

a borrower. However, while expenditures for accounting do not require RUS approval, the selection of a certified public accountant by the borrower to prepare audited reports required by RUS remains subject to RUS approval.

(ii) RUS approval of expenditures for engineering services by a borrower, if such engineering services will not be financed by RUS;

(10) *Banks.* RUS approval of banks or other depositories used by a borrower. However, without the prior written approval of RUS, a borrower shall not deposit funds from loans made or guaranteed by RUS in any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS, or in any account not so insured.

(11) *Certain equipment.* RUS approval of the purchase of data processing equipment and system control equipment by a borrower, if the equipment is not financed by RUS;

(12) *Notification of rate changes.* Requirement that distribution borrowers notify RUS in writing of proposed changes in electric rates 90 days prior to the effective date of such rates. Instead, the required notification period shall be 30 days, and such notification shall be required only if requested by RUS;

(13) *Consolidations and mergers.* RUS approval of mergers and consolidations, and conveyances or transfers of the mortgaged property substantially as an entirety, if the following conditions are met:

(i) Such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security of the mortgage and the rights and powers of the mortgagees;

(ii) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall execute and deliver to the mortgagees a mortgage supplemental in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the outstanding notes and the performance and observance of every covenant and condition of the mortgage;

(iii) Immediately after giving effect to such transaction, no default under the mortgage shall have occurred and be continuing;

(iv) The borrower shall have delivered to the mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the mortgagees, which shall state that such

consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this section and that all conditions precedent herein provided for relating to such transaction have been complied with;

(v) The borrower shall have delivered to the mortgagees an opinion of counsel in form and substance satisfactory to each of the mortgagees; and

(vi) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall be an entity:

(A) Having equity equal to at least 27% of its total assets on a pro forma basis after giving effect to such transaction;

(B) Having a pro forma TIER of not less than 1.50 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years; and

(C) Having net utility plant equal to or greater than 1.0 times its total long-term debt on a pro forma basis;

(14) *Sale, lease, or transfer of capital assets.* RUS approval for a distribution borrower to sell, lease, or transfer capital assets, if the following conditions are met:

(i) The borrower is not in default;

(ii) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.5, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years;

(iii) The sale, lease, or transfer of assets will not reduce the borrower's existing or future requirements for energy or capacity being furnished to the borrower under any wholesale power contract which has been pledged as security to the government;

(iv) Fair market value is obtained for the assets;

(v) The aggregate value of assets sold, leased, or transferred in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the transaction;

(vi) The proceeds of such sale, lease, or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately:

(A) Applied as a prepayment of all notes secured under the mortgage equally and ratably;

(B) In the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the borrower's utility business; or

(C) Applied to the acquisition of construction of utility plant; and

(vii) If the borrower has an RUS-approved wholesale power contract

with a power supply borrower (seller), the circumstances of the sale, lease or transfer of capital assets conform with the conditions in such contract under which the seller may not withhold its consent to the sale, lease or transfer;

(15) *Limitations on distributions.* RUS approval for a borrower to declare or pay dividends, pay or determine to pay patronage refunds, retire patronage capital, or make any other cash distributions, if the following conditions are met:

(i) After giving effect to the distribution, the borrower's equity will be greater than or equal to 30 percent of its total assets;

(ii) The borrower is current on all payments due on all notes secured under the mortgage;

(iii) The borrower is not otherwise in default under its loan documents; and

(iv) After giving effect to the distribution, the borrower's current and accrued assets will be not less than its current and accrued liabilities.

(d) *RUS requirements and operational controls not exempted.* All requirements and operational controls contained in the RUS mortgage and loan contract, or otherwise imposed on borrowers pursuant to statute or regulation, that are not specifically listed in paragraph (c) of this section are not exempted and shall continue to apply according to their terms. Examples of such requirements and controls not exempted are listed in this paragraph for the convenience of the public. This list is not exhaustive, and the absence of a requirement or control from this list in no way means that the requirement or control has been exempted:

(1) Requirements and operational controls contained in the RUS mortgage or loan contract that are necessary to ensure that the security for loans made or guaranteed by RUS is reasonably adequate and that the loans will be repaid, or to accomplish other fundamental purposes of the RE Act. Some of these also represent terms and conditions with respect to the use by borrowers of the proceeds of loans made or guaranteed by RUS. Together, these controls include, but are not limited to, the following:

(i) Area coverage requirements set forth in the loan contract and in § 1710.103;

(ii) Requirement that certain borrowers maintain, on an ongoing basis, a power requirements study and a power requirements study work plan, as set forth in §§ 1710.201 and 1710.202;

(iii) Requirement that borrowers follow RUS construction standards and use RUS accepted materials, as set forth