

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Parts 1710, 1720, and 1785

[Docket Number: RUS-21-ELECTRIC-0016]

RIN 0572-AC49

#### Implementing Provisions of the Agriculture Improvement Act of 2018

**AGENCY:** Rural Utilities Service, United States Department of Agriculture (USDA).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The Agriculture Improvement Act of 2018 (2018 Farm Bill) amended several sections of the Rural Electrification Act of 1936 (RE Act) that are carried out by the Electric Program at the USDA—Rural Utilities Service (RUS). Section 6501 extends refinancing authority to RUS for loans made or guaranteed by the Secretary. Section 6503 ended the Cushion of Credit Payment Program. Section 6505 made several changes to the loan guarantee program authorized under section 313A of the RE Act. Section 6507 permits RUS to include provisions for cybersecurity and grid security improvements.

#### DATES:

**Effective date:** This rule is effective December 6, 2022.

**Comment date:** Comments are solicited from interested members of the public on all aspects of the rule. These comments must be submitted electronically and received on or before February 6, 2023.

**ADDRESSES:** Comments may be submitted on this rule using the following method:

*Electronically using the Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and, in the lower “Search Regulations and Federal Actions” box, select “Rural Utilities Service” from the agency drop-down menu, then click on “Submit.” In the

Docket ID column, select RUS-21-ELECTRIC-0016 to submit or view public comments and to view supporting and related materials available electronically. To submit a comment, choose the “Comment Now!” button. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

#### FOR FURTHER INFORMATION CONTACT:

Alexis Solano, Rural Utilities Service Electric Program, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, STOP 1568, Room 5165-S, Washington, DC 20250; Telephone: (202) 690-3407; Email [alexis.solano@usda.gov](mailto:alexis.solano@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Rule

##### Background

The 2018 Farm Bill amended several sections of the RE Act. The RE Act authorizes Rural Utilities Service’s (RUS) Electric Programs (EP) to make direct loans and loan guarantees through the Federal Financing Bank. Sections 6501, 6503, 6505, and 6507 of the 2018 Farm Bill have a significant impact on the regulations for loans and loan guarantees. Section 6501 extends refinancing authority to EP for loans made or guaranteed by the Secretary. Section 6503 ends the Cushion of Credit Program by prohibiting borrowers from establishing new accounts or making new deposits into such accounts while reducing the interest paid on remaining balances. Section 6505 increased the maximum term of the bonds and notes that RUS can guarantee under the loan guarantee program authorized under section 313A of the RE Act from 20 years to 30 years. Additionally, proceeds from guaranteed bonds may be used to finance or refinance broadband loans. Finally, section 6507 addresses grid security and cybersecurity; specifically, RUS EP may now finance loans for improvements to assist in preventing or mitigating security threats. It is expected that these changes will allow borrowers more flexibility, with regard to financing new grid security and cybersecurity projects and

to refinancing loans, when seeking funding from RUS.

#### Summary of Changes

The following is a discussion, by topic, of the changes made to comply with the 2018 Farm Bill.

Cybersecurity and Grid Security Improvements (§§ 1710.1, 1710.2, 1710.100, and 1710.106)

RUS is amending §§ 1710.1, 1710.2, and 1710.106 to include provisions for cybersecurity and grid security improvements as an eligible loan purpose for RUS EP loans as specified in section 6507 of the 2018 Farm Bill. Section 1710.1(a) is updated to expressly reflect that loans for cybersecurity and grid security improvements may now be financed; § 1710.1(b) establishes refinancing policies for loans made for these improvements and other purposes as described in § 1710.1(a). Section 1710.2 now has additional definitions, including those for cybersecurity and grid security. Section 1710.106 describes the specific uses that funds may finance regarding cybersecurity and grid security improvements as well as for purposes which funds may not be used.

This new purpose authorizes the Secretary to make or guarantee loans for cybersecurity and grid security improvements. Additionally, this new regulatory language allows borrowers greater flexibility when seeking funding from RUS to assess and mitigate the risk from known and emerging security threats and risks. Cybersecurity and grid security investments relate to resources for prevention, protection, and restoration of computers, electronic communications systems, electronic communications services, wire and electronic communication, and physical assets. The purpose of cybersecurity and grid security investments is to mitigate the risk to critical infrastructure or the financial condition of RUS’s borrowers by physical means or cyber measures from intrusions, attacks, or the effects of natural or manmade disasters. Prior to the 2018 Farm Bill, RUS approved financing for cybersecurity and grid security infrastructure investment as eligible purposes when incorporated in larger infrastructure projects. With the changes outlined in section 6507, these purposes can be combined as a single project specifically designed for

cybersecurity and grid security purposes. The changes contained in section 6507 explicitly incorporate cybersecurity and grid security investments as within the RUS EP's lending authority under Titles I and III of the RE Act.

Refinancing (§§ 1710.1, 1710.53, and 1710.100)

Section 6501 of the 2018 Farm Bill amended section 2 of the RE Act to authorize, subject to availability of funding for such purposes, RUS to refinance loans made or guaranteed by the Secretary under the RE Act for rural electrification, furnishing and improving electric and telephone service in rural areas, and assisting electric borrowers in implementing demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems.

RUS is amending §§ 1710.1 and 1710.100 and is adding § 1710.53 to recognize its refinancing authority as authorized by section 6501 of the 2018 Farm Bill. Through these amendments, RUS sets the parameters for exercising said authority. Section 1710.1 is updated to briefly summarize these changes. Specifically, § 1710.1(b) includes additional language establishing refinancing policies. The new section, § 1710.53, describes the refinancing of loans and the requirements of refinancing, including the information required of borrowers seeking refinancing. Section 1710.100 now expressly includes cybersecurity and grid security as eligible projects. RUS will be able to offer new loans to pay off previous RUS loans made or guaranteed pursuant to the RE Act. New loans made under this authority must be used to repay previous loans made by RUS when the Administrator determines that such action is in the interest of rural consumers, taxpayers, rural economic development or otherwise in the public interest.

When funds become available for the refinancing of existing loans, RUS will issue a public notice specifying the amount of funds available under this authority. The notice will contain additional application procedures specific to the amount of funds available and new loan application periods related to the availability of funds. The notice may also include Administration priorities, such as directing benefits to disadvantaged communities and reducing greenhouse gas emissions. The Administrator, in setting funding priorities and application periods, may consider the amount of available funds, RUS resources, RUS priorities and

policy goals, and any other factors related to the efficient operation of the agency. Such notices, at a minimum, will require applicants to provide the information set forth in § 1710.53.

Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes (§§ 1720.1, 1720.2, 1720.3, 1720.4, 1720.5, 1720.6, 1720.7, 1720.8, 1720.11, and 1720.12)

RUS is amending part 1720 to incorporate the statutory amendments as provided by section 6505 of the 2018 Farm Bill. Part 1720 implements the provisions of section 313A of the RE Act, also known as the 313A Program. Section 1720.1 describes the purpose of the regulation. Section 1720.2 will be removed and reserved as the information contained in the section is no longer necessary. In § 1720.3, definitions are added as a result of 2018 Farm Bill changes while some defined terms have been renamed for clarification. Section 1720.4 describes the changes in the general standards and requirements as RUS is now authorized to guarantee bonds or notes issued to make utility infrastructure loans. This section also now contains other changes to terms of financing and refinancing RUS loans. Section 1720.5 is updated to reflect changes in eligibility requirements. Section 1720.6 updates the application process by including requirements for credit ratings. Section 1720.7 now has additions to the application process. Section 1720.8 adds preconditions to RUS's issuance of guarantees and the release of loan funds, such as evidence of creditworthiness. Section 1720.11 adds the requirement that the Secretary may inspect the assets and facilities of the guaranteed lenders. Section 1720.12 provides additional reporting requirements of the guaranteed lenders.

Specifically, section 6505 of the 2018 Farm Bill amended section 313A of the RE Act, which authorizes RUS to guarantee bonds or notes issued to make utility infrastructure loans or refinance bonds or notes for those purposes pursuant to section 313A of the RE Act, as amended, for a term of 30 years or for another term that the Secretary determines appropriate.

RUS is also including regulatory changes that include guaranteed lenders' reporting requirements, such as the contact information for the borrowers whose notes have been pledged and terms and conditions for all notes pledged as collateral, and the development of an action plan by the guaranteed lender in the event of default. The amendments to part 1720 also allow the proceeds of bonds

guaranteed under section 313A of the RE Act to be used to make broadband loans, or to refinance broadband loans, made to a borrower that has received, or is eligible to receive, a broadband loan under Title VI of the RE Act. As a result, to the extent that the proceeds of bonds guaranteed under section 313A are to be used to fund or refinance broadband loans that were not made by RUS ("Non-RUS Broadband Loans"), such proceeds may only be used for Non-RUS Broadband Loans that would meet the amended eligibility requirements of Title VI of the RE Act pursuant to the 2018 Farm Bill. The 2018 Farm Bill also modified the 313A Program to allow the proceeds of guaranteed loans to be used by the Guaranteed Lender to fund projects for the generation of electricity. Furthermore, it has increased the maximum term of the bonds or notes that RUS can guarantee from 20 years to 30 years.

Cushion of Credit Payment Program (§§ 1785.66, 1785.68, 1785.69, and 1785.70)

RUS is amending §§ 1785.66 and 1785.68 through 1785.70 to discontinue cushion of credit accounts and make other changes to the existing accounts as specified in section 6503 of the 2018 Farm Bill. Section 1785.66 describes the discontinuation of the Cushion of Credit Payment Program, which occurred on the date of enactment of the 2018 Farm Bill, December 20, 2018. Section 1785.68 provides specific information on the reduction of interest rates. Section 1785.69 shows the changes in the computations of the interest paid to these accounts. Section 1785.70 includes additional information about drawing down balances by the borrower and ending the Cushion of Credit Payment Program when all balances have reached zero.

Prior to the 2018 Farm Bill, each borrower who made a payment after October 1, 1987, in excess of the required amount due on a RUS note was provided with a cushion of credit account. All payments on these notes which were in excess of required payments and not otherwise designated were deposited in the borrower's cushion of credit account. This account bore an interest rate of 5 percent per annum. Beginning on December 20, 2018, the date the 2018 Farm Bill became law, no new deposits to the program were allowed. From the date of enactment until September 30, 2020, cushion of credit balance holders were permitted to transfer money from their cushion of credit accounts for the purpose of prepaying their RUS debt or Federal Financing Bank debt without a

prepayment penalty. Existing balances continued to earn 5 percent interest until September 30, 2020. This interest rate decreased to 4 percent on October 1, 2020. Beginning on October 1, 2021, interest paid on fund balances will be fixed at a floating 1-year Treasury rate. These changes were made to § 1785.69. RUS will no longer have to maintain the cushion of credit accounts after the remaining balances are depleted. This change will result in savings to the Government in an amount equal to the amount of interest that would have been paid by the Government to the account holders had this section of the 2018 Farm Bill not been implemented.

### Regulatory Analysis

#### Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. In accordance with Executive Order 12866, an Economic Impact Analysis was completed, outlining the costs and benefits of implementing this program in rural America. The complete analysis is available from *Regulations.gov* by searching for Docket number RUS-21-ELECTRIC-0016.

#### Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments, or the private sector. Thus, this final rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

#### National Environmental Policy Act

This final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that: (1) this action of implementing this rule meets the criteria established in 7 CFR 1970.53(f); (2) no extraordinary circumstances exist; and (3) the action is not “connected” to other actions with

potentially significant impacts, is not considered a “cumulative action,” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required. However, individual actions assisted with financing described in this rule are subject to the requirements of the National Environmental Policy Act, 7 CFR part 1970 (Rural Development’s Environmental Policies and Procedures), and associated laws and authorities, including the National Historic Preservation Act.

#### Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

#### Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

#### Administrative Procedure Act and Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The APA exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)). Because this rule is a matter relating to public loans, it is exempt from the APA’s notice and comment requirements and therefore from the RFA’s analysis requirements.

Accordingly, an RFA analysis has not been prepared for this rule.

#### Executive Order 12372, Intergovernmental Consultation

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled “Department Programs and Activities Excluded from Executive Order 12372” (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

#### Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Office of Tribal Relations has reviewed this rule and finds that it does have tribal implications that require clarification under E.O. 13175. The Agency held Virtual Tribal Consultation events in March of 2021 and April of 2022 with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes, pursuant to E.O. 13175, sec. 3(c)(3). Comments on tribal implications received through consultations were deemed, after discussion with the Office of Tribal Relations (OTR), outside the purview of this regulation and OTR will coordinate with Rural Utilities Service to utilize the currently underway RUS Regulatory Streamlining process to clarify the concerns of tribal eligibility, necessary tribal permissions, and tribal law compliance that were raised during the two consultation sessions. Should a tribe request consultation in the future, Rural Utilities Service will work with the USDA Office of Tribal Relations to ensure that meaningful consultation occurs. If tribal leaders are interested in

consulting with RUS, they are encouraged to contact USDA's Office of Tribal Relations at *Tribal.Relations@usda.gov* or Rural Development's Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

#### Assistance Listing

The Assistance Listing (formerly Catalog of Federal Domestic Assistance or CFDA) number for the program impacted by this action is 10.850, Rural Electrification Loans and Loan Guarantees. A complete list of Assistance Listings is available at <https://sam.gov/content/assistance-listings>.

#### Paperwork Reduction Act

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572-0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. Based on the review and analysis of the rule and available data, application submission, and eligibility criteria, issuance of this final rule is not likely to adversely nor disproportionately impact low and moderate-income populations, minority populations, women, Indian Tribes, or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status.

#### USDA Non-Discrimination Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age,

marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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#### List of Subjects

##### 7 CFR Part 1710

Electric power, Energy, Grant program, Loan program-energy, Reporting and recordkeeping requirements, Rural areas.

##### 7 CFR Part 1720

Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

##### 7 CFR Part 1785

Electric power, Loan programs-communications, Loan programs-energy, Rural areas, Telephone.

For the reasons set forth in the preamble, RUS amends 7 CFR parts 1710, 1720, and 1785 as follows:

#### PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 1. The authority citation for part 1710 continues to read as follows:

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

■ 2. Revise § 1710.1 to read as follows:

##### § 1710.1 General statement.

(a) This part establishes general and pre-loan policies and requirements that apply to both insured and guaranteed loans to finance the construction and improvement of electric facilities in rural areas, including generation, transmission, distribution facilities, and cybersecurity and grid security needs.

(b) This part also establishes general and pre-loan refinancing policies and requirements that apply to the refinancing of loans made or guaranteed for the purpose of rural electrification, furnishing and improving electric service in rural areas, and assisting electric borrowers to implement demand side management, energy efficiency and conservation programs, on-grid, and off-grid renewable energy systems, and cybersecurity and grid security improvements.

(c) Additional pre-loan policies, procedures, and requirements that apply specifically to guaranteed and insured loans are set forth elsewhere:

(1) For guaranteed loans in 7 CFR part 1712 and RUS Bulletins 20-22, 60-10, 86-3, 105-5, and 111-3, or the successors to these bulletins; and

(2) For insured loans in 7 CFR part 1714 and in RUS Bulletins 60-10, 86-3, 105-5, and 111-3, or the successors to these bulletins.

(d) This part supersedes those portions of the following RUS Bulletins and supplements that are in conflict with this part including but not necessarily limited to the following:

(1) 20-5 Extensions of Payments of Principal and Interest.

(2) 20-20 Deferral of Principal Repayments for Investment in Supplemental Lending Institutions.

(3) 20-22 Guarantee of Loans for Bulk Power Supply Facilities.

(4) 20-23 Section 12 Extensions for Energy Resources Conservation Loans.

(5) 60-10 Construction Work Plans, Electric Distribution Systems.

(6) 86-3 Headquarters Facilities for Electric Borrowers.

(7) 105-5 Financial Forecast-Electric Distribution Systems.

(8) 111–3 Power Supply Surveys.  
 (9) 120–1 Development, Approval, and Use of Power Requirements Studies.  
 ■ 3. Amend § 1710.2 by adding to paragraph (a) the definition “Cybersecurity and grid security improvements” in alphabetical order to read as follows:

**§ 1710.2 Definitions and rules of construction.**

(a) \* \* \*

*Cybersecurity and grid security improvements* means:

(i) Investment in the development, expansion, and modernization of rural utility infrastructure that addresses known and emerging cybersecurity and grid security risks. This definition incorporates both cybersecurity and grid security as one concept. The cybersecurity component of the definition includes measures and investments designed to prevent damage to, otherwise protect, or restore computers and computer systems, industrial control systems/operational technology, electronic communications systems, electronic communications services, wire, and all other forms electronic communication including information contained therein. Rural utilities often utilize cybersecurity measures and investments to ensure service availability, system integrity, user authentication, confidentiality, and nonrepudiation, related to the services.

(ii) The grid security component of this definition, includes measures and investments made to protect a utility’s infrastructure reliability and resiliency against both natural impacts and man-made physical attacks or intrusions by individuals or groups intent on damaging, destroying, disrupting, or removing components of utility infrastructure or threatening to damage utility infrastructure. Measures considered for RUS financing include, but are not limited to, fire prevention, physical barriers, remote sensing equipment, monitoring physical assets, security cameras, security vehicles, information and operational technology cybersecurity measures, control systems cybersecurity monitoring technologies, fire prevention devices and sensors and other investments which serve the purpose of protecting assets and maintaining the reliability of rural utility systems.

\* \* \* \* \*

■ 4. Add § 1710.53 to read as follows:

**§ 1710.53 Refinancing.**

(a) *General.* (1) Subject to the availability of funds for such purpose, RUS may use loan funds to refinance prior loans made or guaranteed under

the RE Act, as amended, (7 U.S.C. 902(a)). Such refinancing must be in the interest of rural consumers, taxpayers, rural economic development or otherwise in the public interest, as determined by the Administrator.

(2) The Secretary’s authority to make loans for refinancing under this section is in addition to any other authority granted to the Secretary to make or modify loans under the RE Act or any other statutory authority.

(3) Nothing in this section changes the policies or standards set forth in 7 CFR part 1717, subpart Y, or the terms and conditions of the agreements entered into between RUS and FFB or the notes issued to RUS or FFB in connection with RUS or FFB loans.

(4) When funds are made available under this section, RUS will issue a public notice in the **Federal Register** specifying the amount of funds available under this section. The notice will contain additional application procedures specific to the amount and type of funding available and new loan application periods related to the availability of funds. The notice may also include Administration priorities, such as directing benefits to disadvantaged communities and reducing greenhouse gas emissions. The Administrator, in setting funding priorities and application periods, may consider the amount of available funds, RUS resources, RUS priorities and policy goals, and any other factors related to the efficient operation of the agency.

(b) *Definitions.* For the purpose of this section, the following terms have the following meanings. Terms not defined here are defined in § 1710.2. When the definitions provided in this section conflict with any other definition applicable to RUS Electric Program regulations in this chapter, including § 1710.2, the definition of this section will control only as it relates to refinancing under this section.

*Advance* means advance or advances of loan funds made by RUS to the borrower pursuant to the terms and conditions in the loan documents.

*Agency* means the Rural Utilities Service or its successor.

*Conditional commitment letter* means the notification issued by the Administrator to an eligible entity advising it of the estimated terms, conditions, and amount of the new loan.

*Eligible entity* means an RUS Electric Program borrower with an unpaid and outstanding FFB loan or RUS loan.

*FFB* means the Federal Financing Bank.

*FFB loan* means a loan made by FFB and guaranteed by RUS pursuant to the RE Act for electric purposes.

*RUS loan* means a loan made by the RUS under the RE Act for electric purposes.

(c) *Loan purpose.* Proceeds of loans made under this section may be used to:

(1) Prepay all outstanding amounts owed on an FFB or RUS loan or one or more advances made under such loan; and

(2) Pay any applicable prepayment premium, fee, or expense related to the eligible RUS or FFB loan being refinanced.

(d) *Eligibility requirements*—(1) *Eligible entity.* Loans under this section may only be made to an eligible entity for the purposes indicated in paragraph (c) of this section.

(2) *Eligible loans for refinancing.* Only FFB loans and RUS loans as defined in this section are eligible for refinancing under this section.

(e) *Allocation of funds under this section.* Unless prohibited by congressional appropriation or statute, in allocating the funds available to RUS under its lending authority, the Administrator may determine, on a programmatic or case by case basis, that other RE Act loan purposes take priority over refinancing. The Administrator may, but is not limited to, consider the following factors in making this determination:

(1) The overall availability of funding compared to anticipated loan demand;

(2) The best interests of rural consumers;

(3) The protection of the Government’s financial interest in existing loans and collateral; and

(4) Broader policy objectives, including directing benefits to disadvantaged communities, reducing greenhouse gas emissions, and other priorities of the Secretary of Agriculture.

(f) *Application process.* (1) When funds are available, the RUS will publish a notice identifying the amount and type of funds available for refinancing for the funding period in total and per applicant. The notice will identify the priorities established by the Agency for the use of the available funds. Borrowers seeking to refinance RUS loans or FFB loans will be required to submit, at a minimum, the following information:

(i) Borrower reference number;

(ii) Note designation;

(iii) Rural Electric Telephone (RET)

Advance loan account number;

(iv) FFB complete identifier for an FFB loan;

(v) Date(s) of advance;

(vi) Interest rate;

(vii) Principal outstanding;  
 (viii) Current final maturity date;  
 (ix) Short narrative explaining how the proposed refinancing would be in the interest of rural consumers, taxpayers, rural economic development or otherwise in the public interest; and

(x) The requested final maturity date for the new loan. The requested final maturity date must be for a period not to exceed the maximum maturity date allowed by statute, regulation, or applicable notice. An eligible entity must submit a certification that the remaining useful life of its electric system is equal to or exceeds the new requested final maturity date and, that the requested final maturity date does not exceed the term of its wholesale power contract with its members or with its generation and transmission supplier (where applicable).

(2) The Agency reserves the right to offer a loan under this section with a maturity date that varies from the requested date. Unless the Administrator makes a specific determination to the contrary, the Electric Program will not approve a new loan that includes a final maturity date that exceeds the remaining useful life of its electric system or any applicable wholesale power contract term.

(3) On a case-by-case basis, as necessary, the Administrator may approve a new loan that includes a final maturity that exceeds the remaining useful life of the applicant's electric system or applicable wholesale power contract term provided the Administrator finds that the requirements contained in § 1710.151 are satisfied, the new loan is feasible under § 1710.151(b), and such action addresses critical environmental or consumer needs.

(g) *Loan requirements.* (1) All refinancing loans made under this section must be in the interest of rural consumers, taxpayers, rural economic development, or otherwise in the public interest.

(2) All refinancing loans made under this section must be feasible as determined by RUS based on the financial condition of the borrower and the borrower's ability to repay and all loans must be adequately secured, as determined by RUS.

(3) Borrowers will be required to execute new legal documents, including a new note, loan contract, and security documents as necessary.

(4) Refinancing loans made under this section will generally be considered categorical exclusions for the purpose of environmental reviews because environmental reviews have previously

been completed for the FFB loans or RUS loans being refinanced.

(h) *New loan terms.* (1) Interest on advances made on loans made under this section will be at the interest rate available on the date of the advance for the new loan used to refinance the prior outstanding loan and any related premium, fee, or expense.

(2) An eligible entity must propose a maturity date for the new loan not to exceed the maturity prescribed by this section, a funding notice, or thirty-five (35) years, whichever is shortest.

(3) An eligible entity may be given the option of applying the proceeds of an advance made on the new loan to cover any applicable prepayment premium, fee, or other expense.

(4) If the prepayment premiums are to be financed by the new loan, the maximum principal amount of the note will be increased in an amount sufficient to cover such prepayment premiums in full.

(5) Provided such waiver is not inconsistent with applicable law or the terms and conditions of the notes previously issued to RUS or FFB, the Administrator may, on a case-by-case basis, waive or modify the requirements set forth in this paragraph (h), if in the Administrator's judgment, it is necessary to implement the intent of the authorizing statute and is in the best financial interest of the Government.

■ 5. Revise § 1700.100 to read as follows:

#### § 1710.100 General.

(a) RUS makes loans and loan guarantees to finance the construction of electric distribution, transmission, and generation facilities, including system improvements and replacements, and cybersecurity and grid security improvements, required to furnish and improve electric service in rural areas, and for demand side management, efficiency, and energy conservation programs, and on-grid and off-grid renewable energy systems. In certain limited circumstances, and at the discretion of the Administrator, RUS may finance selected operating expenses of its borrowers. Loans made or guaranteed by the Administrator will be made in conformance with the RE Act, as amended (7 U.S.C. 901 *et seq.*), and this chapter. The Administrator's decision to provide financing for selecting operating expenses may include, but is not limited to the following factors:

(1) The overall availability of funding compared to anticipated loan demand;

(2) The best interests of rural consumers;

(3) The protection of the Government's financial interest in existing loans and collateral; and

(4) Broader policy objectives, including directing benefits to disadvantaged communities, reducing greenhouse gas emissions, and other priorities of the Secretary of Agriculture.

(b) RUS provides technical assistance to borrowers to aid the development or improvement of rural electric service and to protect RUS' loan security. Additional information is available at <https://rd.usda.gov/programs-services/electric-programs>.

(c) Provided funds are available for such purpose, RUS may refinance, as provided in § 1710.53, RUS Electric Program loans made or guaranteed for the purpose of furnishing and improving electric service in rural areas, and for the purpose of assisting electric borrowers to implement demand side management, energy efficiency and conservation programs, on-grid and off-grid renewable energy systems, and cybersecurity and grid security improvements.

■ 6. Amend § 1710.106 by adding paragraphs (a)(7) and (8) and revising paragraphs (c)(1) and (e) to read as follows:

#### § 1710.106 Uses of loan funds.

(a) \* \* \*

(7) *Cybersecurity and grid security.* Eligible cybersecurity and grid security improvements.

(8) *Smart grid infrastructure.* The purchase, installation, improvements, and investments in assets needed for a robust smart grid infrastructure capability that enables the utility to operate efficiently, improve its reliability, and enhance its ability to recover from disasters, physical or cyber-attacks, carry out energy efficiency and demand side management activities, and implement renewable energy technologies and cybersecurity and grid security strategies.

(i) Smart grid, grid security, or cybersecurity infrastructure financed under this section must relate to one or more electric utility or energy efficiency purpose. Loan proceeds under this section may not be used to solely finance retail broadband services.

(ii) Notwithstanding paragraph (a)(8)(i) of this section, a borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

\* \* \* \* \*

(c) \* \* \*

(1) Electric facilities, equipment, appliances, or wiring located inside the premises of the consumer, except for measures related to grid security, cybersecurity, or assets financed pursuant to an eligible EE Program, and qualifying items included in a loan for demand side management or energy resource conservation programs, or renewable energy systems.

\* \* \* \* \*

(e)(1) If, in the sole discretion of the Administrator, the amount authorized for lending for municipal rate loans, hardship rate loans, and loan guarantees in a fiscal year is substantially less than the total amount eligible for RUS financing, RUS may limit the size, type, or purpose of loans approved during the fiscal year. Depending on the amount of the shortfall between the amount authorized for lending and the loan application inventory on hand for each type of loan, RUS may either reduce the amount on an equal proportion basis for all applicants for that type of loan based on the amount of funds for which the applicant is eligible or may shorten the loan period for which funding will be approved to less than the maximum of 4 years. All applications for the same type of loan approved during a fiscal year will be treated in the same manner, except that RUS will not limit funding to any borrower requesting a RUS loan or loan guarantee of \$1 million or less. Should a shortfall or urgent need related to cybersecurity, grid security, or statutory preference become evident during a fiscal year, the Administrator may announce priorities in a public notice for utilizing available funds for the balance of the fiscal year.

(2) If RUS limits the amount of loan funds approved for borrowers, the Administrator shall provide public notice to all electric borrowers as early as possible in the fiscal year of the manner in which funding will be limited. The portion of the loan application that is not funded during that fiscal year may, at the borrower's option, be treated as a second loan application received by RUS at a later date. This date will be determined by RUS in the same manner for all affected loans and will be based on the availability of loan funds. The second loan application shall be considered complete except that the borrower must submit a certification from a duly authorized corporate official stating that funds are still needed for loan purposes specified in the original application and must notify RUS of any changes in its circumstances that materially affects the information contained in the original

loan application or the primary support documents. See § 1710.401(f).

\* \* \* \* \*

## **PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR UTILITY INFRASTRUCTURE PURPOSES**

■ 7. The authority citation for part 1720 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*; 7 U.S.C. 940C.

■ 8. Revise the heading for part 1720 to read as set forth above.

■ 9. Revise § 1720.1 to read as follows:

### **§ 1720.1 Purpose.**

This part prescribes policies and procedures implementing a guarantee program for bonds and notes issued for utility infrastructure purposes authorized by section 313A of the Rural Electrification Act of 1936 (7 U.S.C. 940c–1).

### **§ 1720.2 [Removed and Reserved]**

■ 10. Remove and reserve § 1720.2.

■ 11. Revise § 1720.3 to read as follows:

### **§ 1720.3 Definitions.**

For the purpose of this part:

*Administrator* means the Administrator of RUS.

*Applicant* means a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis, that is applying for RUS to guarantee a bond or note under this part.

*Bond documents* means the guarantee, guarantee agreement, Pledge Agreement, and all other instruments and documentation pertaining to the issuance of the guaranteed bonds.

*Criticized loan* means a loan that has borrower risk ratings that have been categorized as “special mention,” “substandard,” “doubtful,” or “loss”, or any comparable categorization as described in the guaranteed lender's most recent audited financial statements.

*Eligible instrument* means a note or bond of a borrower payable or registered to, or to the order of, the guaranteed lender and for which:

(1) No default has occurred in the payment of principal or interest in accordance with the terms of such note or bond that is continuing beyond the contractual grace period (if any) provided in such note or bond for such payment;

(2) No “event of default”, as defined in such note or bond (or in any instrument creating a security interest in

favor of the guaranteed lender, in respect of such note or bond), shall exist that has resulted in the exercise of any right or remedy described in such note or bond (or in any such instrument);

(3) Such note or bond is not classified by the guaranteed lender as “non-performing, criticized or impaired” (or any comparable classification, as determined by RUS) under generally accepted accounting principles in the United States or this part;

(4) Such note or bond is free and clear of all liens other than the lien created by the guaranteed lender's pledge of such security to RUS under the Pledge Agreement;

(5) Such note or bond is not a restructured loan;

(6) Such note or bond is not unsecured debt; and

(7) The amount of generation or transmission loans does not exceed the maximum amount allowed by RUS based on RUS's sole determination of certain factors including, but not limited to, account risk, collateral quality, and collateral quantity.

*Eligible loan* means a loan that a guaranteed lender extends to a borrower for up to 100 percent of the cost of eligible utility infrastructure purposes consistent with the RE Act.

*Federal Financing Bank (FFB)* refers to the Government corporation and instrumentality of the United States of America under the general supervision of the Secretary of the Treasury established by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 *et seq.*).

*Guarantee* means the written agreement between the Secretary and a guaranteed lender, pursuant to which the Secretary guarantees full repayment of the principal, interest, and call premium, if any, on a guaranteed bond.

*Guarantee agreement* means the written agreement between the Secretary and the guaranteed lender which sets forth the terms and conditions of the guarantee.

*Guaranteed bond* means any bond, note, debenture, or other debt obligation issued by a guaranteed lender on a fixed or variable rate basis, and approved by the Secretary for a guarantee under this part.

*Guaranteed bondholder* means any investor in a guaranteed bond.

*Guaranteed lender* means an applicant that has been approved for a guarantee under this part.

*Leveraging data* means the cumulative change in the guaranteed lender's outstanding loans since the filing of the guaranteed lender's last Form 10–Q or Form 10–K or financial statements, as applicable.



*Loan* means any credit instrument that the guaranteed lender extends to a borrower for any utility infrastructure purpose eligible under the RE Act, including loans as set forth in section 4 of the RE Act for electricity transmission lines and distribution systems, loans as set forth in section 201 of the RE Act for telephone lines, facilities, and systems, and loans as set forth in Title VI of the RE Act for broadband systems.

*Loan documents* means the loan agreement and all other instruments and documentation between the guaranteed lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of a loan.

*Pledge Agreement* means the written agreement among the Secretary, the guaranteed lender, and a collateral agent, which sets forth the terms and conditions of the guaranteed lender's pledge of eligible instruments as collateral.

*Pledged collateral* means the following items pledged to RUS by the guaranteed lender as security for the guaranteed lender's repayment of a guaranteed bond:

(1)(i) The pledged instruments and the certificates representing the pledged instruments;

(ii) All payments of principal or interest, cash, instruments, and other property from time to time received, receivable, or otherwise distributed in respect of, in exchange for, and all other proceeds received in respect of, the pledged instruments;

(iii) All rights and privileges of the guaranteed lender with respect to the pledged instruments; and

(iv) All other proceeds of any of the foregoing; and

(2) Any property, including cash and certain permitted investments, that are pledged by the guaranteed lender as security for the repayment of a guaranteed bond.

*Pledged instruments* means the eligible instruments pledged by the guaranteed lender to RUS as security for the repayment of a guaranteed bond.

*Program* or *313A Program* means the guarantee program for bonds and notes issued for utility infrastructure purposes authorized by section 313A of the RE Act as amended.

*Rating agency* means a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization.

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

*RUS* means the Rural Utilities Service, a Rural Development agency of the U.S. Department of Agriculture.

*Secretary* means the Secretary of Agriculture acting through the Administrator of RUS.

*Subsidy amount* means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on Government receipts or outlays, in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*).

*Utility infrastructure* means equipment, systems, facilities, or other assets used to deliver electric, telephone, or broadband related services to consumers or to entities serving consumers.

■ 12. Amend § 1720.4 by revising paragraphs (a)(1), (b), (c), and (e) to read as follows:

**§ 1720.4 General standards.**

(a) \* \* \*

(1) The proceeds of the guaranteed bonds will be used by the guaranteed lender to make loans to borrowers for utility infrastructure purposes eligible for assistance under this chapter, or to refinance, subject to certain limitations, bonds or notes previously issued by the guaranteed lender for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the RE Act;

\* \* \* \* \*

(b) During the term of the guarantee, the guaranteed lender shall:

(1) Limit cash patronage refunds for guaranteed lenders having a credit rating below the level proscribed by the agency in its funding notice or below investment grade or comparable level on its senior secured debt without regard to the guarantee. For such guaranteed lenders, cash patronage refunds are limited to five percent of the total patronage refund eligible. The limit on patronage refunds must be maintained until the credit rating is restored to the level proscribed by RUS in its funding notice or to investment grade or above. For those guaranteed lenders subject to patronage limitations, equity securities issued as part of the patronage refund shall not be redeemable in cash during the term of any part of the guarantee, and the guaranteed lender shall not issue any dividends on any class of equity securities during the term of the guarantee.

(2) Maintain sufficient collateral secured by a perfected lien equal to the principal amount outstanding. Collateral shall be in the form of specific and identifiable unpledged securities equal to the value of the guaranteed

amount plus sufficient margin to cover potential costs, fees, and expenses which may arise in the event of a default. In the case of a guaranteed lender's default, the U.S. Government's claim shall not be subordinated to the claims of other creditors, and the indenture must provide that in the event of default, the Government has the sole right to the pledged instruments. The Secretary has discretion to require additional collateral at any time should circumstances warrant.

(c) The final maturity of the guaranteed bonds shall not exceed 30 years.

\* \* \* \* \*

(e) The Secretary shall guarantee payments on guaranteed bonds in such forms and on such terms and conditions and subject to such covenants, representations, warranties, and requirements (including requirements for audits) as determined appropriate for satisfying the requirements of this part. The Secretary shall require the guaranteed lender to enter into a guarantee agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering.

■ 13. Amend § 1720.5 by revising paragraphs (a)(2) and (b)(2) to read as follows:

**§ 1720.5 Eligibility criteria.**

(a) \* \* \*

(2) Able to demonstrate to the Secretary that it possesses the appropriate expertise, experience, and qualifications to make loans for utility infrastructure purposes.

(b) \* \* \*

(2) The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a rating agency, without regard to the guarantee. If an applicant has no outstanding RUS guarantees or has outstanding aggregate guarantees of less than \$25 million, the Administrator may prescribe in advance by notice an alternate method for the guaranteed lender to demonstrate creditworthiness.

\* \* \* \* \*

■ 14. Amend § 1720.6 by revising paragraphs (a)(4), (6), and (7) to read as follows:

**§ 1720.6 Application process.**

(a) \* \* \*

(4) A pro-forma financial statement and cash flow projection or business plan including detailed assumptions for the next five years, demonstrating that there is reasonable assurance that the applicant will be able to repay the



guaranteed bonds in accordance with their terms;

\* \* \* \* \*

(6) Evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee or such other evidence of creditworthiness as required by the Administrator under § 1720.5(b)(2);

(7) Evidence of a credit rating, from a rating agency, on its senior secured debt, its corporate credit rating, or such other evidence of creditworthiness as required by the Administrator under § 1720.5(b)(2); and

\* \* \* \* \*

■ 15. Amend § 1720.7 by revising paragraphs (b)(4) through (6), adding paragraph (b)(7), and revising paragraph (c) to read as follows:

**§ 1720.7 Application evaluation.**

\* \* \* \* \*

(b) \* \* \*

(4) The extent to which the applicant is subject to supervision, examination, and safety and soundness regulation by an independent Federal or state agency;

(5) The extent of concentration of financial risk that RUS may have resulting from previous guarantees made under section 313A of the RE Act;

(6) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, or generate other economic benefits, including the amount of fee income available to be deposited into the Rural Economic Development Subaccount, maintained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c(b)(2)(A)), after payment of the subsidy amount; and

(7) The geographic or economic distribution of funds made available through this program or use of such funds to advance rural development infrastructure goals.

(c) *Independent assessment.* Before a guarantee decision is made by the Secretary, the Secretary shall request that the Federal Financing Bank review the adequacy of the determination by the rating agency required under § 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without the guarantee, or such other evidence of creditworthiness as may be required by the Administrator under § 1720.5(b)(2).

\* \* \* \* \*

■ 16. Amend § 1720.8 by:

■ a. Redesignating paragraphs (a)(6) through (9) as paragraphs (a)(7) through (10);

■ b. Adding a new paragraph (a)(6);

■ c. Revising newly redesignated paragraphs (c)(9) and (10); and

■ d. Adding paragraph (c).

The additions and revisions read as follows:

**§ 1720.8 Issuance of the guarantee.**

(a) \* \* \*

(6) Outside legal counsel to the applicant, satisfactory to the Secretary, must furnish an opinion satisfactory to the Secretary that the Pledge Agreement creates in RUS's favor a valid perfected and enforceable security interest in the eligible securities pledged to RUS under the Pledge Agreement;

\* \* \* \* \*

(9) The applicant will provide evidence of a credit rating on its senior secured debt or its corporate credit rating, as applicable, without regard to the guarantee and satisfactory to the Secretary; and

(10) Certification by the Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary), acknowledging the applicant's commitment to submit to the Secretary, an annual credit assessment of the applicant by a rating agency, an annual review and certification of the security of the Government guarantee that is audited by an independent certified public accounting firm or Federal banking regulator, annual consolidated financial statements audited by an independent certified public accountant each year during which the guaranteed bonds are outstanding, and other such information requested by the Secretary.

\* \* \* \* \*

(c) The Secretary may condition the release of funds related to a guarantee bond on the guaranteed lender's provision of additional or supplemental information related to agency underwriting, regulatory compliance, program policy objectives, or collateral valuation.

■ 17. Revise § 1720.11 to read as follows:

**§ 1720.11 Servicing.**

The Secretary, or other agent of the Secretary on his or her behalf, shall have the right to service the guaranteed bond, and periodically inspect the facilities, assets, books, and accounts of the guaranteed lender or the collateral agent to ascertain compliance with the provisions of the RE Act and the bond documents.

■ 18. Amend § 1720.12 by revising paragraphs (a)(3) through (5) and (b) and adding paragraphs (c) through (e) to read as follows:

**§ 1720.12 Reporting requirements.**

(a) \* \* \*

(3) Pro forma projection of the guaranteed lender's balance sheet, income statement, and statement of cash flows with detailed assumptions over the ensuing five years;

(4) Credit assessment issued by a rating agency, or such other evidence of creditworthiness as may be required by the Administrator under § 1720.5(b)(2);

(5) Credit rating, by a rating agency on its senior secured debt or its corporate credit rating, as applicable, without regard to the guarantee and satisfactory to the Secretary, or such other evidence of creditworthiness as may be required by the Administrator under § 1720.5(b)(2); and

\* \* \* \* \*

(b) As long as any guaranteed bonds remain outstanding, the guaranteed lender will provide the Secretary with the following items each quarter within seven (7) business days of the guaranteed lender's quarter end:

(1) A list of pledged collateral which includes borrowers' billing information, and other information reasonably requested by RUS.

(2) A list of the guaranteed lender's criticized loans within 30 days of the end of each calendar quarter.

(c) The bond documents shall specify such bond monitoring, and financial and internal audit reporting requirements relating to the pledged collateral as deemed appropriate by the Secretary.

(d) Leveraging data must be submitted to RUS within five (5) business days after the guaranteed lender publishes its 10-K or 10-Q form or financial statements, as applicable.

(e) The use of the proceeds of the guaranteed bonds for the construction of new projects is subject to the environmental review requirements in accordance with 7 CFR part 1970. Prior to the guaranteed lender using the proceeds of the guaranteed bonds to make loans to borrowers for the construction of new projects, the guaranteed lender must provide sufficient details about the proposed construction to RUS so it can comply with the environmental requirements of 7 CFR part 1970. The guaranteed lender is prohibited from using the proceeds of guaranteed bonds to fund loans to borrowers for new construction projects without RUS's written acknowledgment that the environmental requirements of 7 CFR part 1970 have been met with respect to each such project.

## PART 1785—LOAN ACCOUNT COMPUTATIONS, PROCEDURES AND POLICIES FOR ELECTRIC AND TELEPHONE BORROWERS

■ 19. The authority citation for part 1785 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*; Title I, Subtitle D, sec. 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

■ 20. Revise § 1785.66 to read as follows:

### § 1785.66 General.

This subpart sets forth policies and procedures on the Rural Utilities Service (RUS) cushion of credit payments program. The cushion of credit payments program will be maintained only for accounts in existence on December 20, 2018. Once an account has been closed, it may not be reopened. Deposits in the borrower's cushion of credit account may only be used as described in this subpart and applicable law.

■ 21. Revise § 1785.68 to read as follows:

### § 1785.68 RUS cushion of credit payment accounts.

Effective December 20, 2018, no new cushion of credit accounts may be established. Deposits remaining in the cushion of credit accounts will bear an interest rate equal to the one-year Treasury interest rate in effect on October 1st for each year thereafter.

■ 22. Revise § 1785.69 to read as follows:

### § 1785.69 Cushion of credit payment account computations.

(a) *Deposits.* Cushion of credit deposits are credited to the borrowers' cushion of credit accounts as of December 20, 2018, with no further deposits accepted after that date.

(b) *Interest.* Interest at the rate provided for in § 1785.68 will be credited on a quarterly basis to cushion of credit accounts. Interest earned will appear as a reduction in the interest billed on the borrower's RUS notes and will be separately shown on RUS Form 694, "Statement of Interest and Principal Due."

■ 23. Revise § 1785.70 to read as follows:

### § 1785.70 Application of Rural Electric and Telephone Revolving Fund (RETRF) cushion of credit payments.

(a) If a maturing installment on an RUS note or a note which has been guaranteed by RUS is not received by its due date, funds will be withdrawn from

the borrower's cushion of credit account and applied as of the installment due date beginning with the oldest of such notes as follows: first, to current interest then due on all notes; second, to the accumulated interest due, if any, on all notes; and third, to the principal then due on all notes.

(b) A borrower may reduce the balance of its cushion of credit account only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under the Act.

(c) The Administrator of RUS may, consistent with law, authorize the requested release of cushion of credit deposits to a borrower when the cushion of credit balance will exceed the total value of the borrower's outstanding loans made or guaranteed by RUS.

(d) Once the balance in an individual cushion of credit account reaches zero, that cushion of credit account shall be closed. Once balances in all cushion of credit accounts reach zero, the cushion of credit program will be terminated.

(e) As the Rural Utilities Service phases out the cushion of credit program, the Agency may from time to time publish announcements in the **Federal Register**, or on its website related to the efficient administration of the cushion of credit program.

**Andrew Berke,**

*Administrator, Rural Utilities Service.*

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 3560

[Docket No. RHS–22–MFH–0024]

#### Temporary Change in the Tenant Recertification Requirements

**AGENCY:** Rural Housing Service, USDA.  
**ACTION:** Notice.

**SUMMARY:** The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is announcing a temporary exception to the tenant recertification requirements for the Section 515 Rural Rental Housing (RRH) Program and Section 514 Off-Farm Labor Housing (FLH) Program.

**DATES:** The temporary exception to the tenant recertification requirements will be effective on January 1, 2023, and expire on December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Michael Resnik, Acting Director, Multi-Family Housing Asset Management Division, RHS, U.S. Department of Agriculture via email: [michael.resnik@usda.gov](mailto:michael.resnik@usda.gov), or by phone 202–430–3114.

#### SUPPLEMENTARY INFORMATION:

##### Authority

Section 515 Rural Rental Housing Direct Loans Program (42 U.S.C. 1485—Authorized under the Housing Act of 1949 (Pub. L. 81–171), and Public Law 102–550. Section 514 Farm Labor Housing Direct Loans and Grants Program (42 U.S.C. 1484)—Authorized under Title V of the Housing Act of 1949 (Pub. L. 81–171).

##### Background

The RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs. The Agency offers loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. RHS also provides technical assistance loans and grants by partnering with agricultural producers, cooperatives, Indian tribes, non-profits, and other local, state, and Federal agencies. Multifamily Housing (MFH) assists rural property owners through loans, loan guarantees, and grants that enable owners to develop and rehabilitate properties for low-income, elderly, and disabled individuals and families as well as domestic farm laborers.

Section 514 direct loans are provided to eligible borrowers for the development of on-farm or off-farm housing for farm laborers. Loans may be used to buy, build, improve, or repair housing (including furnishings and related facilities) for farm laborers. The Section 515 multifamily housing program offers direct loans for the development of new, or rehabilitation of existing, rental housing for low-income individuals and families in rural areas.

On October 13, 2022, the Social Security Administration announced an 8.7% increase in Social Security and Supplemental Security Income (SSI) benefits in 2023. According to the Social Security Administration, Social Security benefits will increase by an average of more than \$140 per month starting in January 2023. This increase is due in part to the current inflationary pressures on the economy and a demanding labor market that has dramatically increased salaries, also seen in HUD's average increase of 11–12% in Area Median Income this year.

The regulation at 7 CFR 3560.152(e) requires, among other things, that tenant