

All dollar amounts excluded by RUS from the calculation of aggregate investments, loans, and guarantees pursuant to the RUS mortgage, RUS loan contract, and/or RUS regulations, bulletins, memoranda (including the memorandum of March 28, 1985 cited below), or other written notice as of the date of this proposed rule will continue to be excluded in the future. However, profits, interest and other returns (regardless of whether or not they are reinvested) from such investments, loans, and guarantees after the date of this proposed rule will be excluded only if they are excluded under proposed § 1717.654. Also, any new commitment of funds to such investments, loans, and guarantees will not be exempted after the date of this proposed rule unless they are excluded under proposed § 1717.654. Moreover, the memorandum issued to all electric borrowers by the Administrator of the Rural Electrification Administration, dated March 28, 1985, regarding the approval of certain investments is hereby rescinded.

Several new exclusions are proposed under paragraph (c) of this section. There would be no restrictions on investments in or loans to the following types of community infrastructure located in the borrower's service territory: water and waste disposal systems; solid waste disposal systems; telecommunication and other electronic communication systems; and natural gas distribution systems. Guarantees of the obligations of such systems would also be excluded so long as the aggregate amount of such guarantees does not exceed 20 percent of the borrower's equity.

RUS believes that borrowers should be able to minimize the risks associated with investing in these types of community infrastructure because of the similarities in structure and operation between them and the borrowers' main electric utility business, and the opportunities for sharing overhead in such areas as billing, communications, system control, repair and maintenance, and construction supervision. Excluding these investments complements the approach in the proposed new mortgage for distribution borrowers, which would allow borrowers meeting certain criteria to issue up to 20 percent of their total secured debt for such community infrastructure, without the approval of the mortgagees.

It is also proposed that amounts "invested" in customer accounts receivable and other accounts receivable be excluded from the calculation of total investments, loans and guarantees. These "investments" represent

commitments made for a period of less than a year, and should not present a significant on-going risk to the borrower or RUS.

Other proposed editorial changes to existing 1717.654, such as shifting paragraph (b)(1) to 1717.653(b) would not change the substance of the rule.

Section 1717.655 Exemption of Certain Borrowers From Controls

Proposed new § 1717.655 would exempt borrowers that meet certain criteria from RUS approval of investments, loans and guarantees. The proposed criteria are as follows:

- The borrower must be in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreement with RUS.
- The average revenue per kWh for residential service received by the borrower must not exceed 130 percent of the average revenue for residential service for all residential consumers in the state or states served by the borrower. The criterion would apply only to distribution borrowers.
- In the most recent calendar year the borrower must have achieved an operating TIER and an operating DSC of at least 1.0, in each case based on the average of the two highest ratios achieved in the three most recent years.
- The borrower's ratio of net utility plant to long-term debt must be at least 1.1.
- The borrower must have equity equal to at least 27 percent of its total assets.

Both distribution and power supply borrowers that meet these criteria would be exempt from RUS approval of investments, loans and guarantees. It is estimated that about 83 percent of distribution borrowers and 3 power supply borrowers currently would meet the proposed criteria for exemption. Borrowers not meeting the criteria would be subject to RUS approval of investments, loans and guarantees above 15 percent of total utility plant.

The first qualification criterion would require the borrower to be in good standing with respect to all covenants of its RUS mortgage, RUS loan contract or any other agreement with RUS, such as adequately maintaining the property, having adequate insurance coverage, meeting all financial obligations, and achieving margins sufficient to meet TIER and DSC requirements.

The second criterion would exclude borrowers that are more likely to face risks of substantial downward pressure on rates and the possible loss of load and revenues. While comparing a borrower with the state average, as proposed, is less reliable analytically

than a detailed comparison with the borrower's neighboring competitors, setting the threshold at 130 percent should ensure that borrowers that fail the test most likely face an increased risk of rate competition. At a borrower's request, the Administrator of RUS could waive this criterion if he found that the borrower's strength on the other qualification criteria offset the borrower's weakness in rate disparity.

The third criterion would ensure that the borrower is usually able to cover all of the expenses of its utility operation from utility revenues, and normally should not be dependent on income from investments or loans to meet the expenses of its primary business.

The fourth criterion would provide substantial assurance that the borrower's long-term debt is adequately collateralized and that RUS loan security normally should not need to depend on the borrower's investments and loans, which may not be secured or effectively secured under the RUS mortgage and whose liquidation value may vary substantially over time.

The fifth criterion would provide an equity cushion in the event the borrower defaulted and foreclosure and liquidation became necessary. It also would provide an incentive for profitable investments and a disincentive for unprofitable investments, since the ratio of equity to total assets would increase in the first case and decrease in the second. A borrower could lose its exemption status if bad investments reduced equity below 27 percent.

While distribution and power supply borrowers that meet the proposed criteria would be exempt from RUS approval of their investments, loans and guarantees, these borrowers would continue to be obligated to maintain adequate records and to report annually on their transactions. Such records and reports would be needed in the event an exempt borrower lost its exemption because of failure to meet one or more of the criteria, and also to monitor borrower performance in making investments in rural development.

If an exempt borrower ceases to meet the criteria for exemption, it would become subject to the controls set forth in this proposed rule upon receiving written notice from RUS. Such borrower could regain its exemption if subsequently it met the qualification criteria and was so notified in writing by RUS.

If an exempt borrower is over the 15 percent level at the time it loses its exemption, it could ask the Administrator to exclude a portion of its investments, loans and guarantees up to