

§ 1735.22

§ 1735.22 Loan security.

(a) RUS makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid within the time agreed. See 7 CFR 1735.18 and 7 CFR 1735.51.

(b) RUS generally requires that borrowers provide it with a first lien on all of the borrower's property. See 7 CFR 1735.46.

(c) In the case of loans that include the financing of telephone facilities that do not constitute self-contained operating systems or units (such as lines switched by other systems), the borrower shall, in addition to the mortgage lien on all of the borrower's telephone facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that continuous and efficient telephone service will be rendered.

(d) The borrower shall provide RUS with a satisfactory Area Coverage Survey. See 7 CFR 1737.30 and 1737.31.

(e) RUS makes loans only if the borrower's entire system, including the facilities to be constructed with the proceeds of the loan, is economically feasible, as determined by RUS. In addition, RUS considers a system to be feasible only if the system, in addition to being feasible in all other respects, is year 2000 compliant or if the borrower provides RUS with a certification, satisfactory to RUS, that the system will be year 2000 compliant at a reasonable time before December 31, 1999. *Year 2000 compliant* means that product performance and function are not affected by dates before, during, and after the year 2000.

(f) For purposes of determining compliance with TIER requirements, unless a borrower whose existing mortgage contains TIER maintenance requirements notifies RUS in writing differently, RUS will apply the requirements described in paragraph (g) of this section to the borrower regardless of the provisions of the borrower's existing mortgage.

(g) For loans approved after October 6, 1997 loan contracts and mortgages covering hardship loans, RUS cost-of-money loans, RTB loans, and guaranteed loans will contain a provision requiring the borrower to maintain a

7 CFR Ch. XVII (1-1-08 Edition)

TIER of at least 1.0 during the Forecast Period. At the end of the Forecast Period, the borrower shall be required to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.0 and not greater than 1.5.

(h) Nothing in this section shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's TIER requirement to a level above that established in paragraph (g) of this section.

(i) A borrower will not be required to raise its TIER as a condition for receiving a loan. Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by RUS.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 26597, June 10, 1991; 58 FR 66254, Dec. 20, 1993; 62 FR 46870, Sept. 5, 1997; 63 FR 45678, Aug. 27, 1998]

§§ 1735.23-1735.29 [Reserved]

Subpart C—Types of Loans

§ 1735.30 Hardship loans.

(a) RUS makes hardship loans under section 305(d)(1) of the RE Act. These loans bear interest at a rate of 5 percent per year. To qualify for a hardship loan on or after November 1, 1993, a borrower must meet each of the following requirements:

(1) The average number of proposed subscribers per mile of line in the service area of the borrower is not more than 4;

(2) The borrower has a projected TIER (including the proposed loan or loans) of at least 1.0, but not greater than 3.0, as determined by the feasibility study prepared in connection with the loan, see 7 CFR part 1737, subpart H; and

(3) The Administrator has approved and the borrower is participating in a telecommunications modernization plan for the state, see 7 CFR part 1751, subpart B.

(b)(1) Hardship loan funds shall not be used to finance facilities located in any exchange of the borrower that has:

Rural Utilities Service, USDA

§ 1735.30

(i) More than 1,000 existing subscribers; and

(ii) An average number of proposed subscribers per mile of line greater than 17.

(2) Those facilities may, however, be financed with concurrent RUS cost-of-money and RTB loans or a guaranteed loan if the borrower is eligible for such financing.

(c) The Administrator may waive the TIER requirement in paragraph (a)(2) of this section in any case in which the Administrator determines, and sets forth the reasons therefor in writing, that the requirement would prevent emergency restoration of the telephone system of the borrower or result in severe hardship to the borrower.

(d) In order to fairly and equitably approve hardship loans to ensure that borrowers most in need receive hardship financing first, RUS will prioritize for approval all applications qualifying for hardship loans. The criteria in this paragraph will be used by the Administrator to rank, from high to low, applications that have been determined to qualify for hardship financing. Subject to the availability of funds, applications receiving the highest number of points will be selected for loan approval each fiscal year quarter (the application with the most points will be approved first, the second highest next, etc.) The following ranking methodology and loan approval conditions apply:

(1) *Ranking criteria.* Borrowers will receive points based on each of the following criteria applicable to the proposed loan:

(i) *Forecasted Average Number of Subscribers Per Mile of Line (Density).* The number of points assigned to a borrower will be the value 4 less the value of the borrower's forecasted density as determined by the Feasibility Study prepared in connection with the loan (i.e., if a borrower's forecasted system density is 2.75, the borrower would receive 4 less 2.75 points, or 1.25 points).

(ii) *Forecasted TIER.* The number of points assigned to a borrower will be the value 3 less the value of the borrower's forecasted TIER as determined by the Feasibility Study prepared in connection with the loan (i.e., if a borrower's forecasted TIER is 1.75, the

borrower would receive 3 less 1.75 points, or 1.25 points).

(iii) *Unserved Territories.* Borrowers will receive points for loan funds included in the application to provide telephone service in areas previously unserved because it was considered cost prohibitive (for example, high costs resulting from the terrain, remoteness, or system design). In particular, borrowers will receive one tenth of a point, up to a maximum of 2 points, for each subscriber added (in connection with the loan) that currently resides in an unserved area.

(iv) *Plant Modernization.* Borrowers will receive 1 point for loan funds included in the application for at least one of the following basic plant modernizations or system improvements:

(A) Providing digital switching capabilities where those capabilities did not previously exist; and/or

(B) Upgrading to equal access; and/or

(C) Conversion of service to 1-party making an entire exchange all 1-party service.

(v) *Distance Learning and Medical Link Facilities.* Borrowers will receive 2 points for loan funds included in the application for the purpose of providing distance learning or medical link transmission facilities. If loan funds are included for both distance learning and medical link transmission facilities, borrowers will receive 3 points. (See 7 CFR part 1703 for definitions of distance learning and medical link.)

(vi) *Time Factor.* If a borrower's application has been ranked but cannot be approved due to the lack of funds available for loans in that quarter, the borrower will receive .25 points for each quarter in which its loan is pending but not approved.

(2) *Ranking and approval of loans.* Eligible loan applications (satisfying the requirements of 7 CFR 1737.21) will be ranked during the quarter in which the application is received. If an application is received in which insufficient time remains in that quarter to process and rank the application, it will be ranked in the next quarter. At the beginning of the quarter and as soon as practical, RUS will approve all eligible hardship loans ranked in the previous quarter to the extent loan funds are

§ 1735.31

7 CFR Ch. XVII (1-1-08 Edition)

available, beginning with the borrowers that received the highest number of points and working downwards. Any qualified application that is not approved due to the lack of funds will be carried forward to the next quarter and ranked with all other eligible hardship loan applications in that quarter. Upon completion of the ranking and approval of loans, all borrowers will be informed in writing of the status of their loan applications.

(e) *Optimal use of funds.* RUS retains the right to limit the size of hardship loans made to individual borrowers in order to more equitably distribute the amount of hardship funds appropriated among the greatest number of qualified borrowers. Generally, no more than 10 percent of the funds appropriated in any fiscal year may be loaned to a single borrower. In addition, RUS retains the right to approve loans to borrowers that are ranked lower in the priority system, or without regard to when the application was received and ranked, if it is necessary to:

(1) Expedite restoration of service outages due to natural disasters; or

(2) Maximize the use of all available hardship funds appropriated for loans in that fiscal year.

(f) On request of any borrower who is eligible for a hardship loan for which funds are not available, the borrower shall be considered to have applied for concurrent RUS cost-of-money and RTB loans under sections 305 and 408, respectively, of the RE Act.

(g) Hardship loans may be made simultaneously with concurrent RUS cost-of-money and RTB loans or guaranteed loans.

[58 FR 66254, Dec. 20, 1993]

§ 1735.31 RUS cost-of-money and RTB loans.

(a) RUS makes cost-of-money loans, under section 305(d)(2) of the RE Act, concurrently with RTB loans made under section 408 of the RE Act. To qualify for concurrent RUS cost-of-money and RTB loans on or after November 1, 1993, a borrower must meet each of the following requirements:

(1) The average number of proposed subscribers per mile of line in the service area of the borrower is not more than 15, or the borrower has a projected

TIER (including the proposed loans) of at least 1.0, but not greater than 5.0, as determined by the feasibility study prepared in connection with the loans, see 7 CFR part 1737, subpart H; and

(2) The Administrator has approved and the borrower is participating in a telecommunications modernization plan for the state, see 7 CFR part 1751, subpart B.

(b) The loan amounts from each program (RUS cost-of-money and RTB, including amounts for class B stock) will be proportionate to the total amount of funds appropriated for the fiscal year for RUS cost-of-money loans and RTB loans. To determine the RUS cost-of-money portion, the total loan amount will be multiplied by the ratio of RUS cost-of-money funds appropriated for the fiscal year to the sum of RUS cost-of-money and RTB funds appropriated for the fiscal year in which the loan is approved. The same method would be used to calculate the RTB portion (see 7 CFR 1610.6(b)). If during the fiscal year the amount of funds appropriated changes, the ratio will be adjusted accordingly and applied only to those loans approved afterwards.

(c) The RUS cost-of-money loan shall bear interest as described in paragraphs (c)(1) and (c)(2) of this section (the actual rate of interest on the RTB loan shall be determined as provided in 7 CFR 1610.10):

(1) Each advance of funds included in RUS cost-of-money loans shall bear interest at a rate (the "Cost of Money Interest Rate") equal to the current cost of money to the Federal Government for loans of a similar maturity. The Cost of Money Rate is determined when the funds are advanced to the borrower but cannot exceed 7 percent per year.

(2) RUS shall use the Federal Treasury Statistical Release (the "Statistical Release") issued by the United States Treasury to determine the interest rate for each advance of RUS cost-of-money loan funds. Generally, the Statistical Release is issued each Monday to cover the preceding week. RUS shall determine the Cost of Money Interest Rate as follows:

(i) Each advance shall bear the interest rate stated in the applicable Statistical Release for Treasury constant