

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1718

RIN 0572-AB06

Loan Security Documents for Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby establishes new policies and requirements for the form of mortgage required of electric distribution borrowers. This rule updates and clarifies the provisions of the mortgage, ensures that security for loans made to distribution borrowers will continue to be adequate, generally confines the scope of the mortgage primarily to basic issues of collateral and loan security, and supports borrower access to other credit sources.

EFFECTIVE DATE: This rule is effective August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, room 4037-S, Ag Box 1560, 14th Street & Independence Avenue, SW., Washington, DC 20250-1500. Telephone: 202-720-9547.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable

conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572-0032 and 0572-0103.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

On September 29, 1994, at 59 FR 49594, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR 1718 Loan Security Documents for Electric Borrowers, Subpart B Mortgage for Distribution Borrowers, which proposed the agency's policies and requirements for mortgages used to secure direct and guaranteed loans made to electric distribution borrowers. The objectives of the proposed rule were to update and clarify the provisions of the mortgage used with distribution borrowers, to generally confine the scope of the mortgage primarily to basic issues of collateral and loan security, to support borrower access to other credit sources, and to continue to provide adequate loan security. This proposal was preceded by the revision of the agency's policies and requirements for accommodating or subordinating the lien of the RUS mortgage, which was published in final form in the **Federal Register** on October 19, 1993 at 58 FR 53835.

Comments on the proposed rule were received from 30 different sources, including the Ad Hoc Mortgage Committee of the National Rural Electric Cooperative Association (NRECA), the National Rural Utilities Cooperative Finance Corporation (CFC), CoBank,

several state-wide or regional electric cooperative associations, and a number of individual distribution and power supply borrowers.

In addition to the written comments received, RUS met, in either separate or combined meetings, with representatives of the ad hoc NRECA Mortgage Committee, CFC, and CoBank to discuss and answer questions regarding specific provisions of the proposed rule, to clarify the meaning, scope and effect of some proposed provisions, and to listen to alternatives to certain provisions. The NRECA Mortgage Committee also submitted additional written comments to clarify certain points in their earlier written comments. Also, some commenters provided additional oral comments by telephone to clarify or expand their written comments.

All of the written and oral comments received, some of which were conflicting, were taken into consideration in drafting the final rule. The more important comments and issues are discussed below.

Published elsewhere in this issue of the **Federal Register** is a proposed rule that sets forth proposed amendments to RUS regulations to update the agency's policies and requirements regarding loan contracts with distribution borrowers. These new policies and requirements are designed to complement the new distribution mortgage and to reflect changes in the lending program and the electric industry that have occurred over the past several years. Readers are encouraged to review that proposed rule in connection with the final mortgage published today.

Phase-in of New Mortgage

Distribution borrowers receiving a loan from RUS during the transition period between now and the date the new model loan contract is published in final form in the **Federal Register** may opt to execute the new model mortgage and the proposed model loan contract. Such borrowers will have the further option of executing the final form of the model loan contract after it is published in the **Federal Register**. Distribution borrowers receiving a loan from RUS during the period after publication of the final form of the new model loan contract but before its effective date may opt for the final forms of both the model loan contract and the model mortgage. If there are other co-mortgagees on the borrower's existing mortgage, which there are in most cases, the borrower would have to obtain the approval of these co-mortgagees before executing a new mortgage.