

§ 1781.10

Instruction 1901-L. Also see §1780.39(g) of this chapter.

(f) *Borrower contracts and bonds.* See subpart C of Part 1780 of this chapter for applicable provisions.

(g) *Title requirements.* (1) Title evidence for land, easements, and rights-of-way to be acquired with proceeds of loans or advances will be furnished by the sponsoring local organization in accordance with NRCS policies and procedures.

(2) RUS will specify and approve the form and content of instruments for conveying title to or interest in real estate on which a lien will be taken to secure a WS loan, WS advance, or RCD loan. These should be consistent with the applicable provisions of §1780.14 of this chapter. The Rural Development State Director will make his decision after consultation with the Regional Attorney and the State Conservationist. He will notify NRCS in writing of his decision. Thereafter, title clearance will be completed under NRCS regulations except that a marketable title must be obtained on any tract of land, a part of which will be sold as excess land in accordance with §1781.6(a)(9). In addition to the title evidence required by NRCS, applicants will furnish an opinion of legal counsel on all land and interest in land acquired with loan or advance funds.

(h) *Purchasing lands, rights and facilities.* The amounts paid for lands, rights, and facilities with loan funds will be not more than that determined to be reasonable and fair by the loan approval official based upon an appraisal of the current market value made by an Rural Development employee or an independent appraiser.

(i) *Water rights.* Applicants will be required to comply with applicable State and local laws and regulations governing appropriating, diverting, storing and using water, changing the place and manner of use of water, and in disposing of water. All of the rights of any landowner, appropriator, or user of water from any source will be fully honored in all respects as they may be affected by facilities installed with WS loans and advances and RCD loans. If, under the provisions of State law, notice of the proposed diversion or storage of water by the applicant may be

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filed, the applicant will be required to file such a notice. An applicant must furnish evidence to provide reasonable assurance that its water rights will be or have been properly established, will not interfere with prior vested rights, will likely not be contested or enjoined by other water users or riparian owners, and will be within the provisions of any applicable interstate compact.

§ 1781.10 [Reserved]

§ 1781.11 Other considerations.

(a) *Technical assistance.* When pipelines from reservoirs to treatment plants are included in watershed work plans, NRCS will not furnish engineering services for their design or installation. When such pipelines are to be financed by WS or RCD loans, RUS will supervise the activities of the private engineers retained for the purpose. Such RUS supervision will include, among other things, approval of private engineer's contracts, approval of plans and specifications, authorization of contract awards, spot checks of engineering inspection, and final inspection and acceptance.

(b) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Necessary professional services may include such as that of an engineer, architect, attorney, bond counsel, accountant, auditor, and financial advisor or fiscal agent. Form RD 442-19, "Agreement for Engineering Services," may be used when appropriate. RUS Bulletin 1780-7, "Legal Service Agreement" may be used to prepare the agreement for legal services.

(c) *Other services.* Contracts for other services such as management, operation, and maintenance will be developed by the applicant and presented to the RUS official developing the docket for review and approval.

(d) *Fees for services.* Fees provided for in contracts, agreements or services will not be more than those ordinarily charged by the profession for similar

work when RUS financing is not involved.

(e) *State pollution control or Environmental Protection Agency standards.* Facilities will be designed, installed and operated to prevent pollution of water in excess of established standards. Effluent disposal will conform with appropriate State and Federal Water Pollution Control Standards.

(f) *Water pollution.* When repayment of a WS loan, WS advance, or RCD loan will be dependent upon income from the use or sale of water, RUS approval will be contingent upon a determination that the proposed use of stored water for recreation or municipal supply might not be permitted by a State health department because the water is being polluted from an upstream or other source.

(g) *Environmental requirements.* Actions will be taken to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) in accordance with subpart G of part 1940 of this title. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by NRCS, a separate environmental impact statement or assessment on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless the NRCS environmental review fails to meet the requirements of subpart G of part 1940 of this title. The Rural Development State Director should document the action taken by NRCS in compliance with the requirements of the National Environmental Policy Act and formally adopt the impact statement or assessment if satisfactory. If a determination is made that a further analysis of the environmental impact is needed, the Rural Development State Director will make necessary arrangements with the State NRCS conservationist for such action to be taken before a loan is made.

(h) *National Historic Preservation Act.* All projects will comply with the provisions of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) in accordance with RD Instruction 1901-F.

(i) *Civil Rights Act of 1964.* Recipients of WS loans, WS advances, or RCD

loans are subject to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which prohibits discrimination because of race, color, or national origin. Borrowers must agree not to discriminate in their operations by signing Form RD 400-4, "Nondiscrimination Agreement," before loan closing. This requirement should be discussed with the applicant as early in the negotiations as possible. Necessary actions will be taken in accordance with RD Instruction 1901-E.

(j) *Appraisals.* When required by the Rural Development State Director, appraisals will be made by an Rural Development official designated or an independent appraiser. Form RD 442-10, "Appraisal Report—Water and Waste Disposal Systems," with appropriate supplements, may be modified as needed for use with the type of facilities being appraised.

(k) *Architectural Barriers Act of 1968.* All facilities financed with RUS loans and grants which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this act (42 U.S.C. 4151 *et seq.*).

§ 1781.12 Preapplication and application processing.

(a) *WS and RCD loans—(1) Preapplications.* (i) The processing office or other person designated by the Rural Development State Director may assist the applicant in completing SF 424.1, "Application for Federal Assistance (For Non-construction)," and will forward one of SF 424.1 to the Rural Development State Director.

(ii) The Rural Development State Director will review SF 424.1 along with other necessary information and will coordinate selection of preapplications to be processed with NRCS. He will consult with NRCS State Conservationist concerning the status of the WS plan or RCD measure plan, the estimated time schedule for construction and cost of the proposed works to be installed with the loan, cost sharing funds to be made available to the applicant, and other pertinent information.

(iii) Form AD-622, "Notice of Preapplication Review Action," will be prepared and signed by the Rural Development State Director within forty-