, AND PROCEDURES

Subpart A—[Reserved]

1751.1—1751.99 [Reserved]

Subpart B—State Telecommunications Modernization Plan

- 1751.100 Definitions.
- 1751.101 General.
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- 1751.105 Amending a Modernization Plan.
- 1751.106 Modernization Plan; requirements.

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 60 FR 8174, Feb. 13, 1995, unless otherwise noted.

Subpart A—[Reserved]

§§ 1751.1—1751.99 [Reserved]

Subpart B—State Telecommunications Modernization Plan

§ 1751.100 Definitions.

As used in this subpart:

Bit rate. The rate of transmission of telecommunications signals or intelligence in binary (two state) form in bits per unit time, e.g., Mb/s (megabits per second), kb/s (kilobits per second), etc.

Borrower. Any organization that has received an RUS loan designation number and which has an outstanding telephone loan made by RUS or the Rural Telephone Bank, or guaranteed by RUS, or which has a completed loan application with RUS.

Emerging technologies. New or not fully developed methods of telecommunications.

Modernization Plan (State Telecommunications Modernization Plan). A State plan, which has been approved by